

STRAIGHT TALK ABOUT LGBT ISSUES IN THE WORK PLACE

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I. FACTS REGARDING LGBT DISCRIMINATION

- A. Lesbians and gay men continue to face real discrimination in the workplace.
- A recent review of 50 studies that date back to the mid-1980s showed that, depending upon the study, from 15 to 68 percent of lesbian and gay individuals experienced employment discrimination based on their sexual orientation.
 - In a survey conducted by Lambda Legal¹ in 2005, 39 percent of respondents reported experiencing some form of discrimination or harassment at work due to their sexual orientation.
 - Workplace fairness is the number one issue for callers to Lambda Legal's help desk. In 2006 they received more than 1,000 calls.
 - Transgender individual report similar, if not, higher levels of discrimination.
 - In six studies conducted between 1996 and 2006, 20 to 57 percent of transgender respondents reported having experiences some form of employment discrimination.
- B. Lesbian and gay employees earn less than their heterosexual counterparts.
- Gay men earn 10 to 32 percent less than similarly situated heterosexual men.
 - Lesbians earn 5 to 14 percent less than comparable employees nationally.
 - Partnered gay men were paid 23 percent less than married men for the same or comparable jobs.
- C. Anti-gay bias remains largely unconstrained in many workplaces.

¹ Lambda Legal is the oldest national organization pursuing high-impact litigation and public education to secure equality for lesbians, gay men, bisexuals, transgender people and people living with HIV.

- Although racist and sexist jokes are widely accepted as off limit in the workplace, jokes targeting lesbians and gays are frequently still tolerated.
- D. There is a cost to this form of discrimination.
 - Economic and psychological harm to LGBT employees.
 - Loss of talented employees.
 - Wasted recruitment and training investments.
 - Diminished job productivity in the workforce.
 - Lowered employee loyalty and morale.
 - Effect on customers and clients.
 - Costs associated with liability.

II. WHAT LGBT EMPLOYEES WANT FROM THEIR EMPLOYER

A. Non-Discrimination Policies

Iowa law now requires employers to refrain from discriminating against employees based on their sexual orientation and gender identity. This requires employers to review and revise their EEO policy to include sexual orientation and gender identity.

In addition to including sexual orientation and gender identity in the basic EEO policy, it is also imperative that Iowa employers include sexual orientation and gender identity in the harassment policy and complaint procedure.

Once the policy changes have been implemented, the employer should communicate to all employees that the company will not tolerate discrimination based on sexual orientation and gender identity, and that employees who are gay, lesbian and transgendered know that they can come to human resources with any workplace issues.

B. Safe Working Environment

Although a non-discrimination policy is important, it is more important for an employer to take proactive measures to address heterosexist and homophobic attitudes that exist in the workplace.

1. Heterosexism v. Homophobia

a. Heterosexism is the belief that everyone is heterosexual. Addressing heterosexism is similar to addressing any form of prejudice. It requires awareness of the problem, education about the issue and commitment to eliminating the problem.

In today's work environment, we have "holiday" parties instead of "Christmas" parties. We say mail carrier and police officers rather than postman or policeman. We do this to be inclusive.

Similarly, we need to change heterosexist language in the workplace.

Use the terms partner or significant other rather than "spouse."
Ask if someone is in a relationship rather than married.

Review personnel forms:

Add domestic partner to areas for spouse identification.

b. Homophobia is the fear and hatred of homosexuality in ourselves and in other people.

Think of homophobia on a continuum. At one end there is violent physical attacks against LGBT people. On the other end is the occasional joke that someone tells, the offensive anti-gay cartoon taped to an office door or the limp-wristed impersonation when talking about homosexuals. Homophobia includes the use of words like: fag, dyke, queer, fairy, pansy, lezzie, and homo as a way of belittling someone.

2. Company-wide education to address issues of heterosexism and homophobia. This is no different than the anti-harassment training that already occurs in the workplace.

C. ACCESS TO EQUITABLE BENEFITS

Lesbian, gay and transgendered employees want access to equitable employee benefits. Currently, it is unclear if the change in Iowa's civil rights act requires changes to employees' benefits. However, access to most benefits does not cost the employer more in dollars and helps to promote the employer's efforts at inclusion. Some of the benefits include:

-- Domestic partner benefits for health insurance.

- Inclusion of domestic partner in the family and medical leave policy.
- Recognition of a domestic partner and the domestic partner's immediate family in a bereavement leave policy.

