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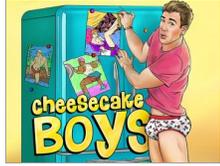
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When It Comes to Being Out at Work, Some Things Haven't Budged In 30 Years



Half of the states allow people to be fired for being LGBT. That means millions of us still live in fear of workplace discrimination.

BY WILLIAM WEINBERGER (/AUTHORS/WILLIAM-WEINBERGER) FEBRUARY 01 2017 6:18 AM EST



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In September 1982, I started my first job at a firm after law school, at the Los Angeles office of what was then one of the five largest firms in the United States. On Friday evening, the young attorneys would meet in the main conference room, where the firm supplied a well-stocked cart of spirits and mixers. This "happy hour" was my most uncomfortable, miserable time at the firm. And yet I continued to attend, because I thought it was necessary to be part of the clan.

But I was not part of the clan: I was gay and not out at the firm. After several drinks, some of the associates — I remember in particular one senior associate and a younger associate he mentored — would begin telling jokes about lesbians and gay men, and those jokes continued relentlessly. I left the gathering as soon as I could, after calculating how long I needed to stay to avoid the appearance that I was leaving because of the jokes.

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In short, soon after I joined the firm, I learned starkly that it most likely would not want me and, even if it did, it was not a place I would want to spend my career. That conclusion resulted not from a deficiency in my legal acumen — the firm would barely have had the opportunity to assess it — or my dissatisfaction with the firm's practice. It resulted from the open hostility expressed toward gays and my fears about the stability of my job prospects in light of the lack of legal protections.

I joined the firm because I was uncertain about my new life in Los Angeles. I had never lived in Los Angeles and moved there to be with my partner, Michael, whom I had met at the end of our second year in law school, and from whom I had been separated for a year after we graduated while I clerked for a federal judge in Cleveland. I chose a firm that also had offices in New York and Washington, D.C., where I had expected to land, and a strong national reputation. This way, if Los Angeles did not work out, I would have good prospects in my formerly intended city.

During the first happy hour at which I experienced the homophobic bigotry, I was flummoxed. I knew there were conservative elements in the firm. But, perhaps naively, I did not expect such open hostility at my work, in a professional setting of my peers. At the time, in 1982 or 1983, the firm could have fired me with impunity for being gay. I thought and expected that the behavior exhibited by the two associates and either joined in or not stopped by others was an aberration. When the same homophobic talk occurred at the following Friday happy hour, I was mortified.



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Eventually, I found excuses not to attend the happy hours, and I decided that I would leave the firm. My reasoning was: First, as a gay man, I have no chance of making partner in the firm. Second, even if the firm eventually offered me partnership, these were not people with whom I wanted to be closely associated long-term.

In the meantime, the comments I heard at the Friday evening happy hours and occasionally other times had their impact on me, particularly before I made the decision to leave the firm. I made efforts not to draw attention to myself. My level of discomfort grew around partners in my practice area whom I knew to be conservative and the associates who had instigated the homophobic comments. I feared disclosure and termination of my employment, and the inability to find employment elsewhere. Maybe I should have had the courage to confront the homophobia. At the time, in a new job in a new city with little social support, I chose to stay quiet.

But when I decided that I would actively seek employment at another firm, I started to work pro bono with National Gay Rights Advocates on a matter involving the refusal of an insurance company to give the same spousal discount in automobile insurance rates to unmarried gay partners as it offered to married spouses. And I became more actively involved in the local LGBT lawyers association. I knew I was leaving the firm; I decided that keeping my sexual orientation secret was no longer a priority.

I did not write this piece to criticize that firm. I suspect that my experience was not very different from that of any other closeted gay or lesbian attorneys at major firms elsewhere at the time. The firm now boasts several LGBT partners, has a perfect score on the Human Rights Campaign's Corporate Equality Index, and describes a diversity program prominently on its website. Smart marketing? Of course. Sincere change of heart or window dressing to attract work from large corporations with major legal needs? Who knows? But whatever the reason the firm is promoting diversity, it is significant progress from when I worked there.

