**MEMO:**

To: Human Resource Professionals & Managers

From: Meagan Frances Ayers

Date: 28 November 2008

Re: LGBT Personnel in the Workplace

**Causes of the Issue Importance**

***“****During the 1950s President Dwight D. Eisenhower issued an executive order banning the employment of homosexuals… and it was impossible for an openly gay person to find employment in almost any occupation one might name, and certainly in any occupation requiring a security clearance from the federal government. Discrimination against sexual minorities was not the subject of any affirmative legislation.*

*Toward the end of the twentieth century, President William J. Clinton issued executive orders banning sexual orientation discrimination in federal civilian employment, and ending discriminatory security clearance procedures. However, so long as there is no express federal statutory ban on employment discrimination on the basis of sexual orientation or gender identity, the legal status of sexual minority workers in America remains complicated, being a patchwork of constitutional case law, state and local statutes and ordinances*.*”* (Arthur S. Leonard)

According to the Human Rights Campaign (www.HRC.org), some states have laws that prevent discrimination in the workplace against those who fall into the LGBT (Lesbian, Gay, Bi-Sexual and Trans-Sexual) category; some of these states include California, Colorado, Illinois, Maine, Minnesota, New Jersey, New Mexico and Oregon. Kathy Belge explains that in 30 out of our 50 United States, it is “perfectly legal” to discriminate against an individual who falls into the LGBT group simply because their employer disproves of their sexual orientation. Alongside this, only 12 states have laws that protect transgendered individuals from being discriminated against; leaving individuals in the other 38 states vulnerable. (civilliberty.about.com)

As stated above however, there is still no federal law which provides peace of mind to these individuals. As a matter of fact, when it comes to hiring, firing, promotions and compensation, there are currently federal laws which protect individuals based on sex (as the socially constructed male or female sexes), race, national origin, age and disability. However, there are no federal laws which provide the same rights and protections to those employees who fall into the LGBT group to protect them from “*discrimination based on real or perceived sexual orientation or gender identity.”* (www.hrc.org)

As a note, please keep in mind that as I refer to sex within this memo, I am referring not only to the two socially accepted groups of sexes (male and female) but also to the group of individuals who are somewhere in-between on the spectrum of sex (i.e. The most obvious example is a person who may look like a normal female but have the chemical makeup of a male; or vice versa). It is safe to say that the Equal Employment Opportunity Commission (EEOC) is not up to date with the advancement in knowledge of the differences between sex, sexual orientation and gender identity.

**Laws Regarding the LGBT Community**

It is important to note that **l**aws are ever-changing and it is therefore important to continually keep up to date on legislation changes and amendments. This is extremely important for managers to keep in mind regarding gay rights within the workplace due to the heavy pressure on our government for new federal laws to address these concerns.

Kathy Belge explains that since 1996, the Employment Non-Discrimination Act (ENDA) has been presented repeatedly to congress only to be shut down and dismissed; “language that would have protected someone based on their gender identity was removed from the bill.” It is thought however, that with our new Democratic congress the chance of this law passing in our near future is better than ever before!

The ENDA’s purpose is to prohibit discrimination in the workplace based on someone’s real or perceived sexual orientation or gender identity. This law, if passed, will establish it illegal to fire or refuse to hire an individual based on their real or perceived sexual orientation as well as require employers to have policies that pertain to dress standards and gender-segregated facilities. This law will pertain to businesses with 15 or more employees and the military and religious organizations, in certain circumstances, will be exempt. (lesbianlife.about.com)

**Behaviors or Attitudes Resulting From the Issue**

Tom Head explains that, *“85 percent of Americans oppose job discrimination on the basis of sexual orientation, and 61 percent would like to see such job discrimination prohibited at a federal level.”* Therefore, it should be noted that a majority of Americans recognize this issue as important. Remember too that the other 15% of American employees “seemingly” approve of discrimination against LGBT personnel in the workplace. This should cause some concern for those who manage the workplace and are required to illuminate discrimination against all individuals. (civilliberty.about.com)

The Williams Institute at the UCLA School of Law conducted a thorough and in-depth controlled study which sought out to determine just how prevalent discrimination against those in the LGBT group truly is. The findings included the following:

