

2009 Out & Equal Workplace Summit

Benefits for Domestic Partners and Same-Sex Married Couples: Best Practices for Employers

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Overview

- Recent Court Cases & Legislative Activity on Same-Sex Marriage
- Effects of Recent Actions on Employee Benefit Plans
- Human Rights Campaign Corporate Equality Index
- Best Practices for Domestic Partner Benefits and LGBT Employment Policies
- Questions

Recent Court Cases & Legislative Activity

- Massachusetts Same-Sex Marriage

- *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003)
 - The Massachusetts Supreme Judicial Court held that the exclusion of same-sex couples from civil marriage violates the Massachusetts Constitution.
 - On May 17, 2004, Massachusetts city/town clerks began to issue marriage licenses to same-sex couples. So far, over 16,000 same-sex couples have been married in Massachusetts.

Recent Court Cases & Legislative Activity

- Massachusetts Same-Sex Marriage (cont.)
 - *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003)
 - Out-of-staters initially halted from marrying due to 1913 law (Mass. Gen. L. ch. 207 §11 (2005)) upheld by Massachusetts Supreme Judicial Court in March, 2006. But the Massachusetts legislature repealed the 1913 law in July 2008.
 - Anti-same-sex marriage constitutional amendment was defeated in the Massachusetts legislature (151-45) on June 14, 2007. This means the measure is dead until 2012 (at the earliest).
 - Interestingly, in February 2009 Goodridge announced her intention to divorce her partner.

Recent Court Cases & Legislative Activity (cont.)

- Connecticut Same-Sex Marriage
 - In *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135 (Conn. 2008), the Connecticut Supreme Court found its state DOMA to be unconstitutional and thereby legalized same-sex marriage on October 10, 2008.
 - On November 4, 2008, Connecticut voters refused to approve a constitutional convention that that may have attempted to overturn same-sex marriage in that state.
 - Connecticut began issuing same-sex marriage licenses on November 12, 2008.
 - On April 23, 2009, Connecticut Governor signed legislation that redefines marriage as the legal union of two people (previously it was “a man and a woman”). This law will also convert all existing civil unions into marriages as of October 1, 2010.

Recent Court Cases & Legislative Activity (cont.)

- Iowa Same-Sex Marriage

- In *Varnum v. Brien*, (Iowa 2009), the Iowa Supreme Court unanimously found its state DOMA to violate the equal protection clause of the Iowa Constitution.
- Same-sex marriage became legal in Iowa on April 27, 2009.
- Opponents are attempting to amend the Iowa Constitution to limit marriage to one man and one woman, but any such amendment needs to pass both houses during two consecutive legislative sessions and then be approved by voters (not likely until 2012).

Recent Court Cases & Legislative Activity (cont.)

- Vermont Same-Sex Marriage

- Vermont Senate overwhelmingly passed a same-sex marriage bill in March 2009. Vermont House approved the bill in early April 2009. However, Vermont's Governor vetoed the bill.
- Despite only having 95 votes from the House the first time around, the necessary 100 House members voted to override the Governor's veto. The Senate did as well, and same-sex marriage is legal in Vermont, effective September 1, 2009.
- Vermont is the first state to officially legalize same-sex marriage through legislative action rather than the courts.
- Vermont will no longer offer civil unions.

Recent Court Cases & Legislative Activity (cont.)

- **Maine Same-Sex Marriage**

- Maine Senate passed a same-sex marriage bill in April 2009. The House approved on May 5, 2009. Maine's Governor signed the bill on May 6, 2009.
- Maine's Governor, who was previously an opponent of same-sex marriage, is the first to sign same-sex marriage legislation.
- Same-sex marriage would have become effective on September 11, 2009
- However, opponents organized a "people's veto" which has put same-sex marriage on hold pending the outcome of a vote to repeal the law that legalized same-sex marriage on the November 2009 ballot.

Recent Court Cases & Legislative Activity (cont.)

- New Hampshire Same-Sex Marriage

- New Hampshire House narrowly passed a same-sex marriage bill in March 2009. New Hampshire Senate approved a revised bill in April 2009. Both houses reconciled the bill, and the Governor signed it on June 3, 2009.
- New Hampshire same-sex marriage becomes effective January 1, 2010, and civil unions will no longer be issued.
- New Hampshire civil unions still in existence on January 1, 2011 will be converted into marriages.