What I learned and experienced is this: The lack of employment protections for an LGBT employee and lack of policies or a program to honor and support diverse employees in a business or firm adversely impacts both employee and employer.

Some may contend that, because the legal profession and major corporations have made sufficient progress in promoting diversity, the lack of federal and state employment protections for LGBT workers does not matter. But, as I experienced, the lack of those protections significantly affects an employee's sense of safety and support. The diversity efforts by law firms and businesses have occurred because of cultural shifts, grassroots and media campaigns to change hearts and minds, *and* the legal protections that activists have persuaded state and local governments to adopt as well as the LGBT rights cases that lawyers have brought and won in the courts. Without those protections, the cultural shifts and diversity programs would have been much less likely.

A firm that does not honor and support diversity suffers a loss of potential — potential talent from attorneys who choose to practice where they feel supported, potentially different perspectives that not only could make the firm more attractive to diverse clients but also could enrich the lives of those at the firm, and potential diverse markets into which the firm's services could expand. An attorney or any employee who works without protections can be hampered by work in a hostile, unsupportive environment. The energy needed either to address fears of disclosure and/or termination or to fight the bigotry can divert the employee from peak performance and contributions.

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A firm that does honor and support diversity can thrive as a result of these potentials. My experience in representing employers is that most of them, out of a combination of simple decency and financial incentive, are open to diversity programs, but most importantly, they want to abide by laws prohibiting discrimination against LGBT workers.

Diversity programs go only so far. Until and unless LGBT workers know they are protected by law, they speak openly with undue risk; their potential is stymied. I experienced this in the early 1980s. This message is particularly important considering the change in national political leadership. The shift in political climate has gone beyond just resisting the establishment of legal protections for LGBT workers; efforts are under way in some states and on the federal level to enact further restrictions on LGBT rights and to prohibit the adoption of local employment protections for LGBT workers. Sustained efforts are critical to assure LGBT workers throughout the country are protected and that protections already established in the law for diverse employees are not rolled back.

WILLIAM WEINBERGER is a partner at the law firm Parker Milliken in Los Angeles. His practice focuses on protection of trade secrets, litigation of business tort claims, and advising and defending companies in employment matters, which often include claims related to anti-LGBT discrimination.

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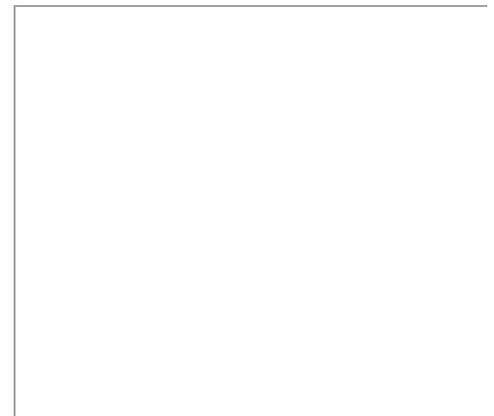
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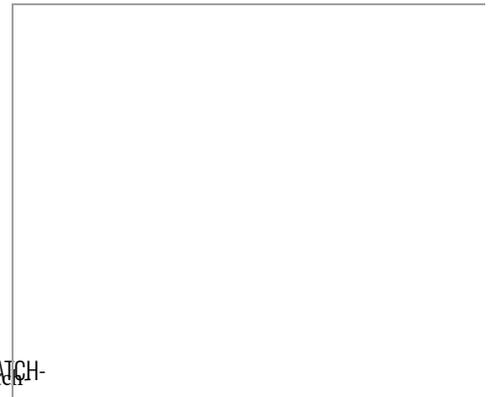
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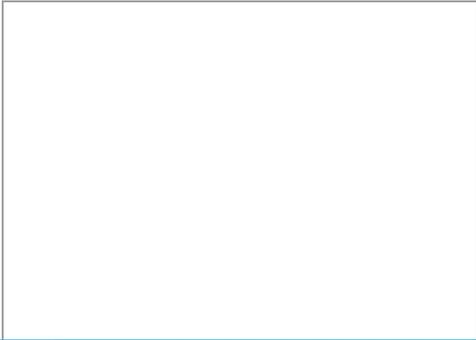
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