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A Practical Guide

Chapter 41: How LGBT-Related Workplace Policies Can Have a Positive Impact on the Corporate Bottom Line

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HOW LGBT-RELATED WORKPLACE POLICIES CAN HAVE A POSITIVE IMPACT ON THE CORPORATE BOTTOM LINE

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I. INTRODUCTION

In the past decade there has been a large increase in the number of corporations adopting workplace policies relating to lesbian, gay, bisexual, and transgender (LGBT) employees. Although companies initially were concerned about the costs of adopting nondiscrimination policies, including providing benefits for domestic partners¹ and employees going through gender

¹For ease of discussion, as used in this chapter, “domestic partners” refers to same-sex couples regardless of whether their relationship is designated as a civil union, domestic

transition, an increasing number of companies are now viewing these policies as having a positive impact on the corporate bottom line. In 2011, the authors of this chapter conducted a study to evaluate what leading corporations in the United States identify as the positive economic benefits of LGBT-related workplace policies. The results of the study were updated in 2012.²

Overall, we found that almost all of the top 50 Fortune 500 companies and the top 50 federal government contractors state that, in general, diversity policies and generous benefit packages are good for their businesses. In addition, the majority have specifically linked policies prohibiting sexual orientation and gender identity discrimination, or extending LGBT-related benefits (such as benefits for employees' same-sex domestic partners or gender transition–related health benefits), to improving their bottom line. More specifically:

- The majority of these companies prohibit sexual orientation and gender identity discrimination.
 - By the end of 2011, all but two (96 percent) of the top 50 Fortune 500 companies included sexual orientation in their nondiscrimination policies and 70 percent included gender identity.
 - As of April 2012, 86 percent of the top 50 federal contractors included sexual orientation in their nondiscrimination policies and 55 percent included gender identity.
- The majority of these companies already provide benefits to the same-sex domestic partners of employees.
 - By the end of 2011, 88 percent of the top 50 Fortune 500 companies extended domestic partner benefits, including health insurance, to the same-sex domestic partners of employees.
 - At least 52 percent of the top 50 federal contractors extend domestic partner benefits, including health insurance, to the same-sex domestic partners of employees.
- More than half (52 percent) of the top 50 Fortune 500 companies and seven of the top 50 federal contractors offer gender transition–related health benefits.

partnership, or marriage. See Chapter 37 (Employee Benefit Issues), Section III.E.2., for a discussion of why, as a result of state “defense of marriage acts” and income tax laws, employees whose married same-sex spouses receive employer-provided benefits are burdened with adverse income tax consequences that employees with married different-sex spouses do not incur. A similar tax burden under federal law was removed as a result of the U.S. Supreme Court’s 2013 decision in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 118 FEP 1417 (2013), which held that §3 of the federal Defense of Marriage Act violated the due process and equal protection guarantees of the Fifth Amendment to the U.S. Constitution. The *Windsor* decision is discussed in Chapter 37, Sections III.C. and III.E.2.

²Readers interested in diving deeper into the data can read our full report, which is updated periodically, on the Williams Institute website, at <http://williamsinstitute.law.ucla.edu/research/workplace/economic-motives-for-adopting-lgbt-related-workplace-policies> and <http://williamsinstitute.law.ucla.edu/category/research/workplace>.

- The majority of the companies (53 percent) that prohibit these forms of discrimination or offer these types of benefits have expressly linked either these specific policies, or diversity that specifically includes LGBT people, to a positive impact on business (17 of 41 contractors and 30 of 48 Fortune 500 companies).
- Based on a review of corporate statements issued to announce a policy, almost all of the companies (92 percent) that prohibit these forms of discrimination or offer these types of benefits state that policies promoting employee diversity in general are good for their bottom line (36 of 41 contractors and 46 of 48 Fortune 500 companies).
- When companies adopt LGBT-related workplace policies, the most frequently mentioned economic benefits include:
 - *Recruitment and retention*: recruiting and retaining the best talent, which in turn makes the company more competitive.
 - *Ideas and innovation*: generating the best ideas and innovations by drawing on a workforce with a wide range of characteristics and experiences.
 - *Customer service*: attracting and better serving a diverse customer base through a diverse workforce.
 - *Employee productivity*: increasing productivity among employees by making them feel valued and comfortable at work.
 - *Public sector clients*: securing business by responding favorably to specific policy requests or contracting requirements from public sector clients.
 - *Employee relations and morale*: maintaining positive employee morale and relations by responding favorably to specific policy requests from employees and unions.³

Although most of the large companies in this study did tie policies related to diversity in general, and LGBT employees more specifically, to the corporate bottom line, many also expressed that doing so was consistent with corporate values such as treating employees with respect and fairness and because it is “the right thing to do.”

