

**Association of the Bar of the City of New York
Special Committee on Lesbians and Gay Men in the Legal Profession
Subcommittee on Employment Practices**

**PRELIMINARY REPORT ON THE EXPERIENCE OF LESBIANS AND
GAY MEN IN THE LEGAL PROFESSION**

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Executive Summary

The Special Committee on Lesbians and Gay Men in the Legal Profession undertook a survey of lesbian and gay attorneys and legal workers in New York City. The Committee believes the responses it received and reports below are reasonably representative of the experiences of lesbians and gay men practicing law in New York City. The survey results indicate that despite the legal prohibition of discrimination on the basis of sexual orientation, significant barriers exist to lesbians and gay men fulfilling their potential as attorneys. Several recommendations are made to legal employers to help eliminate such barriers and fully develop and utilize their lesbian and gay attorneys and staff.

PREFACE

The Special Committee on Lesbians and Gay Men in the Legal Profession has concluded that many lesbian and gay attorneys and legal workers encounter discrimination and homophobia in the work place. While the legal profession has made great strides in its treatment of gay men and lesbians, much reform is still needed to ensure that they are not denied equal treatment and equal opportunity in the profession. The Special Committee hopes that bringing to light the experiences of gay men and lesbians in the profession will encourage the Bar to make greater efforts to eradicate differential treatment which now prejudices them.

I. INTRODUCTION

The Association of the Bar of the City of New York created the Special Committee on Lesbians and Gay Men in the Legal Profession (the "Special Committee")¹ in 1990. One of the Special Committee's purposes is to assist in the identification and the elimination of barriers to full participation in the legal profession faced by lesbians and gay men. Creation of the Special Committee signals the Bar's growing commitment to eliminating discrimination in the legal profession on the basis of sexual orientation.²

The Special Committee believes that a significant number of lesbian and gay attorneys practice in New York City. The State Bar of California, the mandatory bar association of that state, conducted a survey of its membership in 1991 that included some questions regarding sexual orientation. This was probably the first survey to attempt to determine the number of self-identified lesbian and gay attorneys. The questionnaire was mailed to a random sample of California's 14,300 active lawyers. A 73% response rate was achieved with the use of reminder cards and a second mailing. Three percent of the respondents identified themselves as members of the "gay, lesbian, or bisexual community". They tended to be younger than average and they

¹ The Special Committee is one of only three committees of its kind in the United States.

² In 1986, the Bar Association of San Francisco established the Committee on Equality, whose mandate was to study and make recommendations with respect to the elimination of barriers to the advancement of minorities, women, lesbians and gay men, and attorneys with physical or mental impairments in the San Francisco legal community. As the committee's initial efforts were focused on issues relating to the advancement of women and minorities, a subcommittee on lesbian and gay issues was established in January 1990, which has subsequently become a Bar Association of San Francisco committee. The Los Angeles County Bar Association has recently formed a similar committee.

were disproportionately likely to practice in the Bay Area, the urban area probably perceived to be the most tolerant in the state. Likewise, New York is perceived to be among the most tolerant cities in the United States and is known to have a large lesbian and gay community. It would not be surprising to expect the legal community in New York City to employ a higher percent of lesbians and gay men than the national average.

Estimates of the percentage of gay men and lesbians in the U.S. population vary widely and have been based on data gathered for other purposes. The often-used figure of 10% is based on the 1948 Kinsey report of male sexual practices.³ A more recent study of male sexual practices estimated the percentage of men who exclusively engage in homosexual behavior as around 1%.⁴ Other surveys have estimated the percentage of gay men and lesbians to be somewhere around 5%.⁵ Statisticians have acknowledged that survey tools may not accurately measure the number of gays and lesbians, given the difficulty of measuring private behavior with any accuracy.⁶ Whether they collectively number 1% or 10% should not be determinative of the profession's resolve to eliminate discriminatory practices affecting lesbians and gay men.

³ See Alfred C Kinsey, Wardell Pomeroy, Clyde Martin, & Paul Gebherd, *Sexual Behavior in the Human Male* (1948).

⁴ See *The New York Times*, April 15, 1993, page 1.

⁵ See, e.g., *The New York Times*, April 25, 1993, reporting on a poll by Louis Harris and Associates.

⁶ *Id.* Humphrey Taylor, of Louis Harris and Associates, remarked, "Whenever you get into measuring anything that is potentially awkward or embarrassing or might be construed as anti-social, people overreport socially desirable behavior and underreport behavior that might be considered anti-social."

Historically, like women and members of minority groups, gay men and lesbians have generally not fared well in the legal profession. It was not until 1973, in *Application of Kimball*,⁷ that the New York Court of Appeals firmly held that status and conduct as a homosexual was not controlling in the assessment of an applicant's fitness to practice law.⁸ In 1978 an association of the lesbian and gay legal community in New York City was formed.⁹ Similar local or regional associations have been established around the country, and there is also a National Lesbian and Gay Law Association, formed in 1988. Since 1986, discrimination in employment on the basis of sexual orientation has been prohibited by the New York City Administrative Code, § 8-107.16 (1986)¹⁰. In 1993, the New York State Assembly passed A.B. 1336, barring sexual orientation discrimination in employment, but the equivalent State Senate Bill was not released for a floor vote. Governor Mario Cuomo, who endorsed the legislation, indicated he would sign it if it passed. Three national legal organizations with offices in New York City, Lambda Legal Defense and Education Fund, the American Civil

⁷ 33 N.Y.2d 586, 301 N.E.2d 436, 347 N.Y.S.2d 453 (N.Y. 1973).

⁸ The Association of the Bar of the City of New York adopted, by Executive Committee Resolution, a non-discrimination policy in May 1992 prohibiting discrimination on the basis of actual or perceived race, color, creed, religion, national origin, gender, age, marital status, sexual orientation, disability, alienage or citizenship status. *Association of the Bar of City of New York Yearbook 1992-93*, at 323.

⁹ This organization was first called The New York Law Group. In 1983 it incorporated as the Bar Association for Human Rights of Greater New York. In 1991, it changed its name to Lesbian and Gay Law Association of Greater New York ("LeGal").

¹⁰ Similar statutory provisions exist in eight states and numerous municipalities. See Note, "Constitutional Limits on Anti-Gay-Rights Initiatives," 106 Harv. L. Rev. 1905, 1923-25 (June 1993) (table of state and local laws banning sexual orientation discrimination).

Liberties Union Lesbian and Gay Rights Project, and the National Center for Lesbian Rights, exist for the purpose of advocating for the rights of lesbians and gay men generally.¹¹

This preliminary report is the culmination of a survey of gay men and lesbians in the legal profession by the Special Committee's Subcommittee on Employment Practices (the "Subcommittee"). The survey's primary purpose was to identify obstacles to the equal hiring, retention, advancement and compensation of gay men and lesbians in the legal profession in New York City. Although the Special Committee does not purport to have surveyed all or even most of the gay and lesbian lawyers and legal workers, we believe that the responses we received are representative of the views of the lesbian and gay legal community and that the survey provides compelling and persuasive anecdotal evidence that differential treatment of lesbians and gay men persists in the New York City legal community.¹²

This report reviews survey responses about the experiences of gay men and lesbians in the legal profession as they pertain to: 1) hiring and recruitment; 2) discrimination, anti-discrimination policies and benefits; 3) employment policies; 4) visibility of lesbians and gay men at the work place; 5) treatment or perceived treatment of lesbians and gay men; and

¹¹ In addition, the National Lesbian and Gay Task Force and the Human Rights Campaign Fund, both based in Washington, D.C., are among the national organizations that advocate politically on behalf of gay men and lesbians.

¹² Further anecdotal confirmation of the conclusions reached in this preliminary report can be found in interviews with attorneys and others working in business settings. *See e.g.*, James B. Stewart, "Death of a Partner," *The New Yorker* (June 21, 1993); Nicholas Varchaver, "The Invisible Minority," *Manhattan Lawyer* (December 1991); Thomas A. Stewart, "Gay in Corporate America," *Fortune* (December 1991).

6) perceptions of the effect of being lesbian or gay. It sets forth the Special Committee's analysis of the results, as well as its recommendations.

Employer attitudes, policies and practices that hinder advancement may be blatant, subtle or unconscious. The survey responses indicate that blatant discriminatory treatment persists in discriminatory hiring, discriminatory provision of employment benefits, and discriminatory employment practices. In addition, many respondents report that subtle or unconscious attitudes of heterosexist bias on the part of employers are common.¹³ That an employer may be subtle about, or even unaware of, his or her bias regarding gay men and lesbians does not make those attitudes any less pernicious or destructive. An indifferent atmosphere can be just as damaging as a blatantly unfriendly one because of the assumptions that heterosexual employers and managers may make about the sexual orientation of a job applicant or employee. The frequency of illegal inquiries, for example, into applicants' marital status, which contain assumptions about sexual orientation, may signal employers' lack of sensitivity to the existence of gays and lesbians.¹⁴

The impact of discriminatory attitudes on gay and lesbian legal workers is twofold. The first, and more obvious, consequence is one of unequal treatment that hinders the ability of gay

¹³ Homophobia is usually defined as fear and loathing of homosexuals. Heterosexism is usually defined as an attitude that assumes heterosexuality to be the norm and excludes the presence or relevance of homosexuals and their concerns.

¹⁴ See N.Y. Executive Law § 296 1-a (prohibiting discrimination on the basis of marital status), and *New York State Division on Human Rights Guidelines on Pre-Employment Inquiries*, Fair Emp. Prac. Manual (BNA), 456:7501; Emp. Prac. Guide (CCH), ¶ 26,050 (prohibiting inquiries into the marital status of job applicants).

and lesbian workers to advance and succeed within legal organizations. The second impact is psychological; according to the survey responses, gay and lesbian legal workers are often placed in the uncomfortable and stressful position of having to choose between being open about their sexual orientation -- and risking discriminatory treatment or attitudes -- or hiding their identity in order to advance and succeed within the organization.

