Consensual same-sex activity is a criminal offense in Malawi. The Penal Code criminalizes ‘carnal knowledge against the order of nature’ in section 153, which is generally interpreted to prohibit sexual intercourse other than penile/vaginal penetration. Additionally, section 156 of the Penal Code criminalizes “indecent practices between males” with a penalty of five years in prison upon conviction. In 2011 the Penal Code was amended to include, section 137A: the offense of “indecent practices” between females. As it stands, anyone suspected of engaging in same sex conduct can be tried and convicted in Malawi.

In July 2014, during the United Nations Human Rights Committee review of Malawi, the government claimed these criminal provisions were not being applied. However, the Malawian civil society organization, the Centre for Development of People (CEDEP) disputed this claim, based on its research in June. CEDEP researchers visited 23 prisons, requesting and revising prison records for the period between 2011 and 2014. The research revealed that, over that time period, 21 men had served time for adult same-sex sexual acts; at least 6 of those cases involved consensual sex between adults.

There is no legislation to protect employees against discrimination based on their real or perceived sexual orientation or gender identity.