



A comprehensive and customizable toolkit on how to interact with LGBT coworkers that can be utilized by employers, human resources, and the general public.

Discussion Guide for Scenarios

Thank you for agreeing to act as an Ally Toolkit facilitator and for helping us spread the word about the importance of LGBT Ally training in the workplace. We have prepared this discussion guide to help you lead participants through an interesting, engaging, and—we hope—enlightening conversation about how situations that arise in your work environment might be dealt with in a law firm or corporate setting.

A Few Words About the Scenarios

We have prepared seven different scenarios for you to choose from. We have provided them to you in writing without the discussion guide so you can have the group read them at the session (or ahead of time) and then have a discussion about them. Alternatively, we have also provided them with background and interpretations. We do not expect that you will need to use them all. Three or four should be more than sufficient depending on the length of the program you are planning to offer.

Each scenario is drawn from the experiences of the Ally Toolkit team and friends, and it is important that they ring true for you, your lawyers, and your employees. When choosing which scenarios to use, we suggest that you pick ones that you think your audience will best identify with. We have tried to offer a broad range of scenarios that address experiences representing a diverse group of individuals—from harassment to perceived gender identity to real HR concerns and even bias—may have experienced or are likely to have experienced at some point in their careers.

The scenarios are designed to set up a challenging situation with no immediate obvious answers; they do not show you how the scenario ends or what ultimately happens. The idea is to set the stage for the participants to think through how they might act in a certain situation and help them deal with the issues the protagonists in each scenario are confronted with. There are a couple of reasons we have chosen to approach the scenarios in this way: (1) There are no easy answers, and to suggest that any of these situations can be solved quickly or easily is to deny how difficult they are and would be overstating the way in which ally training can be used. There are no “quick fixes” to the problems LGBT coworkers face, but rather tools that can be used to help you and your employees navigate complex challenges and situations while maintaining an open and welcoming workplace environment.; (2) Research suggests that reflecting on these issues and then trying to apply them to real life scenarios—in other words, really taking the time to engage with these situations—leads to the most effective, lasting learning.

Discussion Questions

At the end of each scenario you will see a list of discussion questions. You can use these discussion questions in a few different ways. The first option is to ask the participants to read them and try to answer them in small groups and then select one or two people who wish to report back to the larger group. From there, you can facilitate a larger group discussion. The second option is for you and your co-facilitators (if applicable) to pose them to the group at large and jump right into a full group discussion. The best use of the discussion questions depends on the size and structure of your group and what you think will work best for you. With groups of less than 10, a good group discussion is certainly possible, but with larger groups, we recommend splitting into smaller groups so that everyone has an opportunity to meaningfully participate.

While there are no right or wrong answers to any of these questions, we have provided some suggested responses in case the group gets stumped on a particular question or scenario and looks to you for advice. We suggest that you do not share these suggested responses with the group at first as it is best for them to think about them on their own and suggest possible responses first—however, the thoughts and comments offered can provide valuable take-aways and we suggest to provide them at the end of the program.



Commission on Sexual Orientation and Gender Identity

A comprehensive and customizable toolkit on how to create a supportive work environment for LGBT coworkers that can be utilized by employers, human resources, and the general public.

Discussion Guide for Scenarios

Toolkit Objectives

- Increase awareness of issues that both Ally and LGBT employees face on a daily basis in both legal and professional work setting.
- Suggest strategies for law firms to retain and advance LGBT employees
- Cultivate effective dialogue about inclusiveness within law firms and/or corporate legal departments
- Equip law firms and corporate legal departments with the tools necessary to integrate LGBT inclusive practices into the organization's professional and social fabric.
- Increase awareness by prompting discussion about issues that LGBT attorneys face.
- Foster an open dialogue about critical areas that affect LGBT attorneys/employees such as parental leave during adoption process and healthcare coverage for alternative conception measures.
- Teach ways to recognize and address explicit and implicit biases that affect diversity and inclusion initiatives.

Scenario Objectives:

- Facilitate a robust discussion of each scenario.
- Equip participants with the tools to address each real-world scenario from multiple viewpoints.
- Present a format that is flexible enough to allow a group to focus on a particular issue within any given scenario.
- Serve as a self-contained study kit for individuals.

**Discussion areas**

- Dealing with open LGBT discrimination in the workplace
- The 'coming out' process
- Creating a more 'gay-friendly' work environment
- Job satisfaction
- Helping LGBT
- Marriage and family
- Gender Stereotypes
- Physical appearance
- Perceived Harassment

Audiences

- All attorneys
- HR departments
- Supervising attorneys
- Managing partners at law firms
- General Counsels

Instructions for Group Discussions:

Select the scenario(s) you plan to discuss. Divide into small (2-4) person groups. As a small group read the scenario together or have each person read individually. Everyone should consider the discussion questions for 2-3 minutes on their own. Then discuss the questions in your small groups. Each group should select one person to summarize and share their answers with the larger group. Each scenario has some direct or indirect correlation to a specific discussion area.

These classifications are merely suggestions as to how one might approach selecting a scenario that most closely represents the composition of his or her workplace. For optimal outcomes, the composition of each sub- group should be as diverse (i.e. sexual orientation, gender, race, job function, etc.) as possible.

Remind the importance of this activity is active participation of each participant. There are no wrong answers as the scenarios have been intentionally drafted to have more than one viable outcome.

During each sub-group's report, you should consider the following general questions: (i) What did your group decide? (ii) What happened when the group tried to agree? (ii) Did the group disagree at all?



Scenario # 1: You overhear another colleague or co-worker making derogatory remarks about LGBT people. What should you do?

It is important to address this type of behavior as it happens because when we allow fellow employees to make derogatory remarks about a group, we are fostering a hostile work environment. A hostile work environment is unhealthy because it makes LGBT workers feel unsafe, which can effect productivity. Furthermore, every person in an organization is entitled to work in an environment that is free of derogatory conversations.

As an ally—who may not be a member of a traditionally marginalized group, i.e., LGBT, women, minority—you may be in a better position to address this type of derogatory remark in the moment. Although we may not be able to change a person’s way of thinking, as allies to the LGBT community, it is important that we make it clear that we believe this type of conversation is socially unacceptable and that we do not feel safe in a working environment where people share hatred for marginalized groups. You might approach the situation by saying:

- “I am an ally of the LGBT community, and your comment was quite offensive.”
- “My brother is transgender, and your comment has made me uncomfortable.”
- “Excuse me, comments like that create an unsafe work environment for LGBT employees and we should all do our part to make sure our organization is not hostile to people from different backgrounds.”

Remember, the goal is to create a wonderful workplace for everyone, so use words such as “we” in order to avoid distancing yourself or the coworker who made the derogatory remark from the LGBT community.

After making it clear that derogatory remarks are unacceptable use your own personal judgment to consider whether the remark is a part of a pattern of behavior that should be reported to Human Resources. Even if you do not believe human resources needs to be contacted, document the incident immediately, so you can provide a report if the behavior is repeated. Your human resources department may have a plan of action in place for addressing this type of behavior that includes personal conversations, group education, or other types of training.



DISCUSSION QUESTIONS:

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- What are some other ways the scenario can be handled?
- What questions do you have when reading the scenario?
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ALLY ACTION ACTIVITY:

You are at a deposition with two other attorneys. During a break, you hear them joking about the gender identity and sexual orientation of the secretary at the front desk. You could say,

- "I overheard you talking about the secretary at the front desk. Your jokes make me uncomfortable and I am sure they would be hurtful if overheard. I hope that we can stick to the case at hand, instead."

- "I'm sorry to interrupt, but your remarks are inappropriate and I felt that I should say something. In fact, I bet a lot of the assumptions you are making are wrong, and I think that we should be respectfully of everyone, despite any of our assumptions about his/her/their personal life."



Scenario # 2: A coworker you know to be LGBT comes to talk with you about having missed several days of work. The coworker tells you that they have recently “come out” to their parents. The parents now threaten to cut all ties with them unless they “changes their ways” and refuses “to be gay”. The coworker is feeling hopeless and despondent. What can you say or do?

As an ally, you recognize that coming out can be a very stressful process. It may help to group coming out with some other major life stressors, including moving, death of a loved one, acquiring a disability as an adult, job loss, a new job, major illness or injury. If a co-worker confides in you, offer them affirmation and support. Also share with that person information about existing professional support organizations, such as workplace counseling and counseling programs, and community based support organization, among them LGBT support groups.

Unfortunately, there is no easy approach in this case. You must be supportive. You should listen. You should allow your co-worker to work through this time as needed, realizing your co-worker may experience emotions such as denial, anger, bargaining, or grief. You should affirm that you support your co-worker, that you will not cut ties with them or them, and that you do not expect them to their ways. You should also be aware that your co-worker may say or do things that may be hurtful to you, but try to remember your co-worker is sorting through emotions and likely does not intend to be malicious or hurtful to you. However, you should generally refrain from criticizing another person’s family. But you may find that it is prudent to communicate to your co-worker that they may criticize their family. You can also affirm how the person feels.

Finally, make plans to follow up both formally and information with your co-worker. For example, schedule check-ins with your co-worker. Literally calendar a follow up call or email to set up a social interaction, and then verbally check in with the co-worker. Ask the person, how have things been going? Are you okay? Depending on your relationship, maybe ask about how things have been going with family. Be supportive, non-judgmental, and listen to what your co-worker has to say. Be sure to pay attention to how your co-worker reacts to your checking in, and try to find a good balance between being supportive and smothering

Remember, some families initially react negatively to a family member coming out, but are able to go through their own process towards acceptance. Also realize that some other families and some family members within them never come around to accepting that their family member is LGBT. For some LGBT people, coming out can be both liberating and simultaneously lead to a grieving process and necessity to cope with the rejection of family members. Additionally, some of people lose friends when they come out, and while they may have some expectation that certain family members and friends may reject us, they often have the sad experience of realizing that a loved one, whether a friend or family member, rejects them being LGBT, even if they assert that they are allies.



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ALLY ACTION ACTIVITY:

- "Thank you for sharing that with me; I know it must be a really difficult time for you. How can I help?"
- "I am really glad to you chose to reach out to me. Do you want to talk further outside of work? I actually know a few great places that have resources you might find helpful."
- "I am sure that was really difficult for you, and I am hopeful that you know there is a world full of hope and support out here! Do you want to get coffee after work on Thursday? It will give us something to look forward to and we can catch up on how things are going."



Scenario # 3: A “closeted” LGBT coworker confides in you that they perceive their department or work environment to be not very “gay-friendly”. The person would like to initiate Ally training but is reluctant to do so. How do you respond?

As a straight person, you are a member of the dominant group at work and within society. You are in a special position to use the power of your belonging to the in group to create, contribute to, and maintain a work environment where everyone feels comfortable being themselves and doing their best work. You should support your co-worker. Inquire what they perceives as being not friendly. Seek suggestions on how to change things. Then consider your work context. Some contexts are more challenging than others. Identify ways to make your work environment and your own behavior more gay friendly and then spread the gay friendliness.

Remember, do not out your co-worker. It is your co-worker and co-worker alones choice to remain “closeted”. Forcing the situation upon them could result in a number of terrible and possibly illegal situations.

Consider pronoun avoidance and minimal use of references to husband, wife, girlfriend, boyfriend. This is not an approach that works for everyone, but it can allow people to talk about their personal lives with awareness of the heteronormativity of many social contexts and to communicate to others that they are leaving open to interpretation the gender of their partners. Inherent in this practice is being an ally who is okay with being mistaken for being gay, and recognizing that on one hand it is very important that people understand that straight people are allies of LGBT, but also that being identified as LGBT should not be immediately protested, and should not be viewed as negative.



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ALLY ACTION ACTIVITY:

- “I think that is a great idea and would love to hear about what you had in mind. Maybe I could help.”
- “That sounds like it would be helpful for everyone. Have you proposed it to administration, yet?”



Scenario # 4: A coworker complains to you that they believe his manager/partner has given them a poor review because of their sexual orientation. As a practical matter, how do you respond or address this?

Listen. Offer support. But be careful about jumping to conclusions. Often this is an issue that has HR written all over it. Inquire what specific examples the co-worker may share. It is possible that your co-worker is venting. It is also possible that your human resources department could and should examine and reform the evaluation process. If the purpose of the evaluation process is to help employees improve performance, by identifying areas where they are successful and areas where they may improve, in order to help the work context to be more successful, than it is imperative that you reform your evaluation process.

This issue is not isolated to LGBT, but is shared by women, members of racial and ethnic minorities, members of non-dominant social classes, and people who have disabilities. Workers should understand what is expected of them at work, should be recognized for their successes and should be given opportunities to discuss areas that need improvement and strategies for making those changes. Every worker has strengths and weaknesses, so it is also important to support a diverse team and advantage your workplace of everyone's talents. Your evaluation process may require more work if it takes an approach that weighs the strengths and weaknesses of each team member and attempts to capitalize on the strengths. But it also may yield greater success; however that may be measured in your workplace, in other words, profits, client attraction and retention, more widgets completed, more goodwill with target communities.

Be mindful that members of 'in groups' often benefit from a positive halo effect from other 'in group' members. They are given the benefit of the doubt, their mistakes and errors are minimized and explained by their fellow in group members, their accomplishments may be magnified, and their competence is assumed. Members of 'out groups' are often subjected to scrutiny, their work and ideas are challenged, their mistakes are magnified, their accomplishments may be minimized, and they are presumed incompetent. Blind studies by psychologists have found that law firm partners gave lower evaluations to the exact same work product submitted with an identified with African American named associate's name as they did to that work product submitted with a white male associate. People in power and positions of dominance often set higher bars for competence for members of minority groups and often also fail to credit and weigh the accomplishments of minority member equally with those of members of their in group.



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ALLY ACTION ACTIVITY

-“That is too bad and I am sure it is immensely hurtful and frustrating for you. I would be glad to listen to what happened.”

-“I know you have been working really hard, so that must have been disappointing. What can I do to help?”

-“I know this is difficult, have you considered discussing this with HR?”



Scenario # 5: You are speaking with someone about a lesbian couple you know who just had their second child, and they say to you “You know, I have a hard time with gay people having kids. I think children need the influence of both genders – they need a mother and a father.”

One approach could be to say that a child raised by at least one person who loved her or him is already doing pretty well. Two people who love the child is also a great family context. Gently make your conversational partner aware that comments about mothers and fathers both being needed for kids denies the exemplary parenting job done by single mothers and single fathers, as well as lesbians, bisexuals, transgender, and gay couples, and really for the sake of brevity, any family context where both parents identify with the same gender. Children need loving parents. For a given child, she may have the best mom in the world, or the best dad, or the best moms, or the best dads, or the best moms and dad, or the best dads and mom. Families come in many forms. We can hope that children benefit from a loving family, no matter its form. You could also remind them that many children grow up without either parents and that there is true value in stability.

In addition, a child may find positive role models for women and men outside of their homes. A child who grows up with a parents or parents who has a substance abuse problem, who is abusive, who is neglectful, who does not model positive male and female and human behavior, may find positive role models outside of the home. Teachers, religious leaders, family friends, other relatives, coaches, scout masters and other members of their community may all contribute to a child’s development, and where applicable, reinforce positive models at home. Assertions that parents are the only models of gendered behavior and gender roles for children denies recognition to the many other modes of male identified and female identified behavior that are part of a child’s life and also deny recognition that many children grow up with one or two parents who are not positive role models for anyone, who suffer from illnesses, such as alcoholism and drug addiction, that conflict with best parenting practices, and to children raised by non-parental figures, including a single grandparent or pair of grandparents, aunts, uncles, siblings, and family friends. Family and best role models are hopefully people who love a child and have a healthy relationship with the child.



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ALLY ACTION ACTIVITY:

-“I have always thought it is a blessing to have the love and support of parents and family, whether it is a single-parent, two parents, grandparents, or an aunt/uncle.”

-“It sounds like that child is already head’s above the rest with two loving and attentive parents in their life. To me, the more dedicated adults in a child’s life, the better!”



Scenario # 6: A female coworker tells you that there's a new person at work who "dresses like a girl, and has a female name, but everyone thinks he's really a guy." Your coworker says "I'm ok working with him, but if he comes in the women's restroom, I'm talking to my supervisor."

Remember, Referring to a coworker by non-preferred pronouns is a form of derogatory speech known as "misgendering," and has been held to create a hostile work environment. Consider Scenario #1 and methods for intervening against derogatory comments, such as simply saying "she, not he."

All women have a right to use the restroom. Your coworker should recognize that identification as a woman also means identification with a woman's identified needs to use the restroom. Women need to use the restroom to take care of biological needs. Some women change their clothes in a restroom stall. Some perform grooming, including application of makeup and grooming of hair. Usually, women's interactions in the restroom are greetings and small talk. Sometimes, a woman seeks refuge in restrooms to get away from a negative experience or person, to be by herself, to remove herself from an open cubicle or open office environment.

Women's restrooms do not lend themselves to a lot of interaction during physically vulnerable uses of them. Women's restrooms have single and handicapped accessible stalls with doors that have locks on them. Opportunities for interaction occur when you enter and exit the restroom, exit a stall, and when you spend time at sinks and mirrors.

If the person is asserting a fear that a transgender woman would enter her stall, you should assert to your coworker that she is right to be concerned about safety at work, but that she should not be concerned that a transgender woman would be any more likely to enter her stall than would any other woman at work. If the prospect of another female co-worker doing something inappropriate to you in the restroom seems unlikely, that should be your viewpoint towards the likelihood of ever having an issue with a transgender coworker. Female on female assault in restrooms is rarer than male on female sexual assault, and transgender people are at greater risk in restrooms than cisgender (i.e. not transgender) people. A transgender woman is a woman. She is likely self-conscious about maintaining her identity as a woman at work. She is also very likely to share your concern with being assaulted in the restroom.



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ALLY ACTION ACTIVITY:

-“I have no objection to any person who identifies as a woman using the bathroom.

-“ I see no issue with all women using the bathrooms. Candidly, I do not think that a transgender woman would be any more likely to enter my stall than would any other women in the bathroom.”



Scenario # 7: A LGBT coworker comes to your office and asks to talk. She is angry and tells you that she's going to quit the company. She won't tell you why but just goes on and on about how awful the company is and how mean the people are etc. Finally, she tells you that people in her practice group found out that she's bisexual and have been harassing her. She doesn't know what to do.

If someone confides in you, you should get her permission before you act. Speak with her about the steps that you propose to take. First, a hostile work environment for one person is not good for your work context. People who are busy harassing another person are not doing their jobs. They are spending company and organizational time on their own personal agendas, to the detriment of productivity and a positive work environment. The object of the harassment is demoralized, stressed, and unlikely to be able to do her best work. It is very likely that witnessing the harassment of this person has demoralized other workers, who may similarly feel stressed, may not be able to do their best work in that environment, and may also be actively seeking to leave the workplace. A woman who is being harassed by coworkers also raises issues of sexual discrimination and sexual harassment, and in some educational contexts, Title IX issues for female identified students who may be denied equal educational opportunities in non-hostile environments.

For your co-worker, offer her support, ask what people are doing to bother her, ask how her situation could be improved. Recognize that retaliation is the number one claim in workplace discrimination cases filed with the United States Equal Employment Opportunity Commission (EEOC). Your co-worker likely holds a very rational desire to seek another work context and an equally rational concern that raising her concerns and filing a complaint would subject her to greater harm at the hands of coworkers. Many EEOC complainants find that initial sincerely held beliefs that they are being discriminated against, harassed, and sexually harassed and the negative actions of coworkers in those contexts pale in comparison to the severity and brutality of retaliation from coworkers against a coworker who files a complaint, whether informal or formal. Many workplaces do not handle employee complaints well and do not protect complaining employees from retaliation and related retaliatory harassment. You may sincerely believe that your workplace would reasonably handle a harassment complaint and then be morally offended by the zeal with which your workplace's diversity and inclusion personnel seek to discredit and frighten a complainant.

Human Resources should conduct climate surveys. It should reward the maintenance of positive climate survey responses and corrections to practices and behavior that contribute to a negative climate. It should not reward the reduction of official complaints because that is not rewarding an actual improvement in a work environment or maintenance of a good work environment. It may instead reward the maintenance of a climate in which people are afraid to raise issues and in which they are



afraid to complain. An environment in which employees are afraid to raise issues and complain will have other problems in addition to harassment and discrimination.

For example, federal government agencies are required to report to Congress the number of EEOC complaints filed and break down the complaints by category. Congress does not track how many federal government agencies employ toxic litigation techniques, such as charging a complainant with a crime, in order to frighten and intimidate that employee into not pursuing an EEOC complaint in the formal EEOC investigatory and hearing process. Further, Congress does not hold agencies accountable for improving workplace climates and reducing discrimination, harassment, and retaliation. Congress recognizes fewer official complaints filed as positive, and presumably, federal government agencies reward those charged with keeping complaints low, even when these employees achieve lower numbers through threats, intimidation, retaliation, and harassment. So your average federal government employee who files an EEOC complaint may or may not find that complaining is helpful. Agencies are unlikely to hold employees who discriminate against, harass, and retaliate against other employees accountable for toxic, illegal, and unethical behavior. In some work contexts, such toxic individuals will be rewarded with promotions and greater authority.

All of this belabors the point that everyone who leaves a toxic environment feels better. The reality of Title VII enforcement is that a complainant faces a very high probability that her coworkers will harass her and retaliate against her for complaining. In the private sector, an employer may likely fire an employee who raises an EEOC complaint. So if your coworker is in the private sector, she may have a rational fear of job loss as a result of coming forward with a complaint.



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ALLY ACTION ACTIVITY:

-“I can tell something happened that has upset you greatly. Do you want to talk about it outside of work?”

-“It sounds like you are really upset by what happened. I have a friend who is a specialist in employment issues if you want to talk to him/her.”

-“I am sorry you had to endure something so upsetting! Is there anything I can do to help? I am not an expert in employment law, but I am glad to listen.”