The survey responses show that despite a New York City ordinance prohibiting discrimination against gay and lesbian employees, many of those in the legal profession perceive that they are being treated differently from their heterosexual counterparts. Such a perception is based on specific differential treatment, ranging from the unavailability of equal benefits to management failure to respond to sexual orientation discrimination complaints, as well as on intangible factors relating to questions of visibility and tolerance.

The unequal treatment of employees based on sexual orientation is perhaps most concretely demonstrated by employers' failure to provide comparable benefits. Very few employers extend health and other insurance coverage to the domestic partners and non-biological children of gay and lesbian employees.¹⁵ Although limited progress has been made in the area of bereavement leave and parental leave¹⁶, such policies are still not commonplace.

¹⁵ One notable exception is Milbank, Tweed, Hadley and McCloy, which, in January 1993, began to cover the domestic partners of the firm's gay and lesbian employees under its health insurance plan. The firm's action in this area may be a catalyst for change.

¹⁶ An equitable policy would include, for example, parental leave for the birth of a domestic partner's child, or for the adoption of a child. The New York State Unified Court System has recently adopted guidelines approving such a policy for its employees.

The failure of employers to provide such benefits sends a message that gay men and lesbians are not guaranteed equal rights in the work place.

More intangible, yet equally critical for the full participation of gay men and lesbians in the legal profession, is the question of visibility, that is, being open about one's identity in one's place of employment. The choice of making one's sexual orientation known is an intensely personal decision for each individual. Not all gay men and lesbians will choose to "come out" in the work place.¹⁷ However, an employer's failure to create a work environment of equal opportunity and access unfairly hinders the ability of many gay men and lesbians to reach their full potential as lawyers.

A majority of survey respondents believes that their sexual orientation has an impact on their ability to succeed in the profession. They feel that negative attitudes of others towards lesbians and gay men impair their ability to succeed. The effects of homophobia and heterosexism are real and destructive: hostile working conditions, discriminatory terms and conditions of employment, reduced opportunities, and an immeasurable emotional toll. But on the positive side, some gay men and lesbians believe that their identity and perspective enrich their contribution to and performance in the profession. Employers risk losing talented employees by failing to take affirmative steps towards the eradication of the perception and reality of discrimination on the basis of sexual orientation.

¹⁷

To "come out" is a shorthand expression for the process of "coming out of the closet", that is, to disclose one's sexual orientation to others, rather than concealing it, or being "closeted". See Pam Kruger, "Being 'Out' at the Top Finds New Tolerance," *The New York Times*, July 11, 1993, § 3, at 23.

II. HOW THE SURVEY WAS CONDUCTED

A. Design of the Survey

To study the barriers lesbians and gay men face that prevent full participation in the legal profession, the Special Committee formed subcommittees on employment practices, law schools, and the judiciary, among others, to investigate the experience of lesbians and gay men in different areas of the legal profession.

The subcommittee on employment practices (the "Subcommittee") immediately realized that little data was available from which it could draw conclusions. The Census Bureau does not collect information regarding sexual orientation, nor had any of the legal organizations in New York surveyed their membership regarding their sexual orientation, including this Association. Thus, there were no statistics on the number of lesbian or gay attorneys in New York much less information on the problems they faced. The Subcommittee decided that a survey of lesbian and gay male attorneys and legal workers would be a useful first step to begin to assess the existence and extent of barriers to full participation in the profession.

The Subcommittee devised a questionnaire with 43 items, most of which also requested additional individual comments in addition to "yes" and "no" answers. The questions sought basic demographic data and elicited respondents' experiences in the specific areas that form the following sections of this report. The Special Committee as a whole commented on the questionnaire, and approval was obtained from the Association for its distribution.

A cover letter from the Committee was prepared requesting that the surveys be filled out and returned to Professor Arthur Leonard, Committee Co-Chair. The letter listed the members of the Subcommittee and contained their phone numbers in the event recipients had questions. Respondents had the option of identifying their name and employer or remaining anonymous.

B. Distribution of the Survey

Members of the subcommittee identified organizations likely to maintain lists of lesbian and gay attorneys in the New York metropolitan area. The questionnaire was sent to members of the Lesbian and Gay Law Association of Greater New York ("LeGaL") and to cooperating attorneys in the New York area working with Lambda Legal Defense and Education Fund, the Gay and Lesbian Committee of the National Lawyers Guild, and the ACLU Gay and Lesbian Rights Project. In addition, individual members of the Special Committee sent the questionnaire to individuals who wished to distribute them. To the extent possible, the sending of duplicate surveys was avoided. The mailings were made by members of the cooperating organizations with an assurance inserted in the mailing that it was being conducted by a member of the organization, and that the organization's list had not been provided to the Association of the Bar.¹⁸ Each mailed questionnaire was accompanied by a postage-paid, pre-addressed return envelope. In all, over 600 copies of the survey were distributed. Recipients were also asked to copy the survey and pass it along to other lesbian and gay legal colleagues in New York City.

¹⁸

Copying, mailing, and postage was provided *pro bono* by Skadden, Arps, Slate, Meagher & Flom.

Two hundred and twenty-nine (229) surveys were returned. The demographic questions indicate that the respondents were 66% male and 34% female. 64% identified themselves as gay men, 30% as lesbians, 3% as bisexuals and 3% as heterosexuals. Ninety-two percent of the respondents identified themselves as white, 3% as African American, 2% as Latino/a, 1% as other, and 2% did not respond. Fifty percent said they were employed in a firm, 11% in a government agency, 15% in a public interest or nonprofit organization, 7% in corporate law departments, 2% in a court system, and 8% in law schools. Fifty percent of the respondents identified themselves as staff attorneys or law firm associates, 11% identified as partners, 9% as supervisory attorneys, 8% as self-employed, 6% as support staff, 2% as directors of an organization or agency, and 14% as "other". Eleven percent of respondents were under 30 years old, 64% were 30-40 years old, and 17% were 40-50 years old.

Distribution in this manner appears to be the only realistic option available to reach a large number of lesbian and gay attorneys. The survey is not a random sample of all the lesbians and gay men among the New York bar. The distribution is disproportionately aimed at self-identified lesbians or gay men who have joined an organization or at least been open with friends. This bias might be assumed to make the survey results more typical of individuals who openly acknowledge their sexual orientation. Thus, it seems likely that fears of adverse consequences flowing from being openly lesbian or gay could be greater than those indicated in this survey among those who could not be reached through this survey methodology.

That the respondents are 93% white and 66% male probably reflects the membership of the organizations that provided and distributed the vast majority of the surveys, and of the profession as a whole. The Committee is concerned by this low level of representation of women and people of color. Because of the paucity of responses from people of color, the Committee has begun additional efforts to contact minority organizations, rather than specifically gay and lesbian organizations, not only to increase the numerical survey representation of minority legal workers, but also to begin to identify specific barriers to participation and visibility that lesbians and gay men of color may encounter in the profession.

III. HIRING AND RECRUITMENT

Although nearly all respondents were either members of a gay and lesbian bar organization or did pro bono work for a gay and lesbian legal organization, nearly seventy percent of respondents reported that they did not include any indicia of professional or political work with or membership in lesbian and gay organizations on their resumes. Typical responses were "I wouldn't risk it" and "one must be judicious even in the progressive legal community." One job applicant reported no response from legal organizations when lesbian and gay affiliations were included on the resume; as a result the applicant now uses a separate resume without such references. While one applicant reported being "out" "all over [the resume] in glitter!," many applicants reported that they purposely exclude relevant legal and nonlegal experience in areas that affect lesbians and gay men.

While fewer than 10% of respondents indicated that prospective employers made remarks during job interviews that could be interpreted explicitly and blatantly to exclude gay men and lesbians, legal interviewers commonly address such candidates with subtle or unconscious remarks that reflect stereotypical perceptions of gay men and lesbians. One lesbian applicant was told she was an inappropriate candidate because the work involved contact with children. Another interviewer told an "out" gay man that a "tough, aggressive" candidate was required. Another applicant reported that an interviewer incredulously asked, "Why should we hire gays?"

Questions that illegally inquire into marital status and that contain assumptions about sexual orientation are common from all kinds of legal employers: firms, governmental agencies, and nonprofit organizations. Applicants were frequently asked whether they were married, had families, or boyfriends or girlfriends (of the opposite sex). An applicant reported that an employer mentioned his wife and "said something about me getting married in the future as if to see how I would respond". One applicant reported being advised to "keep certain preferences to oneself," ostensibly to protect the applicant from prejudice on the job.

Not all gays and lesbians encounter hostile attitudes in the hiring process; approximately 15% of respondents' employers affirmatively told applicants that they seek diversity in the work place and welcome a gay and lesbian perspective. "Noting the obvious references on my resume, several interviewers told me about the firm's welcoming attitude towards gay and lesbian attorneys," reported one respondent. Other applicants reported being positively influenced to take a job as a result of the presence of openly gay or lesbian employees in that

work place: "During my day at the firm, I interviewed with several partners, including one who 'came out' to me during the course of the conversation. He somehow picked up that I was gay and he took the chance . . . He was definitely a factor in my coming to this firm."

Nevertheless, 72% reported that their place of employment made no effort actively to recruit gay men and lesbians, although some gay and lesbian employees report making efforts within the work place to make such hiring a priority.¹⁹

IV. DISCRIMINATION, ANTI-DISCRIMINATION POLICIES, AND BENEFITS

The Committee analyzed the survey responses involving instances of sexual orientation discrimination, the existence of policies prohibiting such discrimination and the extent to which employee benefits are made available on an equal basis to gay and lesbian employees, in order to determine any correlation in these areas. Respondents were outspoken in their comments on these subjects, and their responses reveal a connection between work place bias and (the absence of) established non-discrimination policies and benefit programs.

A. Discrimination

Discrimination in employment on the basis of sexual orientation, marital status, or actual or perceived HIV status is prohibited by law.²⁰ Nonetheless, many respondents reported

¹⁹ For an argument that affirmative recruitment of lesbians and gay men may be a necessary prerequisite to true equality in the work place, see Jeffrey S. Byrne, "Affirmative Action for Lesbians and Gay Men: A Proposal for True Equality of Opportunity and Workplace Diversity," 11 Yale L. & Pol. Rev. 47 (1993).

²⁰ New York City Admin. Code, § 8-107.16 (1986); Americans With Disabilities Act of 1990, 42 U.S.C. §12101-12213; New York Executive Law, §296. HIV status refers to infection by (continued...)

awareness of discriminatory attitudes or treatment on the basis of sexual orientation or perceived high risk for being HIV-infected, in areas such as hiring, assignments and promotional opportunities. Despite such reports, 72% of those responding stated that they were unaware of any actual incidents of discrimination against lesbians or gay men having been reported to management in their organizations. It appears, then, that while heterosexist conduct continues to occur in the legal work place, it is not generally being reported to those in authority.

1. Discrimination Experienced by Respondents

Comments ranged from being discouraged from interviewing obviously gay or lesbian law students for employment, being the subject of heterosexist "jokes" and remarks by colleagues, and lack of employer support for lesbian and gay-related outside activities, to being denied promotions and increased compensation, sexual harassment, and termination based upon a wrongly-perceived AIDS diagnosis. Some ten percent of those responding reported having been asked by a supervisor or co-worker to conceal their sexual orientation from co-workers.

Of those who stated that they had been victims, no more than one in four reported the incident to a superior or mentioned it to a co-worker. Twelve percent of those responding took no action at all, and 9% quit their posts as a result of the discrimination rather than pursue redress within the organization or take formal legal action.

²⁰(...continued)

the human immunodeficiency virus, believed to be a causative factor of Acquired Immune Deficiency Syndrome (AIDS).

The explanations offered for failing to take direct action appeared to fall into three categories. Some respondents felt that they had no realistic recourse, even if the offending conduct was illegal:

- * I felt I was going nowhere in the firm, so I simply quit. Realizing other firms would be similar, I decided to open up my own firm.
- * I was fired from two law firms due to their perception that I had AIDS. I was openly gay and had been ill. Since I need legal recommendations to be admitted to the bar I decided it was not in my best interest to pursue legal action.

Others were inclined to attribute the offensive conduct to causes other than sexual orientation discrimination:

- * It was subtle -- reflected in partner compensation; there were other explanations which may have applied, too.
- * I had one highly negative evaluation that can probably be most directly attributed to my open feminist politics rather than homophobia (although the fact that as a female employee, I didn't act stereotypically toward supervisor complicates analysis).

A few respondents questioned the existence of the discrimination, or the validity of their own perception of it, and developed their own strategies for coping with it:

- * The only discrimination I experience is not being able to bring my lover to firm functions. I have complied with my employer's request.
- * [I] speak to a therapist and all of my friends.
- * At my former firm which I left six years ago, homophobic comments were common. I tried to ignore them.
- * [Discrimination] never happened, largely because I've been circumspect.

2. Discrimination Against Co-workers

In marked contrast to their limited approach to handling their own experiences of bias, in dealing with the hypothetical experience of a co-worker, respondents adopted a very proactive posture. When asked how they would respond if a co-worker had suffered such discrimination, 60% of respondents stated that they would report it to a superior, and 53% answered that they would consult another colleague about it. Many respondents indicated that they would vigorously support the victim, pursue the perpetrator, report the matter to management, and/or quit in protest. One writer seemed to capture the sense of the majority of respondents in stating:

- * It seems odd, maybe, but I guess I would be willing to go to bat for someone else in a bigger way (talk to superiors, etc.) than I would for myself.

3. Reported Discrimination Claims

As noted above, most instances of sexual orientation discrimination in the legal work place are not reported to management. Where incidents have been reported, management most often handled the incident through an informal investigation and a warning to the offending party. In fewer than four percent of the cases reported was a formal disciplinary process used. In one-third of the cases, however, management took no action at all. Most of the reported incidents involved homophobic or heterosexist remarks being made either in conversation by coworkers or clients, or as graffiti. Although a small number of respondents praised management for prompt action in disciplining offending employees or in publicizing policies that condemned such conduct, a much larger number expressed frustration with the approach taken by their office leaders in dealing with such occurrences:

- * A joint union-management committee . . . prepared a report which included many recommendations, most of which have been ignored.
- * They respond, but it is not an all-out effort.
- * "Free speech" has been the horn of the dilemma.
- * Management has tolerated and participated in such remarks in the past.
- * [I quit because] [t]he old employer encouraged harassment from the top downwards, as a method of showing superiority.

B. Employment Policies

A bare majority of respondents reported that their work places had adopted formal policies and procedures prohibiting discrimination on the basis of sexual orientation. This number was on a par with the percentage reporting policies barring bias due to marital status, creed and disability, but was less than the two-thirds who reported bans on race, gender and religious discrimination. In only 24% of respondents' law offices, however, had formal grievance and disciplinary policies been adopted that explicitly included redressing claims of sexual orientation discrimination. Moreover, only 16% of the respondents surveyed reported that their employers offered any training programs or written guidelines to educate personnel about office policy on sexual orientation or HIV-based discrimination.

C. Benefits

In the area of employee benefits, gay and lesbian employees have made some limited progress in attaining parity with their heterosexual counterparts, principally in the area of

parental and bereavement leave. Seventy percent of respondents whose employers had adopted parental leave and part-time work programs made them available on a gender-neutral basis, and 75% did not limit such benefits to biological parents. About half of respondents were afforded bereavement leave programs extending to domestic partners and the partners' children. A substantial majority of respondents reported that their employers made some pro bono or charitable contributions to gay and lesbian charities.

The most intense discussion in the realm of benefits was focused on the provision of health and other insurance coverage to domestic partners and the children of such relationships.²¹ Three-quarters of respondents reported that no such benefits were provided by their employers; only three percent had such coverage; and twelve percent of those responding stated that the subject was under discussion at their work places. The comments on this subject revealed a great deal of resentment and anger at employers' excluding respondents from receiving this most essential employment benefit:

- * This enrages me, more than anything else at work. My lover had to maintain two private health insurance policies while I was unable to include him on my coverage.
- * The answer is no -- and I really resent this practice, especially when it is defended on the grounds that it would be 'too costly' to do so -- when is any other form of discrimination defended on the basis of costs? -- especially in the age when many health care costs are passed on to employees anyway
- * This is particularly galling as I pay for my own health insurance (all the partners do) and my partner is a student, so we pay for her health insurance also.

²¹

This includes coverage of the domestic partner's children from a prior marriage who are not biologically related to the employee, and whom the employee is not able to adopt legally.

The availability of health insurance benefits for their family members is a significant issue for gay or lesbian lawyers and legal workers today. The failure of most legal employers to provide such coverage is perceived as a clear statement by the employers that homosexual employees are less equal and less valued than their heterosexual co-workers.²² It may also be indicative of employers' lack of understanding about the permanent nature of gay and lesbian relationships. That so few employers are considering extending these benefits to domestic partners suggests that this inequality is generally acceptable to most legal employers, notwithstanding announced policies of sexual orientation non-discrimination.²³

²²

See Gay Teachers Ass'n v. Board of Education, 183 A.D.2d 478, 585 N.Y.S.2d 1016 (1st Dept. 1992). In *Gay Teachers*, the plaintiffs are challenging the New York City Board of Education's policy of providing health insurance benefits to its employees, their spouses and children, while denying these benefits to the domestic partners of gay and lesbian employees. The plaintiffs have survived a motion to dismiss, and the case is now proceeding to trial. *See also Rovira v. AT&T*, 760 F. Supp. 376 (S.D.N.Y. 1993). In *Rovira*, Sandra Rovira, the domestic partner of an AT&T employee who for 12 years prior to the death of the employee shared childrearing responsibilities for Ms. Rovira's biological children from an earlier marriage, sued AT&T for its refusal to provide her with her deceased partner's sickness death benefit. Rovira argued that notwithstanding AT&T's own policy statement contained in its personnel guide not to discriminate against its employees on the basis of marital status and sexual orientation, AT&T violated ERISA in its administration of its benefit plan and discriminated against its employees on the basis of marital status and sexual orientation in determining beneficiary eligibility for sickness death benefits under the plan. However, the court rejected these arguments and AT&T's motion for summary judgment was granted.

See also Coalition of Lesbian and Gay City Employees et al. v. City of New York, New York City Commission on Human Rights, Docket # ME93-0490-0498 (coalition of lesbian and gay city employees' discrimination complaint against the City of New York for its policy and practice of granting benefits, including but not limited to pension, medical, dental, death, family leave and all other spousal benefits, to spouses of its employees and denying said benefits to the domestic partners of its employees).

²³

Significant societal changes in living arrangements are unquestionably expanding the contours of the concept of the family, however, and some public recognition is now being given to the need for acknowledgment of and support for employees' nontraditional families, through

(continued...)

V. TREATMENT OR PERCEIVED TREATMENT OF LESBIAN AND GAY ATTORNEYS WITHIN THE PROFESSION

The survey also examined how self-identified lesbian and gay attorneys are treated as well as how they perceive they are treated within the profession. While the raw data did not reveal specific trends, comments made in response to specific questions provide insight into the experience of lesbian and gay members of the profession. Respondents offered many examples of discriminatory treatment, some of which appeared particularly harsh. The Committee asked respondents to comment on discriminatory treatment and attitudes from colleagues, clients and the court system.

²³(...continued)

employee benefit programs. (See, e.g., "Not Enough For Domestic Partners," *The New York Times*, Feb. 6, 1993, p. 20, col. 1 [editorial criticizing Mayor David N. Dinkins for his announcement of a domestic partners registry without a corresponding extension of benefits]; "Insurance For Domestic Partners," *The New York Times*, July 28, 1991, p. 23, col. 4; City of Los Angeles, Task Force on Family Diversity, *Final Report -- Strengthening Families: A Model for Community Action* [1988].)

Subsequent to the dissemination of the survey, one major New York City law firm, Milbank, Tweed, Hadley and McCloy, announced that it would cover the domestic partners of the firm's gay and lesbian staff members under its health insurance plan. More recently, several major universities have extended their employee health insurance coverage to the same sex domestic partners of their employees. (*The Stanford Observer*, Nov.-Dec. 1992, at 2 [Stanford University, the University of Iowa and the University of Chicago]). Other employers, such as the City of Seattle, New York's Montefiore Medical Center, and the American Psychological Association, have been offering health insurance coverage to domestic partners of their gay and lesbian employees for some time and are reporting no noticeable adverse claims experience. (See, City of Seattle, *Second-Year Report: Extension of Medical/Dental Benefits to Domestic Partners of City Employees* (May 1992); *Domestic Partnership Benefits*, Panel Discussion at the Association of the Bar of the City of New York (Oct. 29, 1992)(sound tape available from Association of the Bar).

A. Discriminatory Attitudes or Treatment

Respondents were asked whether they were aware of discriminatory attitudes or treatment from co-workers or clients toward lesbian and gay attorneys or lesbians and gay men generally.

Close to 60% answered "no." Forty percent provided detailed comments, many describing specific incidents of discriminatory attitudes and/or conduct.

Many reported that the "good-old-boy-at-the-water-cooler-talk" replete with "fag jokes" persists, and that many colleagues and clients think nothing of making denigrating comments about lesbians and gay men generally, often without knowing that the person to whom such comments are being made is lesbian or gay. Many of those who provided comments when answering this question report hearing demeaning comments or "jokes" about lesbians and gay men. There were other, more detailed examples provided.

Many respondents related personal experiences of discriminatory treatment in a variety of circumstances. One reported:

- * The head of my division was unwilling to approve my organization's submission of an amicus brief in a significant law reform case affecting our clients, specifically because the case also had gay rights implications and was being handled primarily by gay organizations.

Even more disturbing were a number of reports of colleagues "acting out" at each other because of their sexual orientation.

- * One attorney with whom I share an office suite, upon being informed of my sexual orientation, stated that he did not "want this place to be a mecca for gays".

- * A lesbian co-worker [of mine] who took her lover to the annual dance had to contend with offensive comments from other associates and was made to feel extremely uncomfortable on the dance floor (while dancing with her lover). The few partners who interacted with her over the event were very supportive, however.

Another respondent also reported discriminatory attitudes from gay people regarding the hiring of a lesbian or gay attorney.

- * I have had several good friends who were concerned about placing what to them are significant matters in the hands of a gay attorney because of our stereotyped frivolousness. This includes gay friends.

Respondents were also asked about incidents of discriminatory treatment and/or attitudes related to hiring, promotions, assignments, evaluations, or "other". Few were able to so categorize the discrimination. A little more than 10% answered that discriminatory treatment and/or attitudes related to hiring or assignments, fewer than 10% responded that evaluations were affected, and almost 15% responded that the discriminatory treatment and/or attitudes related to promotions. Nonetheless, ninety respondents to this question, approximately 40% of all survey respondents, provided comments, many of which defy categorization. What follows is a sampling of some of those comments:

- * I had to sit through '[Equal Employment Opportunity] training' in which the trainer said "You don't have to like homosexuals - You don't have to think it's moral. You just have to work with THEM". Yes, a true story. ([New York City Government Agency] Training, Winter, 1992.)
- * My hiring was reported to have been delayed for [more than] three months after decision to hire had been made because a very senior staff attorney was homophobic.

- * The only time I've encountered an overtly negative attitude was when an associate I knew discussed with me whether she should disclose that another associate was gay to the partners for whom we all worked directly, in retaliation for complaints the gay associate made about her. I discouraged her from doing this but did not come out to her then. I've since come out to her . . . in connection with having a baby.
- * I'm pretty confident [large law firm] doesn't discriminate in hiring. Promotion is the issue and a complicated one. No associate who's gay feels that it wouldn't be at least an issue, perhaps a major issue. We have one partner [. . .] who is an open advocate of at least the issue of discrimination on the basis of sexual orientation. I know that anti-gay comments/jokes etc. are occasionally tolerated, though I wouldn't say encouraged, *e.g.*, in the lunchroom or at parties. . . . [T]he firm spokesman, made stupid and insensitive comments to the Manhattan Lawyer for their article on being gay in NY law firms ("He's working here, isn't he" in response to a closeted associate's view that there was reason to fear discrimination).

B. Discriminatory Treatment and/or Attitudes in the Court Systems

The Committee also examined the existence of discriminatory attitudes or treatment from judges and court personnel toward gay and lesbian attorneys as well as gay men and lesbians generally. While the Committee did not ask respondents to identify the court or court system when commenting, some did.

1. Judges

When asked whether they were aware of such attitudes or treatment from judges, approximately 15% said yes, 15% did not respond, and approximately 70% were not aware of any discriminatory attitudes. Some respondents who indicated that they were not aware of discriminatory attitudes indicated that they did not practice in court. Twenty-five percent of

respondents submitted additional comments; some of those stated that they have not heard anything specific; or even "rumors" or "stories" of homophobic comments.

Comments were received that both criticized the judiciary and expressed satisfaction with judicial responses to lesbian and gay litigators, litigants and lesbian and gay concerns. "The anomalous homophobic comment or action comes up, but in general, the judiciary has been exemplary in my experience thanks, of course, to their many 'out' colleagues."²⁴ One respondent reported that while he was doing *pro bono* work for Lambda Legal Defense and Education Fund, he found the judges to be "very supportive in decisions and in oral argument".

A majority of the 25% who provided comments related negative and very personal accounts of their experiences as litigators.

- * I have been 'dyke-baited' in open court by [a judge] in Civil Kings (in front of a jury) and by [a judge] in Supreme Kings (during a motion calendar).
- * I work in Housing Court and as an "out" lesbian have experienced hostility from some male judges, subtle remarks about being 'softer,' admonishments about being less 'aggressive,' etc.
- * I overheard [a supreme court judge] suggesting in open court that [a court-appointed] attorney, apparently gay and not present at the time, had AIDS.
- * On cases where gay issues are not involved, I routinely must endure 'faggot' jokes from male judges who do not know my sexual orientation. Also lesbian jokes.

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A group of gay and lesbian judges in New York, the Association of Lesbian and Gay Judges, was formed in 1992, for the purpose, *inter alia*, of increasing visibility of gay men and lesbians in the court system; giving greater attention within the court system to issues affecting gay and lesbian employees, litigants, and attorneys; and serving as a resource for gay men and lesbians who aspire to become members of the judiciary.

Some respondents chose to criticize the judiciary by commenting on judges' lack of sensitivity to lesbian and gay issues. The following comments illustrate seemingly unconscious acts.

- * I have never heard a [j]udge include the possibility of a same-sex domestic partner when inquiring about family members during voir dire.
- * I have tried many AIDS cases and judges often think that AIDS cases are 'gay rights' cases and they stereotype both attorneys and client.
- * I had a judge treat a transvestite client of mine in a very negative manner. There was no indication that my client was HIV-positive, but he allowed the court personnel to clear the courtroom and lock the door.

Some respondents took a more "global" view of the question, citing as examples of discriminatory attitudes judicial opinions that enforce discrimination against lesbians and gays. "From lenient treatment of gay bashers, to Judge Gasch's remarks in the *Steffan* case, homophobia pervades the legal system." Another respondent merely stated "Judge Oliver Gasch - *Steffan v. Cheney*."²⁵

2. Court Personnel

Seventeen percent of respondents reported that they are aware of discriminatory attitudes and treatment toward lesbians and gays from court personnel. However, almost 23% provided written comments that reported examples of "petty harassment", "fag jokes" and "remarks" by

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In *Steffan v. Cheney*, 1991 U.S. LEXIS 4852 (D.D.C., April 12, 1991), United States District Court Judge Oliver Gasch stated during a hearing on a discovery motion: "The most I would allow is what relates to this plaintiff, not every 'homo' that may be walking the face of the earth at this time". . . . "That he's [the plaintiff] a 'homo' and knows other 'homos'. Is that it"? (See also 780 F.Supp. 1 (D.D.C. 1991), appeal pending.)

court personnel. One respondent reported that court personnel make jokes and facial comments when overtly gay men as well as "masculine women" appear as defendants. One respondent reported overhearing court officers referring to a judge as a "faggot."

Most written comments seemed to come from respondents who apparently practice criminal law. None of the respondents who provided comments had positive things to say about court personnel.

- * Court officers, at least in criminal court, are notoriously homophobic. I have overheard many offensive comments from both them and other court personnel. I have also seen homophobic cartoons posted behind courtrooms. Court officers and other court personnel also routinely discriminate against people with AIDS.

Other people also commented that conduct and comments "reflected anti-gay attitudes aimed at people with AIDS or thought to have AIDS." One respondent, reporting about constant homophobic remarks from court officers, stated that "correction officers are worse. 'Homo pen' is where apparently gay men are housed."

VI. VISIBILITY OF LESBIANS AND GAY MEN AT THE WORK PLACE

The Committee sought to learn the degree to which lesbians and gays in the legal profession feel comfortable with being open about their sexual orientation within their places of employment. More than 58% of respondents report that most people at their work place are aware of their sexual orientation and an additional 30% report that only a limited number of

colleagues are aware.²⁶ It should be noted that lesbians and gay men comprise one of the few minority groups that finds itself in the sometimes awkward position of having to decide whether to assert "membership."²⁷

- * Most people [are aware of my sexual orientation at my job]: Although this was a process over time. The head of the organization only recently learned of my sexuality despite my efforts to be as open and out as possible. When I came out directly in discussion concerning domestic partnership benefits he indicated his shock and the fact that because I was so 'feminine' he would not have guessed. I found his comments disturbing and suggesting a degree of sexism and ignorance about issues of sexuality.

There are many aspects of office life that do not present difficulties for heterosexuals, but can cause pain and frustration for lesbian and gay attorneys. For example, heterosexual lawyers routinely display in their offices photographs of their spouses and children, and awards or certificates of participation in political or community activities. For lesbians and gay men, however, such simple displays of identity can be more complex and troublesome.

Mirroring the debate in the gay and lesbian community generally, respondents offered various answers on the degree to which they considered themselves open about their sexual orientation. As in the gay and lesbian community generally, respondents used a number of signals and symbols as a way of declaring their sexual orientation.

- * I feel it's tacky to make announcements, but all of my friends know, and I've done overtly gay things such as wearing a pink triangle, soliciting for the [Gay Men's Health Crisis] AIDS Walk, etc.

²⁶ Ninety-seven percent of the respondents indicated that they were gay, lesbian or bisexual.

²⁷ See Pam Kruger, "Being 'Out' at the Top Finds New Tolerance," *The New York Times*, July 11, 1993, § 3, at 23.

- * Having people ask about the person whose picture is on my desk is a great way to come out to people without throwing my sexual orientation in their faces.

Those who responded that they had some concern with making their sexual orientation known to everyone were evenly split among the following reasons listed in the survey: fear of adverse professional consequences (25 % of those responding), fear of negative personal reactions (20% of those responding), and a preference not to share information regarding one's personal life (25% of those responding).

- * [I do not place photographs of my lover in my office] because of clients and somewhat because of what partners will say due to clients.
- * I was very 'out' at my prior job and I believe that had negative consequences. Having been here [at my present job for] only about six months, I decided to take it slower.
- * Though I'm not concerned about people's negative reactions, I like to lay low to deny those people the opportunity [of] adversely affecting my professional advancement by acting upon those negative reactions.
- * I think that I would feel uncomfortable [placing a photograph of my lover in my office] even if I were heterosexual. I just don't feel that such stuff belongs in the office.

A respondent, citing both the fear of adverse professional consequences and fear of negative personal reactions as his reasons for choosing not to reveal his sexual orientation, echoed the sentiments of several other respondents.

- * Both . . . are definitely concerns, and really the only reasons not to be completely open. Not, of course, that I would be discussing my personal life at work all that much anyway, but certainly if I had a steady boyfriend or companion the issue would arise, and I don't think I'd feel I could talk about such things in [the same way as] the married attorneys mention their spouses.

Another respondent bluntly observed:

- * My office is straight and married: that's the way you get promoted.

The survey also sought information regarding the degree to which gay and lesbian attorneys feel comfortable bringing their lovers to social events. While none of the respondents stated that employers actively discouraged gay and lesbian attorneys from doing so, many of the respondents expressed concern with the idea of inviting their partners to organization-wide events, even if non-spouses were technically welcome:

- * If unmarried, we were invited to bring a 'guest' to the firm dinner. A same-sex guest absolutely would have been tolerated but my sense is that the firm would not have been thrilled.
- * Officially . . . [same-sex] partners are welcome; but many of the other lawyers will ignore the guest and make him/her feel unwelcome.
- * [W]hile no 'official action' would result, I think I would be ostracized & looked upon unfavorably. My sexual preference would (and is) being discussed 'behind my back' and therefore affects my work environment.
- * [It] would be an absolute scandal at [the firm] if . . . a partner or a respected associate [invited a same-sex partner to a firm event]. No one I know thinks you could do this and be serious about wanting to become a partner.

The Committee also sought information about whether "out" lesbians and gays in the profession are aware of one another's presence. Eighty-three percent of the respondents stated that they were aware of other lesbians and gays at their places of employment. The responses, however, do not reveal how people know of other peoples' sexual orientation: whether it is through organized groups, casual contact, or other means.

VII. RESPONDENTS' PERCEPTIONS OF THE EFFECT OF BEING LESBIAN OR GAY

The survey sought to explore respondents' beliefs concerning the impact of their sexual orientation on their careers. One of the survey questions was: "Do you believe that your sexual orientation or sexual preference affects your ability to succeed in your profession in any respect?" Out of 229 respondents, 124 (54.15%) answered in the affirmative; 87 (37.99%) answered in the negative; and 18 (7.86%) did not answer. The comments accompanying the answers reflected diverse and complex views.

A. The Negative Effects of Heterosexism

Many respondents felt that the negative attitudes of others toward lesbians and gay men (*i.e.*, homophobia and heterosexism) impaired their ability to succeed. Some perceived a general negative impact on their work lives, which they said were made more difficult because they were lesbian/gay. For example:

- * Work assignments seem to be handled differently . . . No substantive criticisms have ever been made of my work, yet I hear vague references to 'intangible' qualities, like 'reliability' and 'leadership'. Nothing in my performance indicates any lack of such qualities. Mentors are also not forthcoming.

A number of respondents expressed fear that the fact that they are gay/lesbian would, if known, negatively affect opportunities for advancement.²⁸ For example,

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Respondents who felt that being lesbian or gay did *not* affect their ability to succeed nevertheless perceived the potential for discrimination. For example, in response to the same question, some answered:

- * I detect derogatory sentiment and worry that being out would limit advancement opportunities -- sad to say --it's still very much a reality, the discrimination and the attitude that we are not quite right and to be trusted and valued.

This disadvantage is perceived to have concrete results -- that lesbians and gay men are not compensated or promoted as well as their heterosexual peers.

- * I am certain that I have not been promoted or paid the appropriate salary because of my sexual orientation -- not overtly but because my value system and social orientation are "different" than my heterosexual superiors.
- * All positions of power were exclusively for "straights."

Generally, respondents were clear that this negative effect was due to bias in the profession.

- * I don't think it makes a substandard lawyer per se, but given the state of the world and particularly the legal profession, being gay can be a handicap for one trying to advance and succeed.

Respondents identified specific areas of negative impact. For example, some respondents believed that particular kinds of legal employment are entirely or partially closed to lesbians and gay men:

- * I fear that the most significant in-house positions in major corporations would not go to a lesbian.
- * Some law schools will not hire openly gay faculty members.

²⁸(...continued)

- * No, absolutely not. It's another big obstacle to tackle which shouldn't be there.
- * Not at this firm
- * Not any ability to succeed, but any ability to relax in all situations that come up.

- * I'd love to be a prosecutor or government attorney and feel it would inhibit hiring.

Many respondents viewed their chances for partnership as diminished, both because of heterosexual promotion policies and, on a slightly more subtle plane, because associates' ability to socialize comfortably with partners -- viewed as essential to being promoted -- was compromised. Specific examples of this discomfort included discussion of spouses/partners and children. This impaired ability to socialize comfortably was also perceived to affect client relationships -- and thus "rainmaking" ability -- and relationships with colleagues. One respondent said:

- * Not being a member of the home-boy, sport-betting, lunch pal groups keeps me at a disadvantage.

Some were unsure whether the problems they encountered were exclusively due to homophobia, or to other factors. This view was especially expressed by women:

- * It's difficult to be a rainmaker without a husband to drag to dinner. On the other hand this is a problem for all single women, not just lesbians.

Some said that although they did not feel that they were negatively affected in their current job, they expected they would be so affected in a different one. Other mixed views included that even though a firm was supportive "in theory," this claimed support was not borne out by experience:

- * They never make formal inquiries, even if I make room for them to do so.

B. The Positive Effects of Being Lesbian or Gay

In contrast, a fairly large group of respondents expressed the view that being lesbian/gay had a *positive* effect:

- * I believe being out is an empowering thing, internally and communally, and that empowerment creates professional opportunity and commands respect in the industry.

Some respondents, in particular those in the public interest sector, thought that being gay/lesbian fosters certain personal qualities that are important to the work of attorneys -- that it makes one more empathetic, less judgmental, a better litigator or fighter:

- * makes me more determined to be a successful black lesbian attorney/advocate in this phobic society of ours.

Others from small firms said that being gay/lesbian enables one to forge professional relationships with other gay attorneys. Still others in small firms said that they had benefitted by the development of a specialty in their practice, and that they believed that many clients prefer a gay attorney.

C. Type of Work Place

Whether being lesbian or gay was perceived to have a positive or negative impact varied somewhat depending on the type of work place in question, although all categories of work place were perceived to some extent as homophobic. For example, 44 out of 48 responses from employees of private firms employing more than 10 attorneys believed that they had suffered or were likely to suffer some adverse impact because of their sexual orientation. Similarly,

responses from employees of corporate in-house legal departments overwhelmingly indicated some perceived actual or potential negative impact. Only in the smallest private firms, with between 1 and 10 employees, did a substantial number of respondents (7 out of 17) describe a perceived beneficial impact of being lesbian or gay.

Responses from employees of governmental agencies and public interest organizations were somewhat more mixed. A majority of respondents (9 out of 14 from governmental agencies; 16 out of 22 from public interest organizations) agreed with their colleagues in private firms and corporations that there was some negative impact:

- * You get the feeling that a lot of public interest organizations do not want to be headed by visible queers so as to prevent themselves from being identified as a queer organization.

However, at least 8 of the 36 government agency and public interest respondents believed that their being lesbian or gay had a positive impact on them as professionals.

- * Because I am a lesbian, I have had to grow and develop so as to learn how to deal with adversity. That has enhanced all of my better qualities, including the qualities [that] apply to my career.

Six of the 36 government agency and public interest respondents commented that they did not experience a negative impact at their particular level, office or job, but fully expected to experience such adverse impact if they moved to another one. Many respondents in public interest work places said that they had chosen those work places based on a perception that the impact of homophobia was worse elsewhere.

- * I cannot imagine being in private practice in a firm.

- * During the interview process at large law firms, I felt that I was 'found out' as a result of my demeanor and character. Although I present myself conservatively, I felt less than warmly received.
- * I think [being lesbian/gay] makes me a better advocate for clients being discriminated against. On the other hand, it also limits my career possibilities, as there are many places I wouldn't be happy, solely because of being a lesbian.

Similarly, of 12 respondents who described their work place as "other," *i.e.*, other than private firms, governmental agency, public interest/nonprofit organization, corporate law department, court system, or law school, half alluded to some connection between being lesbian or gay and their choice of work place.

Of 9 responses from employees of law schools, one thought that the impact of being lesbian or gay was positive. The others articulated harm of varying degrees, such as:

- * Some law schools will not hire openly gay faculty members.
- * [C]learly, bigotry always affects the ability to succeed to the extent that there is a presumption of incompetence. I don't think it will ultimately be dispositive. Though, then again, I'm a 'passable' white male.

VIII. ANALYSIS

Most survey respondents believe that the effects of homophobia are both real and destructive. The survey responses show, on the whole, that sexual orientation discrimination is continuing in the legal community despite the enactment of an anti-discrimination statute in New York City. One attorney at a major law firm reported that "[a]t least one partner has expressed his view that firms 'have the right to discriminate on grounds of sexual orientation.'" Limited employment opportunities, hostile working conditions, discriminatory terms and

conditions of employment, and reduced or nonexistent opportunities for advancement characterize many respondents' views of the legal profession.

These effects are perceived by most, even if particular individuals feel that they have not been affected personally. Some people are willing to tolerate these injustices by choosing not to disclose their identity as lesbians and gay men, and suffering the personal consequences of secrecy. Others develop ways to cope with the near-universal perception of homophobia -- a coping process that surely takes a toll in terms of time, mental energy, and collegiality in the work place. Still others are unwilling to accommodate prejudice, and choose their work places accordingly. Nevertheless, some gay men and lesbians who are open about their sexual orientation in the work place are proud to be "out" and believe that they bring diversity and a distinct perspective to their work. All legal employers, especially private firms and corporations, risk losing talented and dedicated employees and potential employees by failing to take strong affirmative steps to eradicate both the perception and the underlying reality of discrimination.

A. The Hiring Process

Gay men and lesbians often face a dilemma in seeking employment. Many job candidates are reluctant to "come out" during the hiring process for fear that they will be prejudiced. When applicants do not feel comfortable to include gay and lesbian-related work on their resumes, legal employers are not informed of the full richness of the applicant's relevant experience, such as litigation and negotiation skills developed through *pro bono* work on gay and

lesbian issues or leadership skills gained through work in the gay and lesbian community. Those who choose to reveal such work-related experience, however, risk being denied employment on the basis of their actual or perceived sexual orientation.

Some applicants who *have* come out in the hiring process reported that they have faced blatant or subtle prejudice, animosity, and insensitivity. Recruitment coordinators and hiring committee members may screen out from the interviewing process applicants who are "out" on their resume. Questions that illegally inquire into marital status and contain assumptions about sexual orientation have a particularly chilling effect on gay and lesbian applicants. Such questions can be fishing for information about an applicant's sexual orientation or a tacit way of stating the preference of the employer that the applicant "fit in" -- *i.e.*, be heterosexual. Such questions force applicants directly to confront the choice whether to disclose their sexual orientation (whether they are prepared to do so or not) or actively to conceal it.

Visibility of other gay and lesbian employees on the hiring committee and/or in the work place, or word-of-mouth information that a work place is "gay-friendly," generally affect a lesbian or gay candidate's job decision positively. These applicants emerge from the interview process with the impression that being gay or lesbian is acceptable in that work place. Not surprisingly, gay and lesbian firms and gay and lesbian rights organizations are particularly hospitable to gay and lesbian applicants and advertise in the community.

B. Discriminatory Treatment in The Work Place

Discriminatory attitudes and treatment toward lesbian and gay employees appear to be widespread throughout the profession, although it is impossible within the context of this survey to draw conclusions regarding the exact degree and locus of this problem. The Committee received responses to these questions from attorneys working in all areas of the profession that indicate that discrimination against lesbians and gay men persists.

For example, one litigator reported: "I have been 'dyke-baited' in open court by [a judge] in Civil Kings (in front of a jury) and by [a judge] in Supreme Kings (during a motion calendar)." Another respondent noted that in the academic arena, discrimination persists as "some law schools will not hire openly gay faculty members." A public interest attorney also commented that "[y]ou get the feeling that a lot of public interest organizations do not want to be headed by visible queers so as to prevent themselves from being identified as a queer organization." Another respondent reported that "a lesbian applicant [where I work] was told that she was an inappropriate candidate because the work involved contact with children."

Concrete programs and policies that disparately affect gay and lesbian employees are easy to identify as one source of discriminatory treatment of lesbians and gay men. One example of such a policy is the widespread exclusion of lesbian and gay family members -- such as the domestic partner of a gay or lesbian employee, or that partner's biological or adopted children - from health benefit coverage. Such a policy, of course, means that lesbian and gay employees are compensated less than their married counterparts for the same work.

Survey responses also demonstrated a slightly more subtle form of discriminatory treatment affecting the culture of a work place. While some employers may view an attorney's sexual orientation merely as a "personal matter," such a view impairs the ability of lesbian and gay attorneys to advance within their organizations. It is customary within places of employment for employees to exchange information about a wide range of issues (work-related, personal, or otherwise), which helps create and strengthen intra-office relationships. Lesbian and gay attorneys who are placed in the uncomfortable position of having to hide their sexual orientation, and, in many cases, their lives outside the strict confines of the work place, are therefore denied participation in an important component of the daily informal networking within legal organizations, part of the social interaction between colleagues that normally leads to a more productive workplace and to greater opportunities for individual advancement. The pressure to hide a part of their identity, and the energy expended in doing so, also imposes on lesbians and gay men a great burden, not similarly borne by their heterosexual colleagues, that may affect an employee's performance.

Respondents indicated that discriminatory attitudes and treatment, whether directly experienced, witnessed, or heard about, are harmful and have a "chilling" effect on them, influencing their practice and their perceptions of their ability to advance within the profession. An increasing number of lesbians and gay men have chosen to become more visible and to assert themselves within the legal work place. Nevertheless, while a majority of respondents felt comfortable enough in their work environment to be open about their sexual orientation with at

least some of their colleagues, the Committee found that a substantial number of respondents expressed a fear that visibility would hurt them within their places of employment and in the profession. That so many respondents expressed such fears is of particular significance because many of the respondents to our survey are more likely to be open about their sexual orientation, given their likely association with lesbian and gay legal organizations.

C. Promulgation and Enforcement of Anti-Bias Policies

While most respondents said that their employers had adopted policies barring sexual orientation discrimination, the vast majority had failed to establish grievance mechanisms or to educate their employees about these policies. Regardless of an employer's good faith in adopting such policies, absent concrete vehicles for their implementation, the policies are ineffective. Additionally, the success of such policies and procedures depends largely upon the extent to which they receive visible and vocal support from the top levels of the organization.

Employers' failure to establish serious policies with meaningful enforcement mechanisms prompts employees to be reluctant to voice complaints of discrimination. Without management-led institutionalized enforcement, discipline and educational mechanisms to redress claims of homophobia or heterosexist bias, the anti-discrimination policies lose their force and eventually their legitimacy. In such an environment, gay and lesbian employees will not only be discouraged from airing their bias claims, but will be disinclined even to reveal their sexual orientation to their co-workers. And to the extent that individuals do not identify themselves as gay or lesbian, employers and co-workers will be less inclined to recognize the existence of

problems of homophobic bias. In such an environment, the gay or lesbian employees may internalize the homophobia of the work place, blaming themselves for the discrimination that they are experiencing.

Some survey respondents felt that despite existing protection against sexual orientation discrimination in the work place, in reality they had no recourse for vindication of those rights. Others displayed a tendency to minimize the offensive conduct they had experienced, through denial, acceptance, or development of some other coping mechanism, rather than confrontation or assertion of their rights. A majority (62%) of respondents stated that they were not aware that any incidents of homophobic bias had ever been reported to management at their firm. While some had reported incidents that resulted in an investigation and invocation of either formal or informal disciplinary procedures against the offending party, in a substantial percentage of reported cases management took no action at all.

Survey responses suggested that most respondents are willing to be more assertive of their colleagues' rights than of their own. It appears that many lesbians and gay men are reluctant to come forward on their own behalf with claims of discrimination, perhaps because of fears of retaliation. Such fears are not without foundation, according to survey participants, as the response of management to such claims has often not been supportive. Expectations of real relief are so diminished that some decide they must either tolerate the offensive behavior or find other employment. Very rarely are employees given the message that they are encouraged (or even entitled) to make complaints. The failure to extend essential benefits

programs to lesbian and gay attorneys may also contribute to chilling the expression of these complaints. In any case, the lack of such benefits for families of lesbian and gay employees imparts a message that those employees are less valuable to the organization than their heterosexual counterparts.

