

What are you constitutionally entitled to as an LGBTIQ+ person?

YOU as a lesbian, gay man or gay boy, bisexual person, transgender person, intersex person, gender non-conforming person, or queer person have a Constitutional right to be treated equally as other people in South Africa in all aspects of life.

You should be equally allowed to:

- Rent a house or room and stay in it for the duration of the lease as well as renew your lease
- Stay at a hotel, guest house, or AirB&B
- Stay at a homeless shelter or temporary shelter
- Seek employment and stay at your job and get paid what is due and fair and in reasonable time
- Stay in employment housing
- Seek the services of a salon, beauty parlor, nail parlor, barbershop, massage parlor or spa
- Eat at a restaurant
- Use a taxi, Uber, Taxify, bus, train, boat, or aircraft
- Register and attend classes at a school, college or university
- Stay at a school, college or university student residence or hostel
- Attend a church, synagogue or mosque or any other house of meditation or prayer
- Get medical attention at a clinic or hospital or medical emergency services or medical insurance
- Get gender reassignment surgery
- Access any public building or office
- Access and use an entertainment or leisure facility
- Shop at a business facility
- Show affection in public
- Dress according to your preferred gender or non-gender
- Marry
- Adopt children
- Access benefits accruing to you
- Get your documents changed within reasonable time
- Acquire new documents within reasonable time
- Be allowed to travel, exit or re-enter the country on reasonable grounds
- Be an active member of a trade, trade union, association, club, occupation, hobby, professional practice



- Be an active member of a family and benefit from your family if you are still dependent on them
- Register and be addressed as per your preferred gender description which may or may not include F or M
- Have access to public information, be allowed to impart information and to receive information in all clarity and in reasonable time
- Access any public spaces such as parks and beaches

What laws protect you from unfair discrimination, harassment and hate speech?

1. Section 9 of the Constitution of the Republic of South Africa protects you from unfair discrimination.

It says that:

- Everyone is equal before the law and has the right to equal protection and benefit of the law
- The state or any private individual may not unfairly discriminate directly or indirectly against anyone on one or more grounds including sexual orientation, gender or sex (including intersex).
- Discrimination on the grounds of sexual orientation, gender or sex (including intersex) is unfair unless it is established that the discrimination was fair

2. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (PEPUDA), which is a law established under the express directive of the Constitution, protects you against unfair discrimination, harassment and hate speech.

It says that:

- Section 6 says that neither the state nor any person may unfairly discriminate against any person (that includes YOU as an LGBTIQ+ person).

- Section 10 says that no person may publish, spread, advocate or communicate hateful or harmful words that are based on among others sexual orientation, gender or sex (including intersex) against any person that would reasonably show an intention to be hurtful, harmful, make other people harm, or spread or promote hatred towards a person because of their sexual orientation, gender or sex (including intersex)
- Section 11 says that no person may subject any person to harassment (that includes YOU as an LGBTIQ+ person).
- Section 12 says that no person may disseminate or broadcast any information; publish or display any advertisement or notice that would reasonably be seen as or understood to show a clear intention to unfairly discriminate against any person (that includes YOU as an LGBTIQ+ person).

Where can you sue someone if they unfairly discriminate you, harass you or direct hate speech at you because of your sexual orientation, gender or sex (including intersex)?

Section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 establishes the Equality Courts of South Africa. Equality Courts are meant to hear and make judgments in cases of unfair discrimination, harassment and hate speech based on among others - sexual orientation, gender and sex (including intersex).



The Equality Courts can be found at:

- Every High Court in South Africa
- The Magistrates' Court in your area or other area near you

What to do if you want to sue for unfair discrimination, harassment or hate speech:

- You do not need a lawyer to sue someone in the Equality Court. You can go there individually. You can also ask a human rights organisation to help you sue. You can also sue on behalf of someone you think was unfairly discriminated, harassed or hate speech directed at them.
- When you go to any Court in South Africa, ask for the designated 'Clerk to the Equality Court' or the 'Presiding' or 'designated' Judge or Magistrate of the Equality Court.
- You will be helped to fill in the necessary forms.
- You will be informed when the case is set for hearing and the person you are suing will be summoned to appear in Court.
- Your case will be heard and the Judge or Magistrate will deliver a judgment in reasonable time.

What will I gain by going to the Equality Court?

If it established by the Court that there was unfair discrimination, harassment or hate speech directed at you because of your sexual orientation, gender or sex (including intersex) you stand to gain one, some or all of the following remedies:

- An apology in writing from the person who you sued.
- Monetary compensation for financial, time and psychological wellbeing lost.
- Refunds for any expenses you incurred while suing the person.
- Sensitisation of the person you sued on LGBTIQ+ rights.
- Any costs for counseling that you might have attended or need to attend as a result of the discrimination, harassment or hate speech.
- Reinstatement at a job or school or accommodation. Also reinstatement of any membership to a club, association, trade union or other entity, institution or organisation that you belonged to.
- Other remedy that the Judge of Magistrate see fit.



Centre for Human Rights

The Centre for Human Rights, University of Pretoria is an internationally recognised university based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. It aims to contribute to advancing human rights, through education, research and advocacy.

For more details on the Centre, visit www.chr.up.ac.za

The Sexual Orientation, Gender Identity Expression and Sexual Characteristics (SOGIESC) Unit

the SOGIESC Unit's mandate is to advocate for and work towards equality inclusion non-discrimination, non-violence, and non-heterosexism for lesbian, gay, bisexual, transgender, intersex, queer, questioning, and asexual persons (LGBTIQ+ persons).

This is done through hate-crime prevention and diligence in hate-crime prosecution; legal aid for LGBTIQ+ victims of discrimination and violence; LGBTIQ+ empowerment through human rights education and affirmative Masters and Doctorate scholarships; and country-based, regional and international advocacy actions.

For more information please contact:
The SOGIESC Unit,
Centre for Human Rights,
Faculty of Law,
University of Pretoria.
Tel +27 (0) 12 420 3810
Tel +27 (0) 12 420 30134



Your responsibility as an LGBTIQ+ person:

By suing someone, an organisation or business for unfairly discriminating you, harassing you, or directing hate speech at you, you will not only be pursuing justice for yourself, you will also be preventing the same from happening to other LGBTIQ+ persons in South Africa. The more the Courts make judgments on unfair discrimination, harassment and hate speech against LGBTIQ+ people, the more people, organisations and business will fear to unfairly discriminate LGBTIQ+ people because they will fear to be sued.



Example of LGBTIQ+ case that was won at the Equality Court

Mphela (transgender learner) v Manamela (school principal) and others (2016), case no1/Seshego Magistrates Court (Equality Court):

Mphela won the case for being discriminated and harassed at school. She was a learner at Raselete Secondary School in Limpopo where Manamela was school principal and also her Grade 12 teacher. Manamela instructed other learners to feel her private parts in the bathrooms and report back what they found. Manamela also called her gay several times in front of other learners and this made the learners to treat her differently in a bad way as well as tease her about her sexual orientation/gender identity. The complainant was awarded 100,000.00 Rand because this was a clear case of harassment and unfair discrimination based on her gender (identity) as a transgender learner.



LGBTIQ+
Information series



THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (PEPUDA)

YOUR GO-TO LAW
The Equality court of South Africa
YOUR GO-TO COURTS