

# International Bar Association's Annual Conference 2016

## LGBT Discrimination in the Workplace – Hot Topics

# Today's Agenda

- Hot Topics
  - I. Impact of Same-Sex Marriage on Company Benefit Plans and Employment Policies
  - II. Employment Discrimination Policies & Actions to Protect Diverse Groups
  - III. Issues Facing Transgender Employees
  - IV. New Focus on Benefits with Special Implications for Diverse Employees
  - V. Corporate Outreach and Involvement



# I. Impact of Same-Sex Marriage on Company Benefit Plans and Employment Policies

- After the U.S. Supreme Court's same-sex marriage rulings in 2013 and 2015, these are some of the effects on employee benefits:
  - Employees who participate in retirement plans receive automatic survivor death benefits for their same-sex spouses benefit.
  - Employers that choose to extend health benefit coverage to their employees' spouses generally must also provide it to same-sex spouses.
  - Movement toward marriage: Potential rescission of domestic partner benefits since same-sex marriage is now legal in the United States.
    - Verizon, Delta Air Lines, IBM, Corning were among large employers that had rescinded domestic partner benefits to employees and began providing spousal coverage instead.





## II. Employment Discrimination Policies & Actions to Protect Diverse Groups

- Companies have taken action to protect diverse groups, including LGBT employees, by:
  - Adding sexual orientation and/or gender identity to nondiscrimination policies, even when it is not technically legally protected.
- EEOC determined in a 2015 ruling that discrimination based on sexual orientation is discrimination based on sex.
- EEOC recently filed two sex discrimination cases that are based on sexual orientation:
  - In its suit against Scott Medical Health Center, EEOC charged that a gay male employee was verbally harassed because of his sexual orientation. After a supervisor refused to take any action to stop the harassment, the employee quit his job.
  - In its suit against IFCO Systems, EEOC charged that a lesbian employee was harassed because of her sexual orientation. A supervisor told the employee, “I want to turn you back into a woman” and “You would look good in a dress,” and made suggestive gestures. The employee was fired for making a complaint.
  - Allegation in both is sex discrimination.

### III. Issues Facing Transgender Employees

- Reaction of other employees to a transgender coworker
  - More and more employers offer diversity training covering gender identity and gender expression.
  - Many employers have Workplace Gender Transition Guidelines that recommend having an engagement plan and a support team to ease the employee's transition.
- Dress code while transitioning in the workplace
- Access to a restroom corresponding to the employee's gender identity
- Recent lawsuits alleging discrimination and harassment – such as being passed over for a job promotion or fired because of one's gender identity, and verbal or physical abuse in the workplace





## IV. New Focus on Benefits With Special Implications for Diverse Employees

- Gender-neutral parental leave
- Adoption assistance and leave
- Surrogacy assistance
- Transition-related health care (i.e. surgery and drug therapy for gender reassignment)
  - Nike, IBM, Microsoft, Google, Apple, and Kroger (which is the largest supermarket chain in the U.S.) are part of a growing list of companies offering trans-inclusive coverage as part of their diversity initiatives

## V. Corporate Outreach and Involvement

- Human Rights Campaign Corporate Equality Index – measures LGBT workplace inclusion
- Burger King Pride Whopper
- Cruise lines, such as Carnival, Norwegian, and Royal Caribbean, have offered all-gay cruises.
- Hotel chains like Marriott and Hilton have websites for LGBT vacation packages.
- Airlines like airberlin and Lufthansa have websites for LGBT travelers. JetBlue has sponsored the Long Beach Gay and Lesbian Pride Festival.
- U.S. companies have taken a stand against initiatives that are perceived as discriminatory towards LGBT individuals:
  - Disney, and its subsidiary movie studio Marvel, recently warned Georgia that they will choose to film elsewhere if it enacts a religious liberty law that would allow faith-based organizations to deny services or employment to anyone who violates their sincerely-held religious beliefs.
  - PayPal recently abandoned plans to create 400 jobs in North Carolina due to a proposed law under which people would only be permitted to use public restrooms that correspond to their biological sex.





Your Question / Comments