

SMALL BUSINESS BASICS

How Small Businesses Can Create **Fair Workplaces**
for Gay, Lesbian, Bisexual and Transgender Employees



Table of Contents

Small Business Basics: An Overview	1
The Business Case for Equality	5
Equal Opportunity Policies for GLBT Workers	9
Equal Benefits for GLBT Workers and Their Families	11
Building and Maintaining an Inclusive Work Environment	15
Recruiting and Marketing to the GLBT Community	17
About the Human Rights Campaign Foundation Workplace Project	19
About the National Gay and Lesbian Chamber of Commerce	19
Acknowledgements	21
Appendix A: Frequently Asked Questions	23
Appendix B: Defining Domestic Partnerships	25
Appendix C: Terminology	27
Endnotes	29

**SMALL
BUSINESS
BASICS**



Small Business Basics: An Overview

Over the past decade, large private-sector employers have made great strides to include gay, lesbian, bisexual and transgender employees and consumers as part of a business-directed diversity strategy. As of Jan. 1, 2007, a majority of Fortune 500 companies had added domestic partner benefits, nearly 90 percent prohibited discrimination based on sexual orientation and a quarter banned discrimination based on gender identity. But the Fortune 500 collectively employs only about 15 percent of the U.S. workforce.

Meanwhile, small businesses — businesses with fewer than 100 workers — employ 41.8 million Americans, or more than a quarter of the U.S. workforce.¹ More than 50 percent of these businesses employ fewer than 20 workers, and 50 percent of those employ fewer than 10. Small businesses — whether seeking to hire and retain the most talented employees or marketing to GLBT consumers — are

particularly with respect to human resources, benefits and the legal expertise needed to focus on creating a welcoming environment. But they do tend to have more flexible work environments, stronger workplace cultures and increased interaction between management and employees.² A 2007 Salary.com survey of small business employees found that, of those respondents who had previously worked at large companies, small businesses held the advantage in terms of office politics, loyalty to the company and corporate culture.³

Policies and practices that promote a working environment where all employees can focus on their jobs can benefit all businesses, regardless of size. The most straightforward of these policies and practices include clearly defined and communicated non-discrimination and confidentiality policies, as well as equal benefits for GLBT workers and their families.

This guide — recognizing the unique strengths and limitations of small businesses — offers insights into how they can create workplaces where GLBT employees are valued.

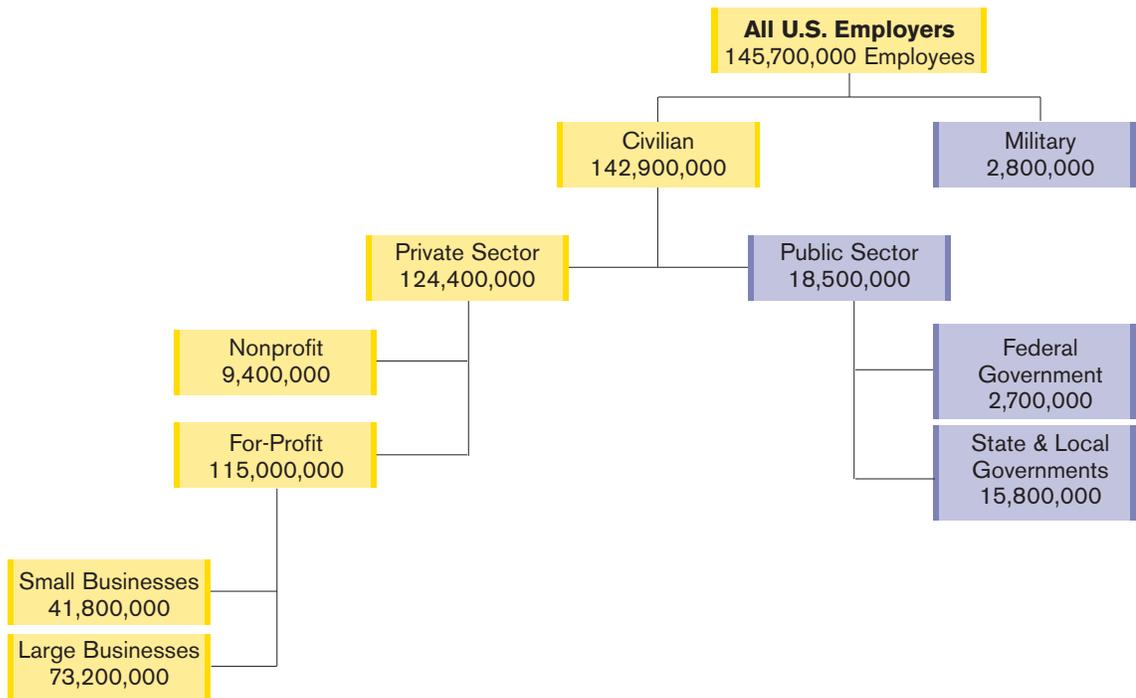
This guide – recognizing the unique strengths and limitations of small businesses – offers insights into how they can create workplaces where gay, lesbian, bisexual and transgender employees are valued.

