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DIVERSITY SPECIAL

LGBTs in the Legal Profession: Will It Get Better?

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There are many important and successful programs designed to initiate, expand, and sustain diversity in the legal profession. Those traditional programs focus on fostering a legal profession that is inclusive in terms of culture, race, and sex. But there is one corner of the world of diversity that has not yet received an equally serious level of attention within the legal profession — the LGBT (lesbian, gay, bisexual and transgendered) community.

Taking diversity to the next level requires proactive measures to assure the word “diversity” is an “inclusive” term that affirmatively recognizes LGBTs. While it is an issue that can be partially addressed by increasing overall education and awareness, it is also one that can be solved only in the same way cultural, racial, and sex diversity is being solved — *business necessity*. For example, are LGBT statistics used in the outside counsel selection process? Are LGBT topics included in legal and business association conferences? Is LGBT data reported by diversity rating organizations? Are there career development and client development programs at law firms that are tailored to LGBT attorneys? Are law schools, law firms and clients conducting LGBT-focused recruiting efforts? Are LGBT issues being incorporated into the practice of law, such as trial attorneys taking into account the LGBT status of potential jurors?

It will get better for LGBTs in the legal profession if all constituents in the profession — law schools, law firms, clients, ratings organizations, and legal and business associations — work together to make it a business necessity.

The research clearly indicates a need to act. In 2007, the Bar Association of San Francisco Equality Subcommittee on LGBT Issues released a report documenting numerous barriers that hinder the comfort level of LGBT attorneys. A 2005 survey of LGBT and ethnic minority law students reported that 59 percent of LGBT law students opined that being “out” in the workplace would negatively impact their ability to make partner. Similarly, the results of a 2006 State Bar Report that surveyed California attorneys who were women, people over 40, ethnic minorities, and LGBTs, revealed that none of the many LGBT lawyers who indicated experiencing workplace discrimination reported the perceived discrimination to management. However, 51 percent of women, 40 percent of attorneys over 40, and 52 percent of ethnic minorities who believed they had experienced discrimination did report.

While the position of LGBT people in the legal profession is somewhat of a reflection of those in our society, in many ways society is far ahead of the legal profession. Indeed, the legal profession has been one of the most conservative professions that is frequently the last to change. However, lawyers do hold influential posts throughout corporate, government, judicial, and education entities. So ironically, the legal profession is actually in the best position to lead change — and lawyers could lead change and would if only it were encouraged and accepted to be an openly LGBT lawyer.

To get started, here are some best practices that legal employers could implement to foster the inclusion of LGBTs in diversity programs and facilitate the elimination of barriers to change.

Recruitment of LGBT law students and laterals: A common question from law school students is whether or not to include their involvement in LGBT organizations on their resumes. Similarly, during job interviews, both students and laterals often do not initiate conversations or pursue topics that would reveal their LGBT status. Consequently, it is up to employers to affirmatively reach out to LGBT applicants in other ways. For example, firm participation in the annual Lavender Law Conference & Career Fair, sponsored by the National LGBT Bar Association, serves multiple purposes. It demonstrates the firm’s recognition that LGBTs are included in its definition of diversity and also provides a unique opportunity to obtain resumes and meet LGBT students from law schools throughout the country. The firm’s lawyers who participate in these events will also develop valuable



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networking relationships with law students and laterals who take in-house positions at client organizations. Similarly, law firms should participate in the many local LGBT bar associations that provide news alerts and job listings to members. Most importantly, to help make it better right from the start, law firms can help sponsor meetings and events held by LGBT associations at law schools.

Demonstrate support for the LGBT community: The same rule of business necessity applies to all areas of diversity — diverse people are most productive, provide the best client service, and form the most effective teams when they are in a work environment that openly embraces their diversity. Consequently, one method LGBT applicants use to evaluate a firm’s general level of acceptance is reviewing the annual corporate equality index generated by the Human Rights Campaign. The index rates workplaces throughout the country based on a survey that gauges, among others, the firm’s non-discrimination policy, benefits, diversity training, as well as diversity-related philanthropic, marketing, community outreach, and recruitment efforts. Other avenues to demonstrate support is participation in local and national LGBT organizations, as well as recognizing and celebrating the involvement and achievements of LGBT employees and attorneys in such organizations.

Provide mentorship and training for LGBT attorneys: “Counting numbers” of diverse attorneys is not enough. Without mentorship, training and career development, LGBT attorneys will leave for better employment opportunities. To that end, many firms have well-organized diversity committees that focus on retention through affinity groups, mentorship assignments, feedback and training, and parity in the distribution of quality work assignments. Local and national surveys report that firms with affinity groups for women and ethnic and racial groups — but not for LGBTs — are perceived as being less supportive of LGBT people. The existence of an LGBT affinity group provides an opportunity for LGBT employees to communicate with each other to identify successes, challenges and solutions that the leader of the affinity group can present to firm management for joint action. Affinity groups also provide for an additional informal level of mentorship that compliments the firm’s more formal mentorship program.

Provide similar benefit packages to LGBT employees: One certain way a firm can help make it better for LGBT employees is to equalize various benefits provided to all employees, regardless of diversity, but with affirmative attention to the unique considerations in how to achieve equal benefits for LGBT employees. For example, extend the same health care coverage (medical, dental, vision), family leave, bereavement leave, relocation assistance, and the like to LGBT employees and their registered domestic partners as are offered to heterosexual employees and their spouses. It is recognized that the Internal Revenue Code does not treat same-sex domestic partners (and the children of the same-sex domestic partner) as dependents. As such, the entirety of a firm’s contribution toward these benefits is treated as taxable income and LGBT employees, unlike their heterosexual counterparts, will be assessed additional federal taxes, which also include an increase in their Social Security and Medicare taxes, if they elect the medical, dental and vision health care coverage. While firms are unable to change the Internal Revenue Code, the 2007 report by the Bar Association of San Francisco Equality Subcommittee on LGBT Issues recommends firms could remedy the tax consequences imposed on LGBT employees by “grossing up” the salary of LGBTs that exercise this health care benefit to compensate the employee for the additional tax amount. This recommendation, and many others, were identified in the 2007 report, which many firms have followed.

One of the most highly valued services law firms provide to their clients is the ability to anticipate legal needs and provide solutions that are practical, effective, and long-lasting. In a profession founded upon precedent, it is often a challenge to get out in front of something that has not yet happened. But lawyers thrive on challenges, on conquering the impossible and, most importantly, setting precedent. It is time to change the “first impression” of the legal profession as a place where change only happens if it is forced upon us. It is time to lead the charge to affirmatively include LGBTs in the formal definition of diversity in our profession, as well as include LGBTs in the many policies, programs and practices of our business. Given our influence in all aspects of society, the legal profession is uniquely situated and, thereby, uniquely responsible for progress. It is time to make it better for LGBTs in the legal profession.



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