Recent Court Cases & Legislative Activity (cont.)

- California Same-Sex Marriage

- In *Re Marriage Cases*, 143 Cal. App. 4th 873 (Cal. Ct. App. 2006):
 - The California Supreme Court held that same-sex couples must be afforded the same marriage rights as opposite-sex couples.
 - There is no residency requirement.
 - California is home to an estimated 12% of the U.S. population.
 - On June 4, 2008, the California Supreme Court declined to halt the issuance of marriage licenses, and California began issuing valid marriage licenses on June 17, 2008.
 - Approximately 18,000 same-sex marriages were performed in California between June 17, 2008 and November 4, 2008.

Recent Court Cases & Legislative Activity (cont.)

- California Same-Sex Marriage (cont.)
 - In *Re Marriage Cases*, 143 Cal. App. 4th 873 (Cal. Ct. App. 2006):
 - Opponents of same-sex marriage in California collected enough signatures to put a constitutional ban on same-sex marriage on the ballot in November. The ballot initiative (called “Proposition 8”) passed (52%-48%), so same-sex marriage in California has been halted for now. Proposition 8 was upheld by the California Supreme Court.
 - Marriages performed between June 17, 2008 and November 4, 2008 remain valid.
 - A lawsuit (*Perry v. Schwarzenegger*) challenging the validity of Proposition 8 is pending in the federal courts in California. Because the California government refused to defend the lawsuit, opponents of same-sex marriage were permitted to intervene as defendants.

Recent Court Cases & Legislative Activity (cont.)

- “Marriages” In Jurisdictions Other Than Massachusetts, Connecticut, Iowa, Vermont and California (from June 2008 – November 4, 2008)
 - Canada, Spain, South Africa, Norway, and Sweden have recently legalized same-sex marriage. Same-sex marriage is also legal in Belgium and The Netherlands.
 - In 2004, potentially unlawful same-sex marriages were performed in San Francisco, New Mexico, upstate New York, New Jersey, and Oregon in acts of “civil disobedience.”
 - Other states have marriage cases brewing in lower courts. (e.g., Maryland).
 - Several other states, including New York, are considering same-sex marriage legislation. New York’s Governor Paterson proposed a bill in April 2009.

Recent Court Cases & Legislative Activity (cont.)

- Defense of Marriage Acts (DOMAs)
 - Federal DOMA (110 Stat. 2419 (1996))
 - Provides that, for purposes of federal law, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex.
 - Also allows states to refuse to recognize other states’ same-sex marriages.
 - Recent constitutional challenges to DOMA by same-sex couples married in Massachusetts and California and the Massachusetts Attorney General. California challenge was recently dismissed.
 - A bill to repeal DOMA, titled the “Respect for Marriage Act,” was introduced in the House of Representatives in September 2009.

Recent Court Cases & Legislative Activity (cont.)

- Defense of Marriage Acts (DOMAs)
 - State DOMAs
 - A vast majority of states have also passed DOMAs, which prevent the states from recognizing same-sex marriages performed in other states.
 - Currently 40 states – all except Massachusetts, Connecticut, Iowa, Vermont, Maine, New Hampshire, Rhode Island, New York, New Jersey, and New Mexico (and Washington, D.C.).
 - New York’s Governor issued an executive order formally recognizing same-sex marriages performed in other jurisdictions. Washington, D.C. city council enacted a law to do the same.

Recent Court Cases & Legislative Activity (cont.)

- DOMA litigation and developments
 - Massachusetts and West Virginia courts recognized a Vermont civil union while Connecticut, Indiana, Georgia, and New York courts refused.
 - A Florida court (*Wilson v. Ake*, 354 F. Supp. 2d 1298 (M.D.Fla. 2005)) refused to recognize a validly performed Massachusetts same-sex marriage.
 - A New York court (*Martinez v. County of Monroe*, 850 N.Y.S.2d 740 (N.Y. App. Div. 2008)) recognized a validly performed Canadian marriage.
 - May 2008 - New York's new Governor ordered all state agencies to recognize same-sex marriages validly performed in other states. Presumably New Jersey, Rhode Island, and New Mexico would reach the same result.

