



Driving Equality

Building Bridges Toward LGBT Diversity

By Francesca Sabbatino and Paul Kimmerling

Sexual orientation and gender identity are much different categories of diversity from race, gender, religion, national origin, and disability. For starters, federal law prohibits discrimination based on all of these categories, except sexual orientation and gender identity. Additionally, sexual orientation and gender identity are not discernable to the naked eye, thus adding to the complexity of inclusion of this group.

We acknowledge that legal workplace protections are not universal. However, some large American companies are working toward establishing best practices for diversity and inclusion, specifically with regard to the lesbian, gay, bisexual, and transgender (LGBT) community. For example, Chevron, Bank of America, and AT&T received top marks as the best workplaces for LGBT employees, according to the Human Rights Campaign Foundation in Washington, D.C. Additionally, Wal-Mart introduced a nondiscrimination policy that protects gender identity and expression.

It is imperative that the legal community take note of the expansion of diversity policies to include members of the LGBT community. A recent study published by the National Bureau of Economic Research suggests that 20 percent of Americans are LGBT. While we might expect comparable numbers for lawyers, data collected in 2013 by the National Association for Law Placement (NALP) revealed that only 2.19 percent of lawyers surveyed identified as openly LGBT. What does this disparity suggest?

LGBT identity is not a characteristic as obvious to the eye as gender and race. This allows a member of the LGBT community to make a choice to be “in” or “out” in his or her professional career. However, many “out” attorneys face discrimination on the basis of their sexual orientation and gender identity rather than being evaluated on their qualifications, skills, and work ethic.

The workplace should be a safe and welcoming place for LGBT lawyers, but recent studies have found that between seven percent and 41 percent of LGBT workers have experienced verbal or physical harassment or had their workplace vandalized. Crosby Burns & Jeff Krehely, *Gay*

and Transgender People Face High Rates of Workplace Discrimination and Harassment, Center for American Progress (June 2, 2011), <http://www.americanprogress.org/issues/lgbt/news/2011/06/02/9872/gay-and-transgender-people-face-high-rates-of-workplace-discrimination-and-harassment/> (last visited May 16, 2014). Discrimination and bias figure into nearly every aspect of employment for LGBT Americans, and many of these workers live in a state without laws providing employment protections on the basis of sexual orientation or gender identity. Discrimination presents significant barriers to advancement in the workplace for LGBT workers. Between 10 percent and 28 percent of gay, lesbian, and bisexual people have been passed over for a promotion because of their sexual orientation, and more than a quarter of the transgender population reports having lost a job because of their gender identity. Burns & Krehely, *supra*; Jaime M. Grant, Ph.D., *et al.*, National Center for Transgender Equality & National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Often a feeling of equality and inclusion as an LGBT attorney stems from a firm’s leadership and an attorney’s direct manager. The choice to be “out” is an easier one when a firm’s leadership encourages openness and diversity. Establishing some degree of identification with others facilitates relationship building, which is crucial to career and professional development. In *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, the author notes: “Individuals are drawn to connect with other people because of shared experiences and personal characteristics. These connections often help people establish rapport, trust, and engagement.” 18 Boston College Clinical Law Review 339 (2012). Thus, the problem is that the choice not to disclose may affect rapport with others. There is a risk that when someone chooses to protect a significant element of his or her identity to try to protect his or her career, others may see us as vaguely inauthentic. Nondisclosure may affect how someone interviews for a job.



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