D. THE ABILITY TO PARTICIPATE IN CORPORATE LIFE

Lesbian, gay and transgendered employees want to feel welcome in all facets of their work life. This includes extending invitations to family members at company social events. The freedom to put family pictures at one's desk without harassment. Acknowledgement of family in a company directory. Including family events in a company bulletin (the birth of a grandchild, the graduation of a client).

III. OTHER LEGAL ISSUES

A. Accommodating Religious Beliefs

1. Courts support an employer's effort to protect GLBT employees from harassment.

Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004). An employee who was disciplined for posting Biblical passages condemning homosexuality in his cubicle did not have a religious discrimination claim. The Court held that accommodating his views would create undue hardship on the employer's efforts to create a diverse, non-discriminatory workplace.

Bodett v. Coxcom, Inc. 366 F.3d 736 (9th Cir. 2004). The court upheld the district court's dismissal of a Title VII religious discrimination claim brought by a Christian fundamentalist supervisor against the former employer after being fired for expressing inappropriately her religiously-based disapproval of her subordinate's lesbian sexual orientation, in violation of the company's anti-harassment policy.

Bruff v. North Mississippi Health Services, 244 F.3d 495 (5th Cir. 2001). The Court ruled that a hospital did not violate Title VII by terminating a therapist who refused on religious grounds to counsel employees needing assistance with gay or extramarital relationships and refused to accept a reasonable transfer; employer did not have to accept the counselor's request to remain in her current position but allow her to refuse clients.

Knight v. Conn. Dep't of Public Health, 275 F.3d 156 (2nd Cir. 2001). A public health nurse, visiting with a gay man with AIDs and his partner, explained that they would only have salvation through her view of Christian beliefs and that God "doesn't like the homosexual lifestyle." The Court held that accommodating the nurse's

request to proselytize her patients was not reasonable because it would interfere with the State's providing services in a religion-neutral manner.

Buonanno v. AT & T Broadband, LLC, 313 F. Supp.2d 1069 (D. Colo. 2004). Buonanno, a Christian fundamentalist, agreed with the company's employee handbook, including the non-discrimination policy. He objected to a literal interpretation of the challenged language that required him to "value; particular behavior and beliefs of co-workers." He was terminated for this objection. The Court held that he had a valid claim for wrongful termination based on religious discrimination.

B. First Amendment Issues

Weaver v. Nebo School Dist., 29 F. Supp. 2d 1279 (D. Utah 1998). Lesbian teacher's First Amendment rights violated when she was told that she could not make comments about her "homosexual orientation or lifestyle" to students, parents or staff even outside the classroom.

Plymouth County Education Association v. Plymouth-Canton Board of Education, (American Arbitration Association). Found that the school district violated academic freedom and the First Amendment when it ordered two gay teachers to dismantle displays commemorating Gay and Lesbian History Month.

C. Use of the Restroom

Cruzan v. Special School Dist, # 1, 294 F. 3d 981 (8th Cir. 2002). The employer gave permission for a MTF transgender person to use the women's restroom. Female co-worker objected. The Court held that the employer's decision did not result in either an adverse employment action or a hostile work environment against the female co-worker.

Goins v. West Group, 635 N.W.2d 717 (Minn. 2001). The employer's policy mandated that an employee use the bathroom based on the employee's anatomical sex at birth. The Court held that the policy did not violation Minnesota's anti-discrimination statute finding that the law "neither requires nor prohibits restroom designation according to self-image of gender or according to biological gender."

IV. SAME SEX MARRIAGE

The issue of same sex marriage does not directly impact an employer's policies. However, because of the Polk County District Court decision in Varnum v. Briem, the issues regarding same sex marriage are in the hot topics. The crux of the case is the ability of gay and lesbian couples to have equal access to all the rights and responsibilities that come with a legal marriage. Currently, there are more than 1050 federal laws that affect the rights and responsibilities tied to marital status. Some of these rights and responsibilities include:

Automatic assumption of spouse's pension (including IRAs, Roth IRAs and 401K plans).
Automatic inheritance, including associated tax breaks and access to gift tax relief.
Automatic housing lease transfer.
Bereavement leave.
Burial determination.
Certain property rights.
Child custody.
Crime victim recovery benefits.
Domestic violence protections.
Exemption from property tax on partner's death.
Insurance breaks for property, life and disability.
Joint adoptions.
Joint parenting.
Reduce-rate memberships.
Sick leave to care for partner.
Visitation of partner's children.
Visitation of partner in the hospital or prison.
Wrongful death benefits.
Social Security benefits.
Ability to sponsor one's partner for immigration