Recent Court Cases & Legislative Activity (cont.)

- Constitutional Amendments
 - Federal Constitutional Amendment
 - In response to the Goodridge decision, President Bush called for an amendment to the United States Constitution that would define marriage as between “one man and one woman.”
 - Failed to pass in the Senate (49-48 vote) on June 7, 2006.
 - Failed to pass in the House on July 18, 2006.

Recent Court Cases & Legislative Activity (cont.)

- Constitutional Amendments
 - State Constitutional Amendments
 - Backlash against Goodridge, which was decided on state constitutional grounds.
 - In 2004, voters in 13 states (Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah) approved constitutional amendments banning same-sex marriages (usually by double-digit margins).

Recent Court Cases & Legislative Activity (cont.)

- Constitutional Amendments (cont.)
 - State Constitutional Amendments
 - Seven more passed in 2006.
 - Even Massachusetts had a pending constitutional amendment that would ban same-sex marriage going forward. The legislature defeated it in June, 2007. And California passed Proposition 8.
 - In 2006, Arizona was the first state whose voters rejected a same-sex marriage ban. But voters changed their minds and approved the ban in 2008. Indiana also rejected a ban in 2007.

Recent Court Cases & Legislative Activity (cont.)

- Constitutional Amendments

- State Constitutional Amendments

- Overall, 29 states have constitutional “defense of marriage” provisions, and others are pending. Some state constitutional amendments ban much more than same-sex marriage (Example: 2005 Michigan Attorney General opinion* regarding state and local government domestic partner benefits. Note that this position was upheld by the Michigan Supreme Court in 2008 in *National Pride at Work v. Gov. of Michigan* (Nos. 133429, 133554), 748 N.W.2d 524 (Mich. 2008).

*Source: Cox M. Constitutionality of city providing same-sex domestic partner benefits: Opinion No. 7171. Available at: www.ag.state.mi.us/opinion/datafiles/2000s/op10247.htm. Accessed September 21, 2009.

Other Legal Statuses

- Civil Unions

- Several states allow *civil unions*, which is a status intended to be marriage by a different name
 - Civil unions may effectively create a “second-class citizenship.” New Jersey issued a report* indicating that civil unions really are not working, especially for transgender individuals, people in the military, and the poor.

*Source: The Legal, Medical Economic, & Social Consequences of New Jersey’s Civil Union Law: Final Report of the New Jersey Civil Union Review Commission, December 10, 2008, <http://www.state.nj.us/lps/dcr/downloads/CURC-Final-Report-.pdf>. Accessed September 21, 2009.

- Domestic Partnerships

- Several states have domestic partnerships or other categories of partnership that carry some (or in some cases all) of the rights of marriage.

Effects of Recent Actions on Employee Benefit Plans

- Considerations for All Types of Employee Benefit Plans
 - Where was the marriage performed? And when? (Was it a “legal” or “illegal” same-sex marriage?)
 - Where does the employee live? (DOMA or non-DOMA state)?
 - What is the plan’s definition/interpretation of “spouse”?

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Health and Welfare Plans

- Employer response depends on whether the employee lives in a DOMA state
 - DOMA state – employer does not have to recognize same-sex marriage for plan eligibility purposes.
 - Non-DOMA state-employer may have to recognize same-sex marriage for plan eligibility purposes.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Health and Welfare Plans (cont.)
 - Employer response depends on whether plans are self-insured or insured
 - Self-insured plans are governed only by federal law (Employee Retirement Income Security Act of 1974 (ERISA) (Pub. L. 93-406)), and under the federal DOMA, plans do not have to recognize otherwise valid same-sex marriages.
 - Insured plans are affected by state law benefit mandates and may have to recognize same-sex marriages.
 - California Insurance Equality Act (AB 2208).
 - New York and Connecticut Insurance Department Bulletins.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Health and Welfare Plans (cont.)
 - Employer response depends on whether plans are self-insured or insured
 - Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99-272) Continuation Coverage not required as a result of federal DOMA.
 - New COBRA subsidy (economic stimulus) does not apply to domestic partners (“bifurcated subsidy”).

