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## LGBTQ+ Rights in Delaware

Delaware has a long and proud history of protecting the fundamental rights and liberties of all of its residents. The Delaware Department of Justice, led by Delaware's Attorney General, upholds and enforces these rights, which include some of the broadest state law protections against discrimination based on sexual orientation and gender identity anywhere in the country.

### **What are my rights in the workplace?**

Both federal and state law prohibit employment discrimination on the basis of sexual orientation or transgender status. Federal law applies to any employer with 15 or more staff.<sup>1</sup> Delaware laws apply to any workplace with four or more employees.<sup>2</sup> These laws protect employment, workplace treatment, and pay.

### **Can my housing be at risk because I am LGBTQ+?**

The federal Fair Housing Act protects renters, home buyers, and homeowners against discrimination on many different bases, including sex, which incorporates sexual orientation and gender identity.<sup>3</sup> In addition to federal law, Delaware state law also protects its residents, including those who identify as LGBTQ+, against any form of housing discrimination.<sup>4</sup>

### **Is my LGBTQ child protected in school?**

Federal courts have found that schools have the right to establish policies allowing transgender students to use bathrooms according to their gender identity, and that forcing transgender students to use single-use bathrooms or ones designated for their gender assigned at birth can constitute discrimination.<sup>5</sup> Delaware law requires every school district to establish an anti-

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<sup>1</sup> Title VII, Civil Rights Act (<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>); *Bostock v. Clayton County*, 590 U.S. \_\_\_\_ (June 15, 2020) (holding that protections against discrimination on the basis of sex necessarily also extend to sexual preference and gender identity, including transgender identity).

<sup>2</sup> 19 *Del. C.* § 710(7)..

([https://delcode.delaware.gov/title19/c007/sc02/#:~:text=\(c\)%20It%20shall%20be%20an,sexual%20orientation%2C%20gender%20identity%2C%20national](https://delcode.delaware.gov/title19/c007/sc02/#:~:text=(c)%20It%20shall%20be%20an,sexual%20orientation%2C%20gender%20identity%2C%20national)).

<sup>3</sup> 42 U.S.C. § 3601 *et seq.* (<https://www.govinfo.gov/content/pkg/USCODE-2016-title42/html/USCODE-2016-title42-chap45-subchapI.htm>)

<sup>4</sup> 6 *Del. C.* § 4603.

<sup>5</sup> *Doe v. Boyertown Area School District*, 897 F.3d 518, 528-520 (3d Cir. 2018) (<https://casetext.com/case/joel-doe-v-boyertown-area-sch-dist-3>).

bullying policy that applies to all school properties and functions, and protects students from bullying on any basis, including sex, sexual orientation, gender identity or expression, among others.<sup>6</sup> Preventing bullying in Delaware’s public schools has long been a priority of the Delaware Attorney General, and this office created an Ombudperson whose job it is to investigate any allegations of bullying in schools.<sup>7</sup>

### **Are my rights protected in the marketplace?**

Delaware law requires all businesses that are places of public accommodation, including retail stores, restaurants, hotels, hospitals and any other business that provides goods or services to the public, treat everyone equally. That means that no business can refuse to provide goods or services to any person because of their sexual preference or gender identity.<sup>8</sup> Delaware law also provides specific protections for gender identity and sex under its insurance code, ensuring health and other insurance policies cannot vary or deny coverage because of someone’s sex or gender identity.<sup>9</sup>

### **Is my marriage safe? What about my family?**

Both federal and Delaware state law protect same-sex marriage<sup>10</sup> as well as adoption rights.<sup>11</sup> Same-sex couples enjoy the same rights and privileges as mixed-sex couples.

### **How can I make sure my ID matches my gender identity?**

Delaware law allows individuals to change their gender identity on state records and identification cards with a supporting statement from a medical or social worker.<sup>12</sup> Any Delaware resident may change their name via a court order.<sup>13</sup>

### **What can I do if I have been discriminated against because of my gender identity or sexual orientation?**

Delaware’s Division of Human and Civil Rights and its Commission is responsible for enforcing the state and federal fair housing laws and the state equal accommodations law. The Division receives and investigates allegations of discrimination in public accommodation or housing. You can file a [complaint online](https://humanandcivilrights.delaware.gov/fair-housing-complaint) at [https://humanandcivilrights.delaware.gov/fair-housing-](https://humanandcivilrights.delaware.gov/fair-housing-complaint)

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<sup>6</sup> 14 Del. C. § 4164.

<sup>7</sup> See Delaware Department of Justice, “Anti-Bullying Efforts” (<https://attorneygeneral.delaware.gov/anti-bullying-efforts/>).

<sup>8</sup> 6 Del. C. § 4504.

<sup>9</sup> See State of Delaware Department of Insurance, “Domestic / Foreign Insurers Bulletin No. 86,” (March 23, 2016) (<https://insurance.delaware.gov/wp-content/uploads/sites/15/2020/09/domestic-foreign-insurers-bulletin-no86.pdf>).

<sup>10</sup> See Respect for Marriage Act, Public Law 117-228 (<https://www.congress.gov/117/plaws/publ228/PLAW-117publ228.pdf>); see also 13 Del. C. § 212 (<https://delcode.delaware.gov/title13/title13.pdf>).

<sup>11</sup> 13 Del. C. § 903 (<https://delcode.delaware.gov/title13/title13.pdf>).

<sup>12</sup> 16 Del. Admin. C. § 4205 (10.6 – Legal Change of Name& 10.7 – Amendment of Sex) (<https://dhss.delaware.gov/dph/ss/files/GenderReassignment.pdf>).

<sup>13</sup> 10 Del. C. § 5901 (<https://delcode.delaware.gov/title10/c059/index.html>).

[information-center/how-to-file-a-complaint/](#). If the Division finds the complaint has merit, the Attorney General's office may prosecute the offending entity before the Commission.

**I was attacked because of my sexual orientation or gender identity. What protection does Delaware law provide?**

Delaware law creates a special category for crimes motivated by hate, including bias motivated by a victim's sexual orientation and gender identity, and provides civil remedies for persons who have suffered injuries on this basis.<sup>14</sup> The Delaware Attorney General's Division of Civil Rights and Public Trust has jurisdiction over hate crimes.<sup>15</sup>

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<sup>14</sup> 11 *Del. C.* §§ 1304, 1307 (<https://delcode.delaware.gov/title11/c005/sc07/index.html>).

<sup>15</sup> 29 *Del. C.* § 2553 (<https://delcode.delaware.gov/title29/c025/sc05/index.html>).

## **Additional Resources:**

### Delaware Division of Civil Rights and Public Trust (DCRPT)

<https://attorneygeneral.delaware.gov/publictrust/>

[Complaint Form \(de.gov/dcrptcomplaint\)](https://de.gov/dcrptcomplaint) if you believe your rights have been violated

Phone: (302)577-5400

Email: [publictrust@delaware.gov](mailto:publictrust@delaware.gov)

### Lambda Legal: Know Your Rights

<https://legacy.lambdalegal.org/know-your-rights>

### ACLU of Delaware

<https://www.aclu-de.org/en/issues/discrimination/lgbtq-rights>

Phone: (302) 654-5326

### Human Rights Campaign – Delaware

<https://www.hrc.org/in-your-area/delaware>

### AIDS Delaware (Offices in Georgetown, Wilmington, and Dover)

<https://aidsdelaware.org/>

### CAMP Rehoboth

<https://www.camprehoboth.org/>

Phone: 302-227-5620

Email: [info@camprehoboth.com](mailto:info@camprehoboth.com)

### The Emerald Lighthouse

<https://www.theemeraldighthouse.org/>

Phone: 302-722-6775

Email: [Info@theemeraldighthouse.org](mailto:Info@theemeraldighthouse.org)

### Equality Delaware

<https://www.facebook.com/equalitydelaware>