* When surveying LGBT people, *“16% to 68% report experiencing employment discrimination (8%-17% were fired or denied employment, 10%-28% were denied a promotion or given negative performance evaluations, 7%-41% were verbally/physically abused or had their workplace vandalized, and 10%-19% reported receiving unequal pay or benefits.)”* It was also found that gay men earn 10% to 32% less than heterosexual men; information for lesbians was not available.
* When surveying transgendered people, *“15% to 77% report experiencing employment discrimination (20% to 57% of transgender respondents reported having experienced employment discrimination at some point in their life. More specifically, 13%-56% were fired, 13%-47% were denied employment, 22%-31% were harassed, and 19% were denied a promotion based on their gender identity.)”* Not to mention that 22-64% reported earning less than $25,000 per year; providing evidence that transgendered people are not generally offered the higher salaries which most of us have the opportunity to pursue.
* To prove that these numbers are not just the word of those who feel discriminated against, another study was conducted to prove that unbiased third parties also witness this behavior within the workplace. *“A small number of researchers also asked heterosexuals whether they have witnessed discrimination against their LGBT peers. These studies revealed that 12% to 30% of respondents in certain occupations, such as the legal profession, have witnessed antigay discrimination in employment.”*

As you can tell, this issue is very real and the discrimination rates are extremely high within the United States. Not only are those of the LGBT group claiming discrimination, those of the heterosexual community are backing up those claims by declaring that they too witnessed these discriminatory behaviors within the workplace.

Perhaps the most frightening part of this discrimination is that sometimes, it can lead to acts of violence being committed towards these vulnerable individuals. According to the Human Rights Campaign, *“A violent hate crime is intended to “send a message” that an individual that “their kind” will not be tolerated, many times leaving the victim, and others within their group feeling isolated, vulnerable and unprotected. Violent crimes based on sexual orientation constituted 15.5 percent of all hate crimes in 2006, with 1,195 reported for the year.”* (www.hrc.org)

It is very important to note that, as a manger, you must still be aware of your employees and their attitudes and feelings towards those who they perceive to be different from themselves in order to prevent any discrimination in the workplace that could result in a potential lawsuit. As a manager, you are responsible for all your employees.

**Performance Implications for Organizations, HR Practitioners and Managers**

With this kind of alarming information, it is very important for managers and human resource personnel to be aware of these issues and to take preventative action to ensure a safe, productive and discrimination free workplace. This is not only important to ensure the well-being of your employees but also in the sense that you could be held liable if something were to happen within the workplace.

For example: An employer is being socially responsible and hires in a LGBT person to their organization without any feelings of discrimination; this person was simply the best person for the job. However, tension quickly starts to rise between this new employee and another homophobic employee. Inappropriate comments are being made and harassment has been observed. Whether or not the LGBT employee has reported this to you, if you are aware of this behavior, you are responsible to address the situation immediately. If you neglect the situation and violence should occur, you can be held liable for negligence of the situation. Not to mention that if you do happen to live in one of the 20 states that have laws protecting these individuals, you could be held liable for negligence of discrimination; whether or not violence occurs.

Since the government will not protect this deserving class of people, the organizations within our country should strive to protect them in every way possible. In order to do this, *“employers should include "sexual orientation" and "gender identity" or “gender identity or gender expression” as protected classes, in addition to federally protected classes, in non-discrimination policies* (www.hrc.org).*”* This should be enforced to pertain to management as they relate to their own employees and also as employees relate to other employees within the workplace.

This company policy should address concerns related to hiring, firing, promoting, compensation (for the individual as well as their partner) and training LGBT personnel/employees. When it comes to the essential functions of HR, it is essential to keep from discriminating (or giving the perceived notion of discrimination) against anyone who applies to the organization or currently works for the organization.

After much research, the organization Out & Equal has provided steps toward a discrimination free workplace against LGBT people. These steps can be found at www.outandequal.org and are as follows:

1. *“Support and Attend the Annual Out & Equal Workplace Summit.”*  This will provide managers with information that is important to be an Out & Equal workplace where employees can feel safe and valued no matter their sexual orientation of gender identity.
2. *“Start an Employee Resource Group.”* Out & Equal states it perfectly, *“To maximize the creativity that fuels innovation, a workplace must be without harassment, without mistrust, and without disrespect. When an employee can arrive at work free of inhibitions or worries, then that person will contribute fully to their work and to the company’s goals. Inclusiveness is simply good for business!”*
3. *“Offer Domestic Partner Benefits.”* There are currently about 1,000 rights that heterosexual married couples enjoy which LGBT people are not entitled too due to the intolerance of homosexual relationships. Providing these people with a chance to acquire the same opportunities that most people take for granted will help attract talented and valuable employees to your company.
4. *“Include Sexual Orientation in your Company’s EEO Policy*.” If a company neglects to include LGBT people in their corporate policies, this may signal that the company condones discrimination. This could lead to the potential loss of valuable employees of the company; it is even noted by Out & Equal that out of the top Fortune 50 companies, 49 of them have included sexual orientation in their EEO Policy.
5. *“Include “Gender Identity and Expression” in your Company’s EEO Policy*.” This includes any person who does not have a typical gender as described by the “male” or “female” socially constructed sexes. This can include a variety of people; cross-dressers, transvestites, those who fall into a non-female or male sex, masculine women, feminine males, etc… (Note: This is different from number 4 which protects employees based on their sexual “orientation” which is the gender in which they are attracted to).
6. ***“Provide Lesbian/Gay/Bisexual/Transgender Workplace Diversity Training.”* This will allow for communication between employer and employees, as well as between employees, on the issues which are at hand and how to deal with those who are perceive to be different according to their gender, sex, sexual orientation, etc... This will allow employees to have a better understanding of LGBT people which could ultimately lower the rate of discrimination and build employee knowledge and tolerance towards these individuals. (Note: This could also benefit the company with regards to discrimination against customers who also fall into the LGBT group.)**
7. ***“Support the LGBT Community through Corporate Giving.”* *“****Donating to the LGBT community accomplishes several goals: it increases visibility, it targets a highly sought demographic with disposable income, it demonstrates commitment to equality, it makes LGBT employees proud to work for a company that supports their community, it generates consumer loyalty, and it announces to potential employees that you are supportive and welcoming to people of all walks of life.” (www.outandequal.org)*
8. ***“Recruit and Develop LGBT Employees.”* Diversity of employees is the key to a successful business in today’s diverse and global day and age. This will allow employees, the community and customers to acknowledge that your company is striving to be as diverse as possible and will earn respect and acknowledgement of diversity.**
9. ***“Market to the LGBT Community.”* Out & Equal makes a very valid point *“****increased visibility means increased LGBT acceptance.”* This means that while advancing your business, you are also creating a trickle affect within the community about ideas and knowledge of persons of the LGBT group.
10. ***“Create LGBT Specific Advertising.”* This will alert the LGBT community that you are dedicated to providing equal opportunities to all employees and potential employees which will ultimately create a loyalty to the company.**
11. ***“Provide LGBT Leadership Development Opportunities.”* Any employee, regardless of their sex, orientation, gender, etc… has unique skill sets which they bring to the company. If these skilled and talented individuals are repressed from moving higher on the leadership scale, your company may be losing unforeseen opportunities.**
12. **“Develop Spousal Equivalency Policies for LGBT Employees.” As stated before, there are around 1,000 benefits which heterosexual couples enjoy that homosexual couples are deprived of. However, *“****70% of heterosexuals agree that rights for family and medical emergencies should apply equally to employees’ married spouses and same-sex partners and a clear majority believes that same-sex partners of employees should be treated equally for workplace benefits that are usually extended automatically to the married spouses of employees… Having Spousal Employee programs makes a clear commitment to building an inclusive workplace where all employees enjoy the same rights and privileges and could set an industry standard. Not to mention that company with SE programs is attractive to savvy potential employees — which increases retention”* (www.outandequal.org)
13. ***“Include LGBT-owned Businesses in your Supplier Diversity Program.”***
14. ***“Promote an LGBT Friendly Corporate Culture.”* When an employee is not worried about discrimination at work, this allows them to flourish in their work and provide a 100% focus on the company.**
15. ***“Share Best Practices Around LGBT Workplace Issues.”* It is important to note that, *“****In the process of increasing their own awareness, companies are promoting LGBT visibility and therefore LGBT equality”* within the community and society.

*“Companies embarking on these “Fifteen Steps to an Out & Equal Workplace” have made a choice. They have chosen to work toward a just and equitable society by setting a standard both in their industry and in society at large. Opening up communications with managers, employee resource groups, business teams and individual employees will increase employee productivity and improve morale.”* (www.outandequal.org)

**Recommendations for Organizations and HR Professionals**

Employees are a company’s most valuable asset, therefore it is very important to take the highest degree of care when preventing discrimination within the workplace. As a manager or HR personnel, it is imperative that you be aware of your employees and their attitudes towards all individuals who could be discriminated against for a variety of reasons including: age, sex (as the socially constructed male or female sexes), race, religion, sexual orientation, disability, etc… You must also take the initiative to ensure that you too are not discriminating against your employees either.

The most important thing to think about is that *“sexual orientation has nothing to do with employment decisions.”* (www.outandequal.org)

As we have seen, many people (including those who are heterosexual) are against discrimination based on gender identity, sex or sexual orientation. This does not mean that these individuals are eager to participate in the same lifestyles as those of the LGBT group. This simply means that while an individual is currently protected based on sex (as the socially constructed male or female sexes), race, national origin, age and disability, there is no reason discrimination should be tolerated for any other reason.

Whether you agree with a person’s lifestyle or not, nothing gives you the right to discriminate in any way. Always remember the golden rule “treat others the way you want to be treated.” Would it hurt you if you were refused a job, lost a promotion, declined comparable compensation to other employees, fired, etc… based solely on the fact that you loved the person you do or because you were not masculine enough of feminine enough?

These individuals deserve the same rights and opportunities. If you are like-minded, I urge you to follow the steps previously provided to ensure a safe, productive and discrimination free workplace within your company.