AMERICAN AIRLINES STATEMENT OF EQUAL OPPORTUNITY

It is the expressed policy of American Airlines to provide equal employment opportunity to all employees and applicants for employment without regard to age, race, sex, gender identity*, color, religion, national origin, sexual orientation, citizenship status, disability or veteran status. American Airlines takes affirmative action to ensure that this policy is practiced in all personnel actions and conditions of employment, including but not limited to layoff, discipline, compensation, benefits and training. American Airlines maintains a workplace which is free from discrimination and which recognizes the individual dignity of each employee or applicant. Sexual harassment or any other kind of harassment or intimidation will not be tolerated. Further, employees and applicants may file a complaint, furnish information, or assist in any manner in an investigation related to Federal, State or local equal employment opportunity laws or company policy without fear of retaliation.

All employees must be aware of and support the company's commitment to the principles of equal employment opportunity.

*Gender identity applies only to those individuals who, with the documented support of medical or psychological professionals and in accordance with recognized Informed Consent Model of Care of the Harry S. Benjamin Standards of Care, are changing or have changed their physical characteristics to facilitate personal and public redefinition of their sex as opposite that which they were assigned at birth. American reserves the right to require compliance with all appearance and grooming standards.

POLICY ON DISCRIMINATION

American Airlines is committed to the following principles: Employment decisions should not be based on race, sex, sexual orientation, age, religion, or other protected characteristics. People should not be treated differently because of personal characteristics that are not related to their ability to do a job, such as their race, sex, gender, gender identity, sexual orientation, age, religion, or disabilities. With few exceptions, individuals must be hired, promoted, disciplined, or fired because of their job-related skills and performance. People with similar skills and performance records should be treated equally.

POLICY ON UNLAWFUL HARASSMENT

American Airlines will not tolerate unlawful harassment or discrimination. The company is committed to providing a work environment for all employees free of unlawful harassment, including sexual harassment. American strictly prohibits harassment because of race, sex, gender, gender identity, religion, color, national origin, ancestry, mental or physical disability, medical condition, union or non-union affiliation, marital status, age, sexual orientation, or any other basis protected by federal, state or local law or ordinance. American Airlines' unlawful harassment policy applies to all persons involved in the operations of the company and prohibits harassment by any employee of the company including supervisors and co-workers, as well as by any person doing business with or for the company. Management is responsible for ensuring that this policy is followed. Employees violating this policy -- and managers who condone violations of this policy -- may be terminated.

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EQUAL OPPORTUNITY

It always has been and continues to be Costco's policy that employees should be able to enjoy a work environment free from all forms of unlawful employment discrimination. All decisions regarding recruiting, hiring, promotion, assignment, training, termination, and other terms and conditions of employment will be made without unlawful discrimination on the basis of race, color, national origin, ancestry, sex, sexual orientation, gender identity or expression, religion, age, disability, work-related injury claim, veteran status, political ideology, or any other factor which cannot lawfully be used as a basis for an employment decision. Individuals will be selected for promotion based on skill and ability. Where skill and ability are equal, then length of continuous employment will be the determining factor.

Additionally, Costco prohibits unlawful harassment of its employees, applicants, or independent contractors in any form. Complaints of unlawful employment discrimination or harassment should be reported as discussed below in Section 2.5. In cases where investigation confirms the allegations, appropriate corrective action will be taken, regardless of whether the inappropriate conduct rises to the level of any violation of law. No employee will suffer reprisals for reporting any incidents of unlawful employment discrimination.

AMERICANS WITH DISABILITIES ACT

It is Costco's intent to fully comply with our duty to provide reasonable accommodations to allow people with disabilities to apply for and perform their jobs. If you have a disability that affects your job performance, let us know as soon as possible. We will then discuss with you the reasonable accommodations we may be able to provide to enable you to perform the essential functions of your job. If you become unable to perform your essential job functions, even with reasonable accommodation, we will assist you in identifying other jobs that may become available and for which you may be otherwise qualified. If you feel the above policy is in any way violated, we encourage you to use the Open Door Policy and report such violation to management.