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Pension Plans
 - 401(k) Plans
 - Participants can name any party as beneficiary.
 - However, does a same-sex “spouse” have to consent to the naming of another beneficiary? What happens if there is no named beneficiary?
 - Pension Protection Act of 2006 (PL 109-280) provided rollover and hardship withdrawal rights for domestic partners and same-sex spouses who are named beneficiaries under the plan.
 - While the rollover provision was made mandatory beginning in 2010, the hardship withdrawal provision is optional and only takes effect if the plan sponsor chooses to implement it.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Pension Plans (cont.)
 - Defined Benefit Pension Plans
 - Generally must offer married participants payment in the form of a qualified joint and survivor annuity (QJSA) (with pre-retirement spousal death benefit (QPSA) coverage).
 - Under federal DOMA, employers are not required to offer QJSA/QPSA rights to same-sex spouses, although some employers have added them.
 - QISA may not be the normal form of payment for a participant with a same-sex spouse, who is considered “single” for purposes of federal law.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Other Benefits Available to “Spouses”:
 - Moving Expenses
 - Adoption Assistance
 - Participation in EAP Programs
 - Bereavement Leave
 - Family and Medical Leave (“FMLA”) - federal DOMA governs, but March 2009 proposed bill would extend FMLA to domestic partners
 - Other Benefits/Perks
- Same-sex marriage has increased possibility of lawsuits by same-sex spouses for sexual orientation (or marital status) discrimination

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Tax Consequences

- Federal Tax Issues

- As a result of DOMA, same-sex spouses will not receive any federal tax advantages associated with employee benefit plans unless the same-sex spouse meets the Tax Code definition of “dependent.” Effective January 1, 2005, the definition of “dependent” changed as a result of the Working Families Tax Relief Act of 2005, but the impact is limited for domestic partner health coverage.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Tax Consequences (cont.)
 - Federal Tax Issues (cont.)
 - Imputed income to employee for fair market value of coverage given to same-sex spouse. No pre-tax contributions to Section 125 cafeteria plan. Proposed federal legislation would change this.
 - Normally no reimbursement from flexible spending accounts.
 - No tax-free reimbursements from HRAs, HSAs, and MSAs.
 - IRS Revenue Ruling 2006-36 – Possibility of HRA reimbursement for expenses for non-dependent can “taint” the whole HRA and make all reimbursements taxable. IRS informally indicated that this is not intended to apply to HRAs that make taxable reimbursements to domestic partners.

Effects of Recent Actions on Employee Benefit Plans (cont.)

- Tax Consequences (cont.)
 - State Tax Issues
 - DOMA states – in DOMA states that do not recognize same-sex marriages, employers will impute income for state tax purposes for fair market value of coverage to same-sex “spouses” (just like domestic partners).
 - Non-DOMA states and states with special recognition of same-sex relationships – in non-DOMA states that recognize same-sex marriages or that have special laws favoring same-sex couples, employers may have to subtract, for state tax purposes, any income imputed to the employee for federal tax purposes.
 - California, New Jersey, Oregon, and Washington, D.C. have tax relief for domestic partners. Connecticut, New Jersey, and Vermont provide relief for civil union parties. Massachusetts, Connecticut, Iowa, Vermont, and California (for marriages between June 17-November 4, 2008) have tax relief for same-sex spouses.

Human Rights Campaign Corporate Equality Index

- New criteria added to 2011 HRC Corporate Equality Index in order to attain 100% rating:
 - Benefits for same-sex partners (including state-registered domestic partners, civil union partners and same-sex spouses) must be equivalent to benefits offered to opposite-sex spouses to the extent permitted by law.
 - Ex: Automatic beneficiaries under 401(k) plans in the absence of a designation
 - Health coverage must include transgender-specific treatments (eliminating “medically necessary” and “cosmetic” exclusions).

Human Rights Campaign Corporate Equality Index (cont.)

- New criteria added to 2011 HRC Corporate Equality Index in order to attain 100% rating (cont.):
 - Sustained and accountable commitment to diversity and cultural competency must be demonstrated through two of the following:
 - New-hire training on non-discrimination policy covering sexual orientation and gender-identity
 - Supervisor training covering sexual orientation and gender-identity
 - Integration of sexual orientation and gender-identity in other training that includes diversity or cultural competency
 - Gender transition guidelines with supportive restroom, dress code, and documentation guidance
 - Performance measures for senior management and executives include LGBT diversity metrics

Human Rights Campaign Corporate Equality Index (cont.)

- New criteria added to 2011 HRC Corporate Equality Index in order to attain 100% rating:
 - LGBT workers must be intentionally and consistently included in organizational assessments of climate, engagement, and/or talent management (via confidential and optional survey questions).
 - LGBT specific engagement across the company must be demonstrated through three of the following:
 - Efforts to recruit LGBT employees
 - Efforts to include LGBT suppliers in supplier diversity programs
 - Marketing or advertising to LGBT consumers
 - Philanthropic support of LGBT organizations
 - Public support for LGBT equality under local, state, or federal laws or initiatives

Human Rights Campaign Corporate Equality Index (cont.)

- 2011 Evaluation Criteria

- Equal employment opportunity policy includes gender identity or expression and sexual orientation
- Employer offers equivalent benefits to spouses and partners and spousal benefits include state-recognized same-sex spouses, partners, and civil union partners
- Health insurance provides transgender-inclusive benefits that follow the WPATH Standards of Care
- Employer's commitment to diversity and cultural competency demonstrated by two of the following: training, gender transition guidelines, LGBT diversity performance metrics for executives
- Employer has LGBT employee resource group or diversity council
- Employer intentionally and consistently includes LGBT employees in organizational assessments of climate, engagement and/or talent management
- Employer's public commitment to the LGBT community demonstrated by three of the following: recruiting, supplier diversity, marketing or advertising, philanthropy, or public support for LGBT equality
- Employer has not engaged in known activity that would undermine LGBT equality

Domestic Partner and Same-Sex Spouse Benefits: Best Practices

- Note that nearly 60% of the Fortune 500 and many other companies now offer domestic partner benefits, but which benefits are offered differs amongst companies.
- Health Plan Issues
 - Try not to require too much proof of domestic partnerships (or require more proof from opposite-sex couples).
 - Eliminate cohabitation requirements?
 - Financial interdependence requirements can have consequences upon dissolution of partnership.
 - Minimum duration requirements? “The Britney Spears issue.”
 - “Equal benefits ordinances” technically require no more proof for domestic partnerships than for spousal relationships (limited enforcement).

Domestic Partner and Same-Sex Spouse Benefits: Best Practices

- Health Plan Issues (cont.)
 - Does the employer offer COBRA continuation health coverage for domestic partners? Which qualifying events? “Divorce”?
 - Make sure the cost of domestic partner coverage is not higher than the cost of spouse or dependent coverage.
 - Do you offer all benefits – health, dental, vision, supplemental life, etc.?
 - Don’t eliminate domestic partner benefits
 - Caution: Same-sex marriage has other implications, e.g., international adoption, movement from state to state, and military issues.

Domestic Partner and Same-Sex Spouse Benefits: Best Practices (cont.)

- Pension Plan Issues

- Add pension survivor annuity coverage for domestic partners (or at least same-sex spouses).
- Same-sex marriages should be treated as spousal relationships for pension plans and other benefits (e.g., 401(k) automatic beneficiary).
 - Will be enforced on 2011 Human Rights Campaign Corporate Equality Index.
- Implement Pension Protection Act rules regarding non-spouse rollovers (required beginning in 2010) and hardship withdrawals.

Domestic Partner and Same-Sex Spouse Benefits: Best Practices (cont.)

- Non-ERISA Plan Issues

- Equalize parental leave policies (“primary caretaker” vs. “secondary caretaker”) and add adoption leave.
- Add FMLA-style leave for illness of domestic partner.
- Consider adding adoption assistance.
- Make sure all “non-ERISA” benefits and policies are amended to include domestic partners (e.g., bereavement leave, moving expenses, tuition reimbursement, employee discounts, EAPs, etc.).

Domestic Partner and Same-Sex Spouse Benefits: Best Practices (cont.)

- Tax Issues
 - Consider tax gross-up for health benefit coverage.
 - Tax Equity Act – proposed in 2009 in health care reform bill and supported by over 50 large companies (see next slide).
 - Make sure you allow domestic partners to certify to their “dependent” status for tax purposes.
 - Make sure you appropriately tax health benefits for same-sex marriages, civil unions, and domestic partnerships in states with special tax treatment.
- Stand Firm in the Face of Opposition
 - Customer/Organization Backlash – Examples: Threatened boycotts against Gay Games Sponsors (Kraft and Harris Bank) and advertisers (Proctor & Gamble) on “Queer Eye” and “Will & Grace.”

Business Coalition for Benefits Tax Equity

- Over 50 businesses and professional organizations have joined the Business Coalition for Benefits Tax Equity in support of this legislation.
- Representative businesses include:
 - The Dow Chemical Company
 - “Domestic partner health benefits have been a key part of our effort to attract and retain a qualified and diverse workforce, and we are pleased to support Rep. McDermott’s legislation that would end the tax penalties we and our employees face when we make these benefits available.” Julie Fasone Holder, Corporate VP for Human Resources, Diversity & Inclusion, and Public Affairs
 - The Chubb Corporation
 - “Unfortunately, the continued taxation of domestic partner benefits places an undue burden on our employees and our company. We support Rep. McDermott’s efforts to repeal the unfair taxation of these important benefits.” Kathy Marvel, Senior VP & Chief Diversity Office

Business Coalition for Benefits Tax Equity (cont.)

- Representative businesses include:
 - Motorola
 - Time Warner Inc.
 - Nike Inc.
 - General Mills Inc.
 - Coors Brewing Co.
 - Citigroup

Domestic Partner and Same-Sex Spouse Benefits: What Companies Cannot Do

- Why? Because of DOMA.
- Unless the employee's partner is a dependent, companies:
 - (1) have to impute income for the value of health coverage for federal tax purposes; and
 - (2) cannot allow the employee to pay for coverage on a pre-tax basis through a Code Section 125 “cafeteria plan.”
- Non-dependent domestic partners and same-sex spouses cannot enter a qualified domestic relations order (QDRO) to divide pension benefits upon dissolution.

Domestic Partner and Same-Sex Spouse Benefits: What Companies Cannot Do (cont.)

- Domestic partners and same-sex spouses cannot be taken into account for spreading out post-death pension distributions over their life expectancy.
- No tax-favored reimbursements from HSAs, HRAs, FSAs for non-dependent partners.
- Cannot make a QJSA with a same-sex spouse the normal form of payment under a pension plan
- Cannot newly require same-sex spousal consent for the naming of a beneficiary for a pre-existing 401(k) account

Transgender Benefits

- Many health and prescription drug plans contain transgender exclusions.
- LGBT-friendly employers should eliminate these exclusions and talk to insurers about which services (e.g., mental health, hormone therapy, sex reassignment surgery, short-term leave, etc.) are covered. 8 of the Fortune 20 have already made this change.
- Non-discrimination policies should be amended to include “gender identity and gender expression.” Nearly 70% of the Fortune 100 have made this change (40% of the Fortune 500).
- Companies should consider implementing gender transition guidelines.
- Make sure dress codes are gender-neutral.
- Currently, over 1/3 of the Fortune 500 companies prohibit discrimination against transgender individuals in their policies. In 2000, only three of the Fortune 500 had such a policy.
- 2011 Human Rights Campaign Corporate Equality Index will no longer allow transgender benefit exclusions if a company wants to obtain a 100% rating.

LGBT Employment Policies: Best Practices

- Foster an inclusive work environment
 - Provide comprehensive diversity training.
 - Use inclusive language in policies and in practice.
 - Offer mentoring opportunities.
 - Encourage self-disclosure and modify new hire data collection forms accordingly.
 - Prohibit discrimination based on sexual orientation (85% of the Fortune 500 and 49 of the Fortune 50 do so).
- Support transgender employees
 - Educate employees about gender identity and gender expression.
 - Demonstrate sensitivity around bathroom access and dress code issues.

LGBT Employment Policies: Best Practices (cont.)

- Create LGBT Networks (“ERGs”)
 - Encourage participation by all employees/communicate with management.
 - Leverage the network to support career development, recruiting efforts and business development opportunities.
 - Partner with other employees resource groups.

- Support the LGBT Community
 - Offer philanthropic (financial and volunteer) or pro bono support to community-based organizations.
 - Target marketing efforts to LGBT consumers.
 - Attend diversity job fairs and conferences (e.g., Lavender Law, Out & Equal).
 - Stay firm in the face of protesters – Gay Games example.

Your Questions