held to the same standards as their larger counterparts with respect to inclusive practices.

Small businesses do not have resources comparable to those of the largest employers,

**SMALL
BUSINESS
BASICS**

Figure 1: Number of U.S. Employees by Type of Employer



**SMALL
BUSINESS
BASICS**

Methodology

In 2006, the Human Rights Campaign Foundation and the National Gay and Lesbian Chamber of Commerce conducted three focus groups and several one-on-one interviews with owners and managers of businesses with fewer than 100 employees. For a geographically diverse sample, participants were drawn from locations across the country, including Seattle, Dallas, Chicago and Washington, D.C. These businesses, as self-reported, ranged from highly inclusive to completely devoid of gay, lesbian, bisexual and transgender representation.

Derived from both the HRC Corporate Equality Index survey and consultation with HRC and NGLCC staff, questions for the focus groups and interviews covered the need for GLBT equality in the small-business work environment and obstacles to establishing fair-minded policies, to more specific

questions including whether businesses had non-discrimination policies, offered domestic partner and transgender wellness benefits or marketed to the GLBT community. Focus group participants were encouraged to discuss their answers in order to produce more details and generate ideas.

The results of the focus groups and interviews were used to determine the specific challenges, capabilities and needs of today's small business owners and managers. These responses were then compared to those of large employers for which best practices and resources already exist, in large part. Further interviews were conducted with small business owners, managers and consultants to determine the best practices for developing inclusive policies and practices in the small business environment.

The information in this document does not constitute legal advice. For legal assistance specific to your situation, please consult an attorney.

Summary of Findings

Small business owners and managers are largely unaware of inequalities for gay, lesbian, bisexual and transgender employees.

For those small businesses that have taken some steps to address GLBT issues, the following factors were considered:

- Up-front and long-term financial costs;
- In-house human resources and/or legal expertise;

- Availability of diversity training resources; and
- Potential client and customer concerns.

The business case for creating a more inclusive workplace environment is typically based on financial and resource considerations. At a minimum, creating a more inclusive small business environment for GLBT employees requires a time commitment. But, as small businesses with inclusive policies can attest, these changes ultimately yield a positive impact on businesses.

Figure 2: A Typical Pathway to GLBT Workplace Inclusion



**SMALL
BUSINESS
BASICS**



The Business Case for Equality

Successful businesses always anticipate the needs of their people: the employees who develop the products or services as well as the consumers who buy them.

In the case of gay, lesbian, bisexual and transgender employees and consumers, these needs include employment protections and benefits. In 2007, more than half of the Fortune 500 companies offered domestic partner health benefits to their employees. Nearly 90 percent prohibited discrimination based on sexual orientation and 25 percent prohibited discrimination based on gender identity. Among the top 100 companies, 80 percent offered domestic partner health benefits, 98 percent banned employment discrimination based on sexual orientation, and 48 percent banned discrimination based on gender identity.

qualified candidates.⁴ With 49 percent of small business owners claiming their principal competition is located within 10 miles of their headquarters, successful businesses are those that differentiate themselves to attract high-caliber talent and minimize workforce attrition.⁵

Employees who are protected from employment discrimination, receive equal benefits and are judged solely on the quality of their work are more likely to be highly productive and invested in their company. By developing a workplace climate that attracts and develops top talent, companies can reduce spending on recruitment and new employee training and increase the resources managers can devote to primary business activities.

GLBT employees are a valuable labor pool, and the businesses that are able to recruit them are those that provide the most visible security to GLBT candidates.