II. HISTORICAL EVOLUTION

In 1999, 52 percent of Fortune 500 companies included sexual orientation in their nondiscrimination policies, and only a handful included gender identity.⁴ By 2013, 91 percent of such companies included sexual orientation

³Each of these economic benefits is discussed in greater detail in Section IV. *infra*.

⁴HUMAN RIGHTS CAMPAIGN FOUNDATION, STATE OF THE WORKPLACE FOR LESBIAN, GAY, BISEXUAL AND TRANSGENDERED AMERICANS 9, 17 (1999), available at www.hrc.org/files/assets/resources/sotw1999.pdf.

and 61 percent included gender identity in their nondiscrimination policies.⁵ Over the same time period, the percentage of Fortune 500 companies offering domestic partner benefits increased from 14 to 67 percent.⁶ Between 2004 and 2013, the percentage of Fortune 500 companies offering gender transition–related health benefits, including surgical procedures, increased from 1 to 28 percent.⁷

Since companies started to adopt these policies, and state and local governments started to amend their laws to prohibit sexual orientation and gender identity discrimination, arguments have been made that the requirements are costly and burdensome for private businesses. For example, in May 2011, the Tennessee legislature repealed an ordinance passed by the City of Nashville requiring city contractors to include sexual orientation and gender identity in their nondiscrimination policies.⁸ The Tennessee Chamber of Commerce initially supported the state bill, stating that “employment standards . . . should be consistent across the state and not create an additional burden on companies that are endeavoring to become competitive.”⁹ However, when it became clear that the proposed law was not just about providing uniformity of employment law throughout the state, the Chamber stated that, “[b]ecause [the bill] has turned into a debate on diversity and inclusiveness principles, which we support, we are now officially opposing this legislation in its present form.”¹⁰

Many private companies support LGBT-related policies because they make good business sense. For example, in 2009 and 2010, during the consideration of the Employment Non-Discrimination Act (ENDA),¹¹ a statute that would prohibit sexual orientation and gender identity discrimination in the workplace, a number of private sector employers reported to Congress that these policies are good for the corporate bottom line.¹² When the U.S.

⁵HUMAN RIGHTS CAMPAIGN FOUNDATION, CORPORATE EQUALITY INDEX 2014: RATING AMERICAN WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 3, 6, 9 (2013), *available at* www.hrc.org/corporate-equality-index.

⁶*Id.* at 3, 9. For an additional discussion of domestic partner benefits, see Chapter 37 (Employee Benefit Issues), Sections III.E., III.I., and III.J.

⁷*Id.*; *Transgender-Inclusive Benefits for Employees and Dependents*, HUMAN RIGHTS CAMPAIGN (2013), www.hrc.org/resources/entry/transgender-inclusive-benefits-for-employees-and-dependents. For an additional discussion of transition-related health benefits, see Chapter 37 (Employee Benefit Issues), Sections III.E.2.e., III.G., and III.H.

⁸2011 Tenn. Pub. Acts 278 (May 23, 2011), *available at* <http://state.tn.us/sos/acts/107/pub/pc0278.pdf>; Chas Sisk, *[Governor] Halsam Reverses Metro's Anti-Discrimination Law*, TENNESSEAN (May 24, 2011).

⁹Amanda Terkel, *Tennessee Anti-Gay Bill, Backed by State Chamber of Commerce, Puts Big Business in a Tough Spot*, HUFFINGTON POST (May 23, 2011), www.huffingtonpost.com/2011/05/23/tennessee-anti-gay-bill-chamber-commerce-business_n_865581.html.

¹⁰Neal Broverman, *Tenn. Green-Lights Discrimination*, ADVOCATE.COM (May 23, 2011), www.advocate.com/news/daily-news/2011/05/23/tenn-green-lights-discrimination.

¹¹ENDA is discussed in Chapter 19 (The Employment Non-Discrimination Act: Its Scope, History, and Prospects).

¹²Companies include Alcoa Inc., The Bank of New York Mellon Corp., Bingham McCutchen LLP, Boehringer Ingelheim Pharmaceuticals, Inc., Bristol-Myers Squibb Co., Clear

Senate held hearings on ENDA in 2012, Corporate America again expressed its support.¹³

III. METHODOLOGY OF STUDY

In 2011, we conducted a study to analyze the extent to which economic reasons motivate corporations to adopt LGBT-related policies, including policies relating to sexual orientation and gender identity nondiscrimination, domestic partner benefits, and gender transition–related health benefits. Using 2010 data, we reviewed the nondiscrimination and diversity policies and benefits policies of the top 50 Fortune 500 companies and the top 50 federal government contractors (collectively “companies” or “employers”). For each company in the two groups, we first determined whether its nondiscrimination policy includes sexual orientation and/or gender identity and whether it extends domestic partner benefits to its employees with same-sex partners or offers gender transition–related health benefits. This information was gathered from the companies themselves, through their websites, job postings, or directly from the human resources department, and from the Corporate Employer Database maintained by the Human Rights Campaign.¹⁴

If we determined that a company had these policies, we reviewed company-issued documents, news articles, and other sources to find company statements expressing why these policies were adopted and why the company supports a diverse workforce that includes LGBT people.

We recorded all instances of a company linking LGBT-related policies or LGBT workforce diversity to a positive impact on business. We also noted where a company tied diversity in general or competitive employee benefits packages to an impact on the bottom line. The findings below provide examples of statements issued by the companies that express how economic benefits result from adopting these policies and this approach to diversity.

Channel Communications, Inc., Dow Chemical Co., Eli Lilly and Co., Hanover Direct Inc., IBM Corp., KeyCorp, Kimpton Hotels & Restaurant Group, Marriot International Inc., Morgan Stanley, Motorola Inc., Nationwide Mutual Insurance Co., Replacements Ltd., and Whirlpool Corp. The full list of companies that publicly support ENDA and their written testimonies submitted to Congress in support of ENDA are available at www.hrc.org/resources/entry/business-coalition-for-workplace-fairness-members.

¹³See, e.g., *Equality at Work: The Employment Non-Discrimination Act, Hearing Before the U.S. Senate Committee on Health, Education, Labor & Pensions*, 112th Cong., 2d Sess. (June 12, 2012), available at www.help.senate.gov/imo/media/doc/Charles1.pdf (testimony of Kenneth Charles, Vice President, Global Diversity & Inclusion, General Mills, Inc.).

¹⁴From these sources, we were able to determine whether most of the companies had these policies. We could not determine the policies of eight companies in the survey. We assumed that these companies did not have the policies for purposes of calculating the percentages reported above. For this reason, should these companies in fact have such policies, the percentages we report for companies having these policies would be higher.

IV. HOW SEXUAL ORIENTATION AND GENDER IDENTITY NONDISCRIMINATION POLICIES, DOMESTIC PARTNER BENEFITS, AND GENDER TRANSITION-RELATED HEALTH BENEFITS AFFECT THE CORPORATE BOTTOM LINE

Nearly all of the top 50 contractors and the top 50 Fortune 500 companies state in company-issued documents that diversity is good for business. Of the employers that have LGBT-related policies, 92 percent have linked diversity to corporate success (88 percent of top 50 contractors and 96 percent of the top 50 Fortune 500 companies), suggesting that these employers treat LGBT employees equally to serve diversity goals.

The majority of employers (53 percent) we looked at have expressly linked either LGBT-related policies, or diversity that specifically includes LGBT people, to a positive impact on business.¹⁵ In these statements, the companies pointed to several specific economic benefits that motivated them to adopt their policies or to support a diverse workforce that includes LGBT people. The most frequently mentioned economic benefits are set forth immediately below.

A. Recruitment and Retention

The most commonly mentioned economic benefit was the increased ability to recruit and retain the best talent. For example, a senior vice president at Lockheed Martin (a top 50 Fortune 500 company and top 50 federal contractor) said of the policies, “Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees.”¹⁶ Similarly, the chairman and chief executive officer of Hewlett-Packard (HP; a top 50 Fortune 500 company and top 50 federal contractor) said that the company decided to extend domestic partner benefits to continue “HP’s ongoing efforts to create an inclusive environment [and enhance its] competitiveness as a great place to work so we can attract and retain top talent.”¹⁷ Making a similar point, the provost of the University of Tennessee (a top 50 federal contractor) said of the omission of sexual orientation from the university’s prior employment nondiscrimination policy, “We fool ourselves if we believe that the absence of a direct statement regarding discrimination against gays and lesbians does not harm our institution We are probably hurt not only by gay and lesbian candidates preferring to go elsewhere, but by heterosexuals who are as horrified as I am that we will not pledge to treat

¹⁵Of the top 50 Fortune 500 companies with these policies, 63% have justified them with a business rationale. Similarly, 41% of contractors with such policies have expressly linked these particular policies, or the creation of a diverse workforce that includes LGBT people, to a positive impact on business.

¹⁶*Corporate Equality Index: 2009 Statements From Employers That Rated 100 Percent*, HUMAN RIGHTS CAMPAIGN (2008), www.hrc.org/resources/entry/corporate-equality-index-2009-statements-from-employers-that-rated-100-perc.

¹⁷HUMAN RIGHTS CAMPAIGN FOUNDATION, *THE STATE OF THE WORKPLACE FOR LESBIAN, GAY, BISEXUAL AND TRANSGENDER AMERICANS 2003 18* (2004), available at www.hrc.org/files/assets/resources/SOTW03.pdf.

gay and lesbian applicants without prejudice.”¹⁸ The university’s policy now includes sexual orientation and gender identity.

B. Ideas and Innovation

Several companies identified the link between these policies and promoting their business success in the variety of ideas and innovations that result from fostering a workforce with a wide range of characteristics and experiences. For example, top 50 federal contractor General Dynamics recognizes the following:

Appreciating differences involves respecting the underlying characteristics that make each of us unique. These differences include personal points of view, beliefs and ways of thinking, as well as tangible differences such as age, gender, ethnicity, national origin, physical ability, military experience and sexual orientation, among others. General Dynamics recognizes that the best ideas and solutions are developed by gathering input from people who have these different perspectives as well as these tangible differences.¹⁹

Top 50 federal contractor Raytheon’s chief diversity officer said that these policies reflect “the strides our company has made to build a culture that recognizes, respects and leverages individual and cultural differences. Our commitment to diversity and inclusion is our undeniable pathway to success for individuals and the company.”²⁰ And the vice president of global workforce diversity at IBM (a top 50 Fortune 500 company and Top 50 federal contractor) said that, through LGBT inclusiveness,

we are creating an environment that allows employees to operate in the marketplace and the workplace where they can personally influence client success, foster innovation, as well as exhibit trust and personal responsibility in achieving IBM’s business goals. . . . Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT IBMers accrue directly to our bottom line and ensure the success of our business.²¹

C. Customer Service

Some companies find that they are better able to serve a diverse customer base when they have a diverse workforce that includes LGBT people. For example, HP’s executive vice president of human resources said that HP “is strongly committed to attracting, developing, promoting and retaining

¹⁸Yasmine Alotaibi, *Sexual Orientation Added to Hiring Policy*, DAILY BEACON (Oct. 1, 2007), available at <http://utdailybeacon.com/news/2007/oct/1/sexual-orientation-added-to-hiring-policy>.

¹⁹*Diversity*, GENERAL DYNAMICS (2013), www.generaldynamics.com/careers/diversity.

²⁰*Corporate Equality Index: 2008 Statements From Employers That Rated 100 Percent*, HUMAN RIGHTS CAMPAIGN (2007), www.hrc.org/resources/entry/corporate-equality-index-2008-statements-from-employers-that-rated-100-perc.

²¹*Corporate Equality Index: 2005 Statements From Employers That Rated 100 Percent*, HUMAN RIGHTS CAMPAIGN (2004), www.hrc.org/resources/entry/corporate-equality-index-2005-corporate-statements.

a diverse workforce to better serve our increasingly diverse customers.”²² The vice president for corporate diversity and responsibility at General Motors (GM; a top 50 Fortune 500 company) said that “non-discrimination policies and practices . . . [are GM’s] way of showing [LGBT] customers that we support the community and appreciate their business.”²³ And the diversity and inclusion executive at Bank of America (a top 50 Fortune 500 company) stated that “diversity and inclusion mean respecting and valuing all nationalities, cultures, religions, sexual orientation, economic and social backgrounds and disabilities. By working with our differences, we can develop innovative products for our customers and a unique environment for our associates.”²⁴

D. Employee Productivity

Other employers state that these policies increase productivity of LGBT employees by making them feel valued and comfortable at work. The director of diversity at top 50 federal contractor Booz Allen has said that the company is committed to valuing “people from all backgrounds, across all cultures, and regardless of sexual orientation or gender [identity]. We recognize that . . . our people can serve our clients best when they can be authentic in the workplace.”²⁵ And the cultural diversity and inclusion manager of top 50 federal contractor Boeing said that the decision to include gender identity in the company’s nondiscrimination policy would help to create a “fully engaged workforce,” which is part of the company’s “core business strategy.”²⁶

E. Public Sector Clients

Some of these companies added these policies in response to requirements of public sector clients. For example, top 50 federal contractor Bechtel Group added sexual orientation to its nondiscrimination policy and extended domestic partner benefits to bid for a contract with San Francisco after the city passed an ordinance requiring that all city contractors have a sexual orientation nondiscrimination policy and extend equal benefits.²⁷ Top 50

²²*Corporate Equality Index: 2004 Statements From Employers That Rated 100 Percent*, HUMAN RIGHTS CAMPAIGN (2003), www.hrc.org/resources/entry/corporate-equality-index-2004-corporate-statements.

²³*Corporate Equality Index: 2008 Statements From Employers That Rated 100 Percent*, HUMAN RIGHTS CAMPAIGN (2007), www.hrc.org/resources/entry/corporate-equality-index-2008-statements-from-employers-that-rated-100-perc.

²⁴*Diversity Is a No-Brainer, Says Bank of America*, HR (Feb. 9, 2011), www.hrmagazine.co.uk/hro/news/1018983/diversity-brainer-bank-america.

²⁵Press Release, Booz Allen Hamilton, Booz Allen Receives Perfect Score for 2011 Corporate Equality Index for Second Year in a Row (Oct. 6, 2010), *available at* www.boozallen.com/media-center/press-releases/48399320/corporate-equality-index-2010.

²⁶Todd Henneman, *Companies That Embrace Equality*, ADVOCATE.COM (Oct. 10, 2006), www.advocate.com/politics/commentary/2006/09/25/companies-embrace-equality.

²⁷Rachel Gordon, *Bechtel Agrees to Extend Its Benefits Policy*, SFGATE (May 4, 2000), www.sfgate.com/news/article/Bechtel-agrees-to-extend-its-benefits-policy-3062653.php.

Fortune 500 company Chevron extended domestic partner benefits for the same reason.²⁸

F. Employee Relations and Morale

Some of these companies added these policies in response to requests from clients or employees. For example, top 50 federal contractor California Institute of Technology said that it extended domestic partner benefits to respond to the requests of employees and because doing so was consistent with the university's policy of nondiscrimination.²⁹ The "Big 3" auto companies (Ford, GM, and DaimlerChrysler), two of which are top 50 Fortune 500 companies, agreed to offer domestic partner benefits in response to union requests.³⁰

V. CONCLUSION

Nearly all the federal contractors and Fortune 500 companies reviewed in our study have stated that diversity is good for the bottom line. Most of these companies explicitly include sexual orientation and gender identity in their nondiscrimination policies, and many explicitly state that differences in sexual orientation and gender identity contribute to the diversity of a workforce. In addition to showing that policies that promote diversity in general make good business sense, a number of employers have also expressly linked the inclusion of sexual orientation and/or gender identity, or the extension of domestic partner benefits, to positive business outcomes.

²⁸TODD A. SOLOMON, DOMESTIC PARTNER BENEFITS: AN EMPLOYERS GUIDE 20 (3d ed. 2006).

²⁹Denise Hamilton, *Caltech, JPL to Expand Benefits to Same-Sex Partners*, L.A. TIMES (Mar. 30, 1995), available at http://articles.latimes.com/1995-03-30/news/ga-48733_1_partner-benefits.

³⁰*Three Automakers Agree With UAW to Offer Health Care Coverage to Same-Sex Partners of U.S. Employees*, FORDGLOBE.ORG (June 8, 2000), http://fordglobe.org/2000/06/08fcn/big3uaw_dbp.html.