So long as legal employers do not take affirmative steps to assure that their lesbian and gay employees do not continue to experience the effects of blatant or subtle discrimination, they will continue to lose the loyalty and productive contributions of those employees from their organization.

IX. RECOMMENDATIONS²⁹

A. Employers Must Be Committed to Equality and Diversity in the Work Place

Legal employers should make a commitment to the equal recruitment, hiring, retention, advancement and compensation of gay and lesbian employees. This includes maintaining an atmosphere of respect for diversity. Employers should demonstrate their commitment through: the equal treatment of gays and lesbians in the hiring process and in the work place; the development, publication and implementation of work place anti-discrimination policies; the provision of education and sensitivity training; and the equal inclusion of the employee's domestic partner and children in employee benefits policies and in work place-related events.

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The Committee wishes to acknowledge a report by The Bar Association of San Francisco's Committee on Lesbian and Gay Issues, *Recommendations to Eliminate Barriers to the Equal Advancement of Lesbians and Gay Men in the Legal Profession* (1990), which has assisted the Special Committee in the framing of its recommendations.

B. Employers Should Implement Anti-Discrimination
and Equal Employment Opportunity Policies

Employers should develop, implement, and publicize the work place's commitment to a policy of equal opportunity in employment. These policies should specifically prohibit discrimination, including harassment, on the basis of sexual orientation and marital status. Moreover, such policies should be enforced with appropriately sensitive investigative and disciplinary mechanisms.

C. Employers Should Provide Comparable Benefits to All Employees

In order to provide gay men and lesbians with compensation comparable to that which heterosexuals receive, employers should make every effort to extend all of their employee benefits on a comparable basis to all employees, regardless of sexual orientation. Extending comparable benefits demonstrates that an employer values gay and lesbian employees and their families equally.³⁰

1. Accordingly, employers should make every effort to offer health benefits to the domestic partners of lesbian and gay employees on the same basis as spouses. Children of lesbian and gay couples should also be eligible for coverage on the same basis as the children of married employees. Many employers are now self-insured and have greater flexibility to achieve this result. If an employer who is not self-insured cannot obtain coverage of domestic

³⁰

Some employee benefit consultants are now providing the service of assisting employers to set up domestic partnership plans. See, e.g., *Segal Executive Letter*, vol. 17, Nos. 1 and 2 (1993); (benefits consultant company newsletter on domestic partnership benefits).

partners through the group coverage plan, it can pay the premium for outside individual insurance for domestic partners, although this usually is more costly, offers more limited coverage, and excludes some pre-existing conditions. Since the value of this benefit is a taxable employee benefit under ERISA, it is considered taxable income to the employee. Therefore, the employer might also consider paying to the employee the dollar amount equal, after taxes, to the income tax liability for the benefit in order to achieve comparability of compensation for all employees. Employers should seek the advice of tax counsel in promulgating their policies in this area.

2. Sick and bereavement leave policies should be provided for domestic partners and their families on an equal basis to married couples and their families.

3. Employers should also ensure that all parenting leave policies and part-time policies are gender-neutral and are not dependent on the biological relationship between the parent and the child. This will ensure that the families of lesbian and gay employees, which may include children born or legally adopted by, or related to the employee's partner, are treated in the same manner as are the families of heterosexual employees.

4. Employers should also consider undertaking appropriate advocacy to achieve regulatory change in areas such as insurance regulation, or tax treatment of benefits, where government policy may inhibit equal treatment of lesbian and gay employees.

**D. Employers Should Employ Greater Sensitivity
in the Hiring Process**

Employers should try to ensure that at least one lesbian or gay employee participates in the hiring process, or serves as a contact person for gay and lesbian applicants. Active participation of openly lesbian and gay members in the recruitment and hiring process will often change the dynamics of the process, educating and sensitizing the others, confronting and challenging overt or subtle bias on the part of colleagues when necessary, and causing the process as a whole to be more objective and fair in deliberations and decisions. In addition, visibility of gay men and lesbians in the hiring process will send a positive message to gay and lesbian applicants.

Training for interviewers should include identification of inappropriate areas of inquiry, such as the candidate's sexual orientation (unless volunteered), marital status or family plans.

**E. Employers Should Provide Training on Work Place Related Issues
Affecting Gays and Lesbians**

Employers should take affirmative steps throughout the work place to educate employees about the existence of anti-discrimination and equal employment opportunity policies and the reasons for their implementation, and to promote greater sensitivity to the issues affecting gay men and lesbians as well as minorities, women and individuals with disabilities in the legal profession.

F. Employers Should Eliminate Discriminatory Aspects of Work Place Conditions and Practices

The employer should scrutinize its work place environment to ensure that gay and lesbian employees are encouraged to participate fully in the work place and related functions, thereby ensuring that gay men and lesbians are given the opportunity to advance their professional careers on an equal footing with heterosexual employees:

1. Employers should establish a policy that invitations to office functions and other employer-sponsored events use neutral designations such as "guest" rather than "spouse."

2. If an employer has an internal newsletter, it should periodically include items of particular interest to lesbian and gay employees, including family events such as the births of children, if included for heterosexual employees. Internal newsletters may also be used to help educate heterosexual employees about issues affecting lesbians and gay men. Newsletters should also report the achievements of those who work within the lesbian and gay community.

3. Employers should foster opportunities for gay and lesbian employees to support each other in the work environment, *e.g.*, an employer might sponsor a periodic luncheon for lesbian and gay employees or recognize Gay and Lesbian Pride Week in June, or encourage and assist lesbian and gay employees to participate in the Lesbian and Gay Law Association's activities.

4. Employers should authorize and recognize pro bono work on lesbian and gay legal issues on the same basis as other pro bono projects approved by the employer.

CONCLUSION

There are many benefits for employers and employees in implementing the preceding recommendations. Policies that discourage discriminatory behavior are of immeasurable value to both employers and employees. Not only do such policies encourage an atmosphere of dignity in the work place, they also encourage lesbian and gay visibility which will in turn dispel negative perceptions of lesbians and gay men.³¹

Openly gay or lesbian attorneys can also provide mentoring to other lesbian and gay attorneys and legal workers. The sharing of their expertise with less experienced colleagues will stimulate better performance among newer employees. Without the additional pressure of having to conceal their sexual orientation, lesbian and gay employees will be free to be more productive and committed to their employer. Similarly, openly gay and lesbian attorneys would be more likely to pursue *pro bono* interests within the lesbian and gay community. This would benefit both the community and the employer, as such employees will acquire and share experiences and skills in such work, as employees generally do when performing any *pro bono* work.

Other benefits that can be anticipated through the implementation of these recommendations include an increased pool of prospective qualified employees for employers, a better atmosphere for lesbian and gay attorneys to develop important and lucrative relationships and thereby enhance their "rainmaking" abilities, increased productivity, and better worker retention and loyalty.

³¹ The Special Committee will act as a resource to any legal employers who are considering implementing the preceding recommendations.

Finally, the implementation of these recommendations will signal a true commitment to diversity and equality in the work place.

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APPENDIX

The Association of the Bar of the City of New York
Special Committee on Lesbians and Gay Men in the Legal Profession

SURVEY ON EMPLOYMENT POLICIES AND PRACTICES

Please circle the appropriate letter.

	<u>Number</u>	<u>Percentage</u>
BACKGROUND INFORMATION		
1. Are you:		
a) Male	151	65.94%
b) Female	78	34.06%
c) Not Answered	0	0.0%
2. How do you define your sexual orientation or sexual preference?		
a) Gay	147	64.19%
b) Lesbian	69	30.13%
c) Bisexual	7	3.06%
d) Heterosexual	6	2.62%
e) Not Answered	0	0.0%
3. How old are you:		
a) under 30 years old	39	17.03%
b) 30-40 years old	145	63.32%
c) 41-50 years old	38	16.59%
d) 51-60 years old	7	3.06%
e) Over 60 years old	0	0.0%
f) Not Answered	0	0.0%

4. Are you:

a)	White	212	95.58%
b)	African-American	7	3.06%
c)	Latino/a	5	2.18%
d)	Asian	0	0.0%
e)	Other	3	1.31%
f)	Not Answered	2	.87%

5. Where do you work:

a)	Firm	114	49.78%
b)	Governmental agency	25	10.92%
c)	Public interest/nonprofit	35	15.28%
d)	Corporate in-house	17	7.42%
e)	Court system	4	1.75%
f)	Law school	15	6.55%
g)	Other	18	7.86%
h)	Not answered	1	0.44%

6. How many attorneys work in your workplace?

a)	1-10	71	31.00%
b)	11-50	55	24.02%
c)	51-100	29	12.66%
d)	101-200	14	6.11%
e)	Over 200	59	25.76%
f)	Not answered	1	0.44%

7. Are you a:

a)	Staff attorney/associate	114	49.78%
b)	Partner	25	10.92%
c)	Director of organization, agency, office	4	1.75%
d)	Supervisory attorney	19	8.30%
e)	Support staff	14	6.11%
f)	Self-employed	18	7.86%
g)	Other	32	13.97%
h)	Not answered	3	1.31%

8. How long have you worked in the legal profession?

a)	0-2 years	34	14.85 %
b)	3-5	57	24.89 %
c)	6-10	72	31.44 %
d)	11-20	57	24.89 %
e)	Over 20 years	8	3.49 %
f)	Not answered	1	0.44 %

YOUR CURRENT WORKPLACE'S HIRING AND RECRUITMENT PROCESS9. Was there anything listed on your resume from which someone could conclude your sexual orientation or sexual preference *e.g.*, work for gay and lesbian social or political organizations, membership in gay and lesbian bar association?

a)	Yes	50	21.83 %
b)	No	159	69.43 %
c)	Indirectly	9	3.93 %
d)	Not answered	11	4.80 %

10. At any time during the hiring process, did an interviewer or employer's representative ever make statements or pursue lines of inquiry which had or could have had the effect of *excluding* gay and lesbian applicants?

a)	Yes	11	4.80 %
b)	No	201	87.77 %
c)	Not answered	17	7.42 %

11. At any time during the hiring process, did an interviewer or employer's representative ever make statements or pursue lines of inquiry which had or could have had the effect of *including* gay and lesbian applicants?

a)	Yes	33	14.41 %
b)	No	175	76.42 %
c)	Not answered	21	9.17 %

12. Are you aware of any effort on your employer's part actively to recruit lesbian or gay attorneys?

a)	Yes	34	14.85 %
b)	No	166	72.49 %
c)	Don't Know	12	5.24 %
d)	Not answered	17	7.42 %

VISIBILITY IN THE WORKPLACE

13. Who is aware of your sexual orientation or sexual preference at your job?

a)	Most people	134	58.52 %
b)	A limited number of people	70	30.57 %
c)	No one	11	4.80 %
d)	Don't know	8	3.49 %
e)	Not answered	6	2.62 %

14. If you are not open about your sexual orientation or sexual preference, what best describes your reasons for not being so (circle all applicable):

a)	Fear of adverse professional consequences	58	25.33 %
b)	Fear of negative personal reactions	46	20.09 %
c)	Prefer not to share information about personal life	57	24.89 %
d)	Other	10	4.37 %

15. If you are aware of negative attitudes or discriminatory treatment regarding sexual orientation or sexual preference, does it relate to (circle all applicable):

a)	Hiring	24	10.48 %
b)	Promotions	33	14.41 %
c)	Assignments	25	10.92 %
d)	Evaluations	21	9.17 %
e)	Other	48	20.96 %

16. Are you aware of discriminatory attitudes or treatment from clients or others who work with your office regarding gay and lesbian attorneys or lesbians and gays generally?

a)	Yes	80	34.93%
b)	No	135	58.95%
c)	Not answered	14	6.11%

17. Are you aware of discriminatory attitudes or treatment from judges regarding gay and lesbian attorneys or lesbians and gays generally?

a)	Yes	35	15.28%
b)	No	161	70.31%
c)	Not answered	33	14.41%

18. Are you aware of discriminatory attitudes or treatment from court personnel regarding gay and lesbian attorneys or lesbians and gays generally?

a)	Yes	39	17.03%
b)	No	160	69.87%
c)	Not answered	30	13.10%

19. If you were ever discriminated against at your firm on the basis of sexual orientation or sexual preference, what did you do? (circle all applicable)

a)	Report it to a superior	20	8.73%
b)	Speak to a co-worker	22	9.61%
c)	Speak to someone outside the workplace	21	9.17%
d)	Take no action	12	5.24%
e)	Quit	7	3.06%
f)	Other	11	4.80%

20. What would you do if a co-worker was the subject of anti-gay or lesbian discrimination in the work-place? (circle all applicable)

a)	Report it to a superior	138	60.26 %
b)	Speak to a co-worker	121	52.84 %
c)	Speak to someone outside the workplace	82	35.81 %
d)	Take no action	5	2.18 %
e)	Quit	7	3.06 %
f)	Other	43	18.78 %

21. How has the management responded to reported incidents of discriminatory remarks or treatment of lesbians and gays? (circle all applicable)

a)	Formal investigation and/ or discipline	8	3.49 %
b)	Informal investigation and/or warning	25	10.92 %
c)	No action	16	6.99 %
d)	Not aware of any incidents	142	62.01 %
e)	Other	8	3.49 %

22. Have you ever been asked by anyone in the workplace to conceal your sexual orientation or sexual preference from co-workers?

a)	Yes	23	10.04 %
b)	No	191	83.41 %
c)	Not answered	15	6.55 %

23. Do you fee that the office dress code or conventions *e.g.*, earrings, jewelry, accessories, dresses or skirts only, if any, inhibit your freedom to express your gay or lesbian identity?

a)	Yes	22	9.61 %
b)	No	182	79.48 %
c)	Not answered	25	10.92 %

24. Have you felt welcome to invite your lover or domestic partner to office events open to spouses or opposite sex partners?

a)	Yes	115	50.22%
b)	No	77	33.62%
c)	Not answered	37	16.16%

25. Do you feel comfortable displaying photographs of your lover or domestic partner in your office?

a)	Yes	115	50.22%
b)	No	85	37.12%
c)	Not answered	29	12.66%

26. Do you feel comfortable displaying posters or other indicia of involvement in gay and lesbian issues or organizations in your office?

a)	Yes	98	42.79%
b)	No	116	50.66%
c)	Not answered	15	6.55%

27. Are you aware of other gays and/or lesbians at your job?

a)	Yes	189	82.53%
b)	No	35	15.28%
c)	Not answered	5	2.18%

28. If yes, are they:

a)	Partners	66	28.82%
b)	Directors of organization, agency, office	25	10.92%
c)	Middle management	55	24.02%
d)	Associates/staff attorneys	130	56.77%
e)	Support staff member	112	48.91%
f)	Other	32	13.97%

29. Do you believe that your sexual orientation or sexual preference affects your ability to succeed in your profession in any respect?

a)	Yes	124	54.15%
b)	No	87	37.99%
c)	Not answered	18	7.86%

30. Do you believe that any discrimination that you have experienced is compounded by other factors, *e.g.* race, gender, HIV-status?

a)	Yes	57	24.89%
b)	No	115	50.22%
c)	Not answered	57	24.89%

31. Do you believe that your sexual orientation or sexual preference affects your relationship with clients in any respect?

a)	Yes	80	34.93%
b)	No	121	52.84%
c)	Not answered	28	12.23%

EMPLOYMENT POLICIES

32. Does your workplace include explicit prohibition in its formal policies and procedures of discrimination based on the following categories (circle all applicable):

a)	Race	155	67.69%
b)	Sex	153	66.81%
c)	Sexual orientation or sexual preference	119	51.97%
d)	Marital status	112	48.91%
e)	Religion	146	63.76%
f)	Creed	126	55.02%
g)	Color	138	60.26%
h)	Disability	119	51.97%
i)	HIV-status	39	17.03%

33. Does your workplace conduct educational training programs and/or provide employees with written guidelines to educate all employees about sexual orientation or sexual preference issues, including HIV-related issues?

a)	Yes	37	16.16%
b)	No	150	65.50%
c)	Has been proposed	9	3.93%
d)	Don't know	15	6.55%
e)	Not answered	18	7.86%

34. Does your workplace have a formal grievance and disciplinary policy which includes responding to and redressing incidents of anti-lesbian and gay bias?

a)	Yes	55	24.02%
b)	No	106	46.29%
c)	Has been proposed	5	2.18%
d)	Don't know	45	19.65%
e)	Not answered	18	7.86%

35. If your workplace provides health care benefits to spouses, does your workplace provide health benefits to the domestic partners of lesbian and gay employees and to the children of the domestic partner?

a)	Yes	6	2.62%
b)	No	156	68.12%
c)	Has been proposed	25	10.92%
d)	Don't know	19	8.30%
e)	Not answered	23	10.04%

36. Does your workplace extend bereavement leave to the domestic partners of lesbian and gay employees and to the children of the domestic partners?

a)	Yes	63	27.51%
b)	No	66	28.82%
c)	Has been proposed	7	3.06%
d)	Don't know	66	28.82%

37. Are your workplace's parental leave policies and part-time policies accommodating parenting gender-neutral?

a)	Yes	93	40.61%
b)	No	39	17.03%
c)	Has been proposed	3	1.31%
d)	Don't know	73	31.88%
e)	Not answered	21	9.17%

38. Are your workplace's parental leave policies and part-time policies accommodating parenting dependent on the biological relationship between the parent and the child?

a)	Yes	26	11.35%
b)	No	74	32.31%
c)	Has been proposed	1	0.44%
d)	Don't know	106	46.29%
e)	Not answered	22	9.61%

39. Are your workplace's policies regarding relocation benefits or other employee assistance programs which extend benefits to employees and their families (such as drug and alcohol counseling) extended to include domestic partners and non-biological children?

a)	Yes	8	3.49%
b)	No	84	36.68%
c)	Has been proposed	4	1.75%
d)	Don't know	92	40.17%
e)	Not answered	41	17.90%

40. Does your workplace support civic and charitable activities of concern to gay and lesbian employees (such as work with GMHC, Lambda Legal Defense), including pro bono work?

a)	Yes, extensively	51	22.27%
b)	Yes, to a certain degree	93	40.61%
c)	No, not at all	22	9.61%
d)	No	28	12.23%
e)	Don't know	22	9.61%
f)	Not answered	13	5.68%

41. Has your workplace adopted express goals and timetables for the hiring and promotion of gays and lesbians?

a)	Yes	5	2.18%
b)	No	172	75.11%
c)	Has been proposed	4	1.75%
d)	Don't know	29	12.66%
e)	Not answered	19	8.30%

PRIOR WORKPLACE EXPERIENCE WITHIN THE PAST FIVE YEARS IN NYC

42. Did you experience any discriminatory treatment in a prior workplace within the last five years as a result of being identified as gay or lesbian or perceived to be gay or lesbian?

a)	Yes	33	14.41%
b)	No	137	59.83%
c)	Not answered	59	25.76%

43. Were you aware of negative attitudes or discriminatory treatment of gay and lesbian attorneys or gays and lesbians generally within your workplace within the past five years?

a)	Yes	74	32.31%
b)	No	94	41.05%
c)	Not answered	61	26.64%