In a recent poll, 89 percent of GLBT respondents said it was important to them that potential employers had inclusive non-discrimination policies.⁶ General public opinion in the United States is also increasingly supportive of inclusive policies for GLBT employees. While 59 percent of people polled by the Gallup organization in 1982 felt that gays and lesbians should have equal rights in terms of job opportunities, an overwhelming 89 percent felt that way in 2006. And 58 percent of people believed those protections should include transgender workers as well, according to a 2007 Peter D. Hart Research Associates survey.

SMALL BUSINESS BASICS

Having internal training and a process to address potential problems is superior, and less costly, to handling them through litigation.

These businesses choose to go beyond legal requirements, valuing the GLBT employees who are integral to their success.

Employee Recruitment, Productivity and Retention

Recruiting and retaining talented employees is a key but often elusive business imperative. Seventy-one percent of small business owners say it is hard to find

Regardless of whether they are actively seeking to diversify their workforces, small businesses that do not have formal, prominent non-discrimination policies are foregoing an easily attained competitive edge in the market for talented employees. As baby boomers retire from the workforce, businesses will increasingly rely on the younger labor pool, which is generally more tolerant and comfortable with individuals of diverse sexual orientation or gender identity.

Employers that implement and communicate policies that address discrimination against GLBT employees can enhance company reputation, increase job satisfaction and boost employee morale.⁷ As these policies involve minimal cost, proactively safeguarding against potential problems greatly outweighs the cost of engaging in legal battles from claims of discrimination.

The Consumer Perspective

Gay, lesbian, bisexual and transgender consumers have proven loyal to companies that have inclusive workplace policies and practices for their employees. One study showed that 72 percent of GLBT consumers preferred brands that supported GLBT equality.⁸ With an estimated market capitalization of \$660 billion in 2007, the buying power of the GLBT community is undeniable.⁹ Consumers in general may choose to purchase products and services from small businesses rather than large companies for a variety of reasons, ranging from better customer

service to identifying more closely with the small business owner to interests in buying locally.

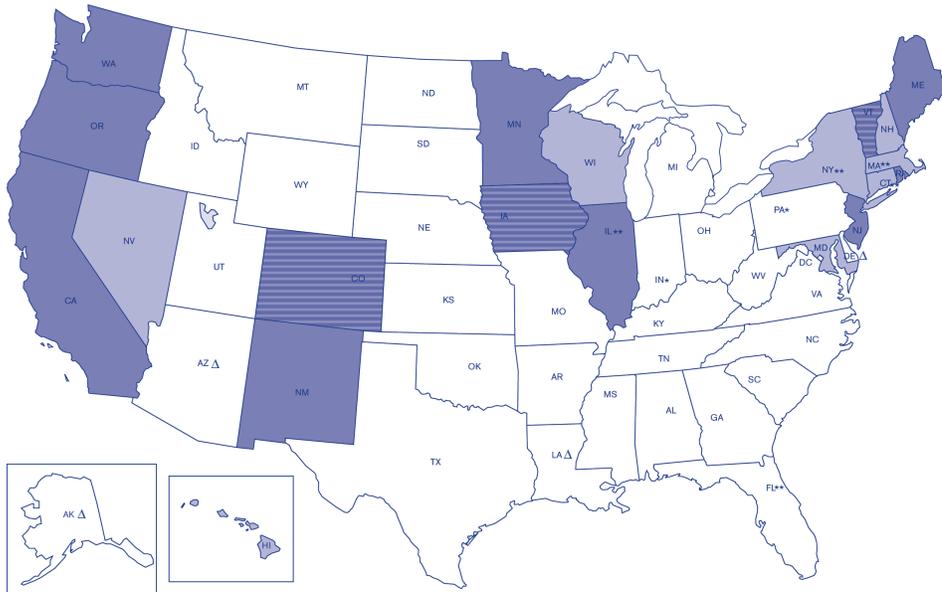
But a small business striving to attract a wider consumer base can further differentiate itself from its competitors, both large and small, by establishing more inclusive policies, benefits and practices. No company should leave a significant source of revenue untapped, and failing to implement inclusive employment policies will deter potential GLBT consumers.

Legal Ramifications

Proactively addressing employment discrimination and workplace harassment issues may help protect small business owners and managers from legal troubles before they occur. Legal battles can have a host of negative consequences, including attorney and court fees, time spent away from the business and unwanted media attention. Elizabeth Birch, owner of Fair Measures Inc., a GLBT-certified business, said, “Having internal training and a process to address potential problems is superior, and less costly, to handling them through litigation.”

