

# LGBT DIVERSITY TOOLKIT: HOW TO DIVERSIFY YOUR BUSINESS

NATIONAL LGBT BAR ASSOCIATION



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# Introduction

In the wake of the recession, the legal profession is more competitive than ever before. In law firms and board rooms across the country, smart employers know they must ensure that their best and brightest are not inhibited by any barriers to success. At a time when everyone must make do with fewer resources, continued investment in LGBT workplace diversity is becoming an ongoing business imperative.

The most successful companies and law firms in the world understand that employees with a wide range of backgrounds, experiences, and sensitivities are better to meet corporate America's diverse needs. Increasingly, as the corporate world caters to the larger LGBT community as a crucial market, companies are beginning to demand that the people they do business with be gay-affirming and representative as well.

Employers spend valuable time and money to identify, recruit, train and retain the brightest attorneys they can possibly find. During a slumping economy, a company must make more effective staffing decisions.

Smart employers know that a prospective hire will weigh quality of life issues alongside salary, benefits and location when making career decisions. When a potential hire declines a job offer because he or she perceives a lack of commitment to LGBT employees, the firm has fumbled a competitive opportunity.

Being up front with pro-LGBT policies and openly gay personnel helps law firms recruit and retain lucrative corporate clients. In addition to making a firm more competitive to diversity-minded clients, the inclusion of pro-LGBT policies can make the firm more competitive to its diversity-minded employees.

# As a Protected Class

*As an organization that wishes to practice stronger diversity inclusion policies, does your anti-discriminatory legislation include “sexual orientation” as a protected class?*

- Add verbiage to recruitment packages that clearly read “sexual orientation” as a protected class within the business; make sure it is clearly written amongst the current established nondiscriminatory policies such as gender and race.
- Provided a clear outline that includes sexual orientation within the anti-discriminatory policy of the office; this should be written and publicized by your Human Resources Department; and included on all recruitment materials.

Lawyers who identify as LGBT are more likely to either choose or stay within a business that actively demonstrates their commitment to diversity inclusion within its workplace; providing such inclusion will ensure the recruitment of new and progressive lawyers.

*In addition to offering “sexual orientation” as a protected class, are “gender identity” and “gender expression” included in your company’s nondiscrimination policies?*

- Businesses should proceed cautiously when addressing the spectrum of gender identity and expression as it differs with each individual who wishes to express his or herself.
- Organizations should highlight on gender identity and expression separately from sexual orientation because many individuals do not always identify one with the other so it’s best to presume that they do not coincide.
- In the legal profession, like any profession, gender conformity is expected in the workplace, but progressive organizations should not assume nor force its employees to comply with such conformities and should protect their freedom of expression. For further reference see *Jespersen v. Harrah’s Operating Company*.

- The National LGBT Bar Association recommends that organizations be as broad as possible when applying such wordage to policies so when current or prospective employees have any inquiries it can be understood gender expression or identity discrimination of any sort is forbidden within the workplace.

The Gay & Lesbian Alliance Against Defamation's (GLAAD) Media Reference Guide defines gender identity as "one's internal, personal sense of being a man or a woman (or a boy or a girl). For transgender people, their birth-assigned sex and their own internal sense of gender identity do not match."

GLAAD further defines gender expression as "external manifestation of one's gender identity, usually expressed through "masculine," "feminine" or gender-variant behavior, clothing, haircut, voice or body characteristics. Typically, transgender people seek to make their gender expression match their gender identity, rather than their birth-assigned sex."

The American Bar Association recommends promoting "full and equal participation in the legal profession by... persons of different sexual orientations and gender identities."

*While gender identity and expression might already be implemented in your nondiscriminatory policies, does your business also go beyond to provide training and transition guidelines for its staff?*

- Contract a diversity professional or have your in-house diversity director conduct a business-wide training to address ways employees understand and support a colleague who undergoes transition; show that such trainings are undertaken in new-hire literature and recruitment packages and ensure the sessions are done at a minimum on an annual basis.
- Include guidelines in your Human Resources verbiage that can be catered to multiple employees who wish to transition; be broad when implementing timelines as each transition changes per scenario.
- Whichever the situation, colleagues should be notified of such transition and the individual's timeline; announcement from senior management can be effective when communicating such transition as it demonstrates inclusion from a higher level partner.

The National LGBT Bar Association can assist organizations that wish to undergo such trainings by connecting them with other corporations that have been successful.



# Reevaluating Health Coverage

*For those employees who desire to transition, does your company's health care plan cover transition-related expenses?*

- Provide benefits that cover as much of the transition as possible from the psychological assessment, to the hormonal therapy, and up to the surgery and post-op counseling.
- Offering as much coverage throughout the entire process—pre-operative, operative, and post-operative—will ensure retention of current lawyers as well as the recruitment of prospective employees who wish to invest professionally in a diversely open work environment.
- Transitional processes are timely as well as costly, corporations should apply health plans that assist the costs transgender lawyers and associates pay for such procedures.

Transitioning is a long-term process. Transgender persons can be pre-operative, post-operative, and non-operative—assisting costs during any and all stages is essential.

*Do your employment policies offer domestic partnership benefits, regardless of current state and federal legislation? It is better to be ahead of the curve.*

- It is beneficial to invest in policies of total inclusion regardless of federal, state or local legislature; adopting policies that are more progressive than contemporary law and administration demonstrates to prospective LGBT attorneys that your office is inclusive and nondiscriminatory.
- When hiring prospective lesbian, gay, bisexual or transgender employees, make sure to clearly state that equal domestic partnership benefits are available within the workplace.
- Advertising that your business climbs beyond a floor of tolerance to a ceiling of inclusion in its policies will be attractive to future attorneys and therefore diversifying your team.

As part of increasing a discriminatory-free work zone, businesses should adapt and advertise benefit packages for partnered LGBT attorneys and associates which mirror those for heterosexual coworkers.

# New-age Tax Policies

*Married couples are offered significant tax incentives on state and federal levels, but same-sex domestic partners are not only recognized as “married” in very few states, therefore being denied such tax breaks at the end of the year. What are some ways your company can compensate for its LGBT employees and their domestic partners?*

- One way is to “gross up,” which is defined when an organization compensates an employee’s health insurance by reimbursing them for their taxed salary that would otherwise have been used for health insurance for them and their same-sex domestic partner before take-home pay.
- Have your Human Resource Department clearly state that their employees’ taxed salary would be compensated by the amount that would otherwise have been used for health insurance for them and their same-sex domestic partner.
- Make sure the grossing up procedure is clearly stated and explained in detail in new hire orientations, interviews and the written policies of your Human Resources Department.

The National LGBT Bar Association encourages corporations to practice “grossing up” for their LGBT employees for their domestic same-sex partners.

*Are your bereavement leave policies extended to your company’s LGBT employees and are equal to those of their heterosexual coworkers?*

- Have bereavement leave policies for LGBT lawyers identical to those offered to heterosexual attorneys and associates.
- Ensure that these policies are clearly written in the Human Resources outline for LGBT employees and prospective lawyers.
- Explicitly state that sick, care-taking, or other family leave benefits are extended to LGBT lawyers with needs relating to their children, family or same-sex domestic partner.

Many state legislatures do not recognize same-sex unions. Make sure your organization observes its LGBT employees and their domestic partners in bereavement policies, regardless of local and state law.

# Family Support

*Do the paternity and maternity leave packages for your company's LGBT parents mirror similar benefits offered to heterosexual parents?*

- It is necessary for companies who wish to expand their LGBT inclusion and recruitment to provide benefits and parenting leave packages for lesbian, gay, bisexual or transgender attorneys or associates who wish to have children.
- Whether the straight or gay male lawyer wishes to adopt or the female attorney plans to be inseminated, parental leave options should be available for these future parents.
- Parental leave benefit packages for LGBT lawyers and associates should mirror those offered to heterosexual employees in the business.

*Couples or individuals from the LGBT community who wish to become parents must do so in nonconventional ways, which are usually very costly and require a substantial amount of paperwork. How does your corporation help defray such costs?*

- With the advancements of reproductive technology, outlets for both straight and LGBT couples starting families are becoming available and businesses that employ future parents should endorse benefit policies that aid in financial expenditures.
- Applying in vitro, adoption, sperm and egg donor, and surrogacy fees as family planning options for LGBT employees will help retain and recruit current and future attorneys.
- Make sure such options that are available for opposite-sex coupled families are also extended to LGBT families as well.

*It should be mentioned that adoption, in vitro, insemination and surrogacy require different pathways to achieve parenthood. A company should assist as much as it can for its LGBT employees as much as it would for their straight coworkers.*