While some states still allow employment discrimination at private companies based on sexual orientation and gender identity, others do not. An increasing number of cities and counties have also banned employment discrimination based on these two categories. As of Jan. 1, 2007, it was legal to fire someone based on sexual orientation in 33 states. And in 42 states, it was legal to fire an employee for being transgender.

Figure 3: States That Prohibit Workplace Discrimination Based on Sexual Orientation and Gender Identity



■ States that prohibit discrimination based on sexual orientation plus gender identity (Nine states and the District of Columbia).

- o California, District of Columbia, Illinois, Maine, Minnesota, New Jersey, New Mexico, Oregon (effective 2008), Rhode Island and Washington.
- o Legislation is awaiting the governor's signature in three states (Iowa, Vermont and Colorado). **▨**

■ States that prohibit discrimination based on sexual orientation (18 states and the District of Columbia).

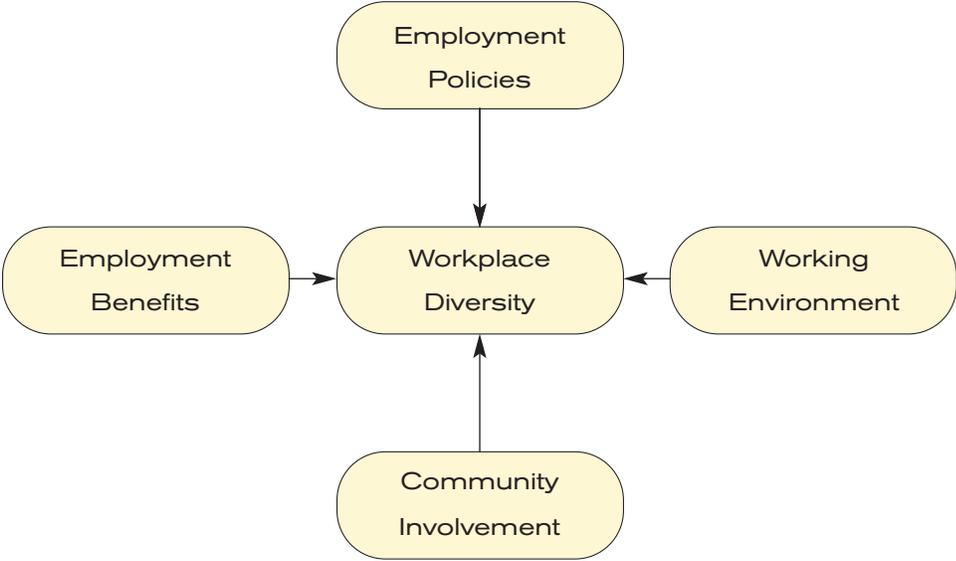
- o In addition to the same states above – Connecticut, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New York, Vermont and Wisconsin.
- o Legislation is awaiting the governor's signature in two states (Iowa and Colorado). **▨**

△ States that have an executive order, administrative order or personnel regulation prohibiting discrimination against public employees based on sexual orientation.

***** States that have an executive order prohibiting discrimination against public employees based on sexual orientation and gender identity.

****** State courts, commissions, agencies or attorneys general have interpreted the existing law to include some protection against discrimination against transgender individuals.

Figure 4: Building Workplace Inclusion and Diversity





Equal Opportunity Policies for GLBT Workers

Small businesses may believe their internal culture and practices reflect positively on gay, lesbian, bisexual and transgender workplace issues, but fail to implement formal, written policies. Small business owners may believe such policies are unnecessary, because they are small enough – fewer than 15 employees – to be exempt from non-discrimination laws affecting private-sector employers. They may also feel that senior management works closely enough with all employees to establish an environment free of discrimination without having to formalize it.¹⁰

While unwritten policies might be followed in spirit, formal policies ensure employees, consumers and clients can depend on a business’ commitment to inclusion.

Formal policies also help prospective employees — who have no knowledge of the business’ culture — see and understand the company’s non-discrimination stance during the application process.¹¹

tation or gender identity, successful companies recognize the business impact of including these two items in their equal employment opportunity policies:

- **Sexual Orientation:** The preferred term used when referring to an individual’s physical and/or emotional attraction to people of the same and/or opposite gender.
- **Gender Identity:** A person’s innate, deeply felt psychological identification as a particular gender, which may or may not correspond to the person’s body or assigned sex at birth (meaning the sex listed on a person’s birth certificate).

SMALL BUSINESS BASICS

A written non-discrimination policy guarantees both equal treatment and opportunity with respect to hiring, promotions and compensation.

Non-Discrimination Policies

A written non-discrimination policy guarantees equal treatment and opportunity with respect to hiring, promotions and compensation based on characteristics unrelated to job performance. These policies are the foundation for establishing inclusive workplaces. While, as of 2007, there is no federal law banning employment discrimination based on a sexual orien-

Sample Equal Employment Opportunity Policy

“Company X prohibits discrimination with respect to the hiring or promotion of individuals, conditions of employment, disciplinary and discharge practices or any other aspect of employment on the basis of sex, race, color, age, national origin, religion, disability, marital status, sexual orientation, gender identity, pregnancy,

veteran status or any other basis of discrimination prohibited by applicable local, state or federal law.¹¹

For more information and sample policies, please refer to HRC's website at www.hrc.org/workplace/policies.

Confidentiality Policies

Certain information about benefits should be kept confidential. Respecting employee privacy will help employees feel more comfortable about enrolling for domestic partner benefits, and is crucial for an employee who has undergone a gender transition and does not wish to disclose this status to co-workers.

Gender Transition Guidelines

Transgender employees, especially those who are in the process of transitioning, face unique challenges in the workplace. Establishing guidelines for these staff members and their managers is an important step that ensures fair and equitable treatment and improves the likelihood of retaining those employees' valuable knowledge and experience. While many small businesses may never employ a transgender individual, as with all diversity initiatives, the ultimate purpose is not just accommodating a single employee. It also includes establishing the business' commitment to providing a productive and inclusive work environment for all employees.

Sample Guidelines

Below are a few general guidelines that can have a significant impact on the outcome of a transitioning employee's experience:

- Establish processes and roles that clarify responsibilities for management and staff.
- Provide additional training on transgender issues.
- Ensure employee privacy, particularly around medical issues.
- Change personnel and administrative records to reflect the gender identity and name of the transitioning employee.
- Permit the transitioning employee to use restrooms that correspond to his or her full-time gender presentation, regardless of where the individual is in the transitioning process.
- If the business has a dress code, it should be modified to avoid gender stereotypes and enforced consistently for all employees.
- In the provision of benefits, treat a transgender employee's spouse or partner as you treat other employees' spouses or partners.

For more information and examples of gender transition guidelines, visit www.hrc.org/workplace/transgender.



Equal Benefits for GLBT Workers and Their Families

Benefits typically constitute about one-fifth of an employee's compensation. Offering equal benefits demonstrates that a business values its gay, lesbian, bisexual and transgender employees and consumers and is firmly committed to treating all employees fairly. All benefits available to an employee's family members, including soft benefits such as bereavement leave, education or adoption assistance, should also be provided for family members of GLBT employees.

In a recent poll, 91 percent of GLBT respondents and 79 percent of heterosexual respondents felt it was important that their employers offered equal health insurance benefits to all employees.¹²

Small employers that offer domestic partner benefits recognize that an employee's sexual orientation should not limit the benefits they receive. Domestic partners are typically defined as couples in committed relationships who are responsible for each other's financial and emotional well-being, are at least 18 years old and are mentally competent to enter into a legal contract.

Small employers that offer domestic partner benefits recognize that an employee's sexual orientation should not limit employee benefits.

Employers are increasingly relying on government-based documentation, such as domestic partner registration provided by a

state or local government authority, to determine eligibility for benefits, rather than the employers setting their own definitions and managing documentation that they typically don't require for opposite-sex spouses and dependents. See Appendix B for more on defining domestic partnerships.

In addition, transgender employees have unique challenges with respect to health insurance. Most transgender people are denied health insurance coverage for treatments and procedures because of "transgender exclusion" clauses in commercial health insurance plans and, furthermore, limitations on which procedures are deemed "medically necessary." Small businesses should explore health insurance providers that can remove such exclusions from the insurance plan.

While the cost of providing equivalent wellness benefits to transgender employees may appear steep, when compared to the costs of other, more common healthcare expenditures related to diabetes, asthma or congestive heart failure, the costs of these benefits are actually comparable or lower.¹³

Health Benefits Challenges for Small Businesses

Small businesses are sensitive to the costs of health insurance benefits. These businesses are significantly less likely than larger companies to offer health insurance or other benefits to employees and their spouses and partners. The proportion of health insurance coverage that small businesses are willing to pay for on

SMALL BUSINESS BASICS

behalf of their employees also varies widely. Although 98 percent of large businesses offered employee health benefits in 2005, only 59 percent of businesses with fewer than 200 employees did the same, according to a Kaiser Family Foundation study.¹⁴ And, although only 4 percent of small employers required the employee to pay the full amount of coverage for themselves, 36 percent required the employee to pay the full amount for dependent coverage.¹⁵

The majority of small-business owners rank the cost of healthcare as their No. 1 overall concern, according to the National Federation of Independent Businesses.¹⁶ And more than one-quarter of small employers would change their health benefits options if the costs were to increase an additional 5 percent, the Employee Benefits Research Institute said in a 2003 report.¹⁷

But the same EBRI study found that small employers that offered health benefits did so in large part because the benefits helped with recruiting employees and reducing turnover.

The barriers for small employers to add health insurance are indeed significant, but not insurmountable. And, in the past three years, the rate of increase for health insurance premiums went down.¹⁸

Designing Inclusive Benefits Packages

While traditional medical insurance plans may not be affordable for small businesses, owners can still create robust benefits packages by implementing strategies designed to support companies with small employee bases. A step-by-step guide for offering employee benefits, along with options employers have at each stage in the process, follows.

1. Determine employee needs and preferences.
 - Generate a list of all benefits that are currently offered or could be offered to employees and their spouses.
 - Poll employees for preferences.
 - Take into account that employee needs may change, which may not be reflected in their stated preferences.

2. Establish how much money may be put toward employee benefits.
 - Enlist the assistance of a professional advisor.
 - Factor in the costs expected to be saved by decreasing attrition and earned by employing higher-quality talent.
3. Review potential options to meet the needs of the employees within the budget.
 - Leverage the strengths of being a small business, like offering flexible work schedules for employees to substitute for Family and Medical Leave Act and bereavement leave.
 - Keep in mind that special tax vehicles specific to health insurance coverage — such as Health Savings Accounts, Health Reimbursement Arrangements and Flexible Spending Accounts — provide tax incentives to help employees and employers manage medical expenses. However, federal tax regulations do not specifically include most same-sex domestic partners, precluding most GLBT employees from taking advantage of these vehicles in the same manner as their non-GLBT counterparts.
 - Enlist a broker's help to find the best value.
 - Depending on where your business is located, you may join a Risk Pool, Association Health Plan or other organization that brings together small businesses to collectively obtain more competitive premiums for healthcare.
 - Consider using a Professional Employer Organization as a potentially cost-saving means for administering health benefits, rather than keeping the function in-house.¹⁹
 - If your insurance provider allows your business to offer a range of health insurance plans, define a set company contribution to each employee's plan and ask each employee to cover the difference.

Below are some suggested employee, spousal and domestic partner benefits:

- Medical
- Dental
- Vision
- Dependent medical coverage, including partner's dependents
- Family and Medical Leave Act (FMLA) benefit
- Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits
- Bereavement leave
- Relocation/travel assistance for the spouse or partner
- Adoption assistance
- Employee discounts

Pending Legislation

Unfortunately, the disparate tax treatment of domestic partner health benefits adds an additional cost beyond the benefits themselves. Health insurance premiums paid by employers on behalf of workers, their spouses or dependents are tax-deductible for both the employer and employee as business expenses. But if a domestic partner cannot be claimed as a tax dependent, the cost of those health benefits must be reported as additional income to the employee, resulting in higher payroll taxes for the employer and higher income taxes for the employee.

The Tax Equity for Health Plan Beneficiaries Act of

2007 (H.R. 1820) would remove this disparity and give the same tax-deductible status to health benefits for domestic partners and their dependents. For information on how employers can support this legislation, visit HRC's website at www.hrc.org/workplacesupport.

Insurance Coverage for Transgender Employees

Small employers should be informed of their health plan's limitations on coverage for transgender employees. Wherever possible, employers should make available company-provided healthcare coverage for medically necessary treatments and procedures, as defined by the World Professional Association for Transgender Health's Standards of Care for Gender Identity Disorders, available online at www.wpath.org.

The following are general categories of treatments that may be denied insurance coverage for transgender employees, whether as part of a medically supervised gender transition or for general medical needs:²⁰

- Counseling by a mental health professional
- Pharmacy benefits (covering hormone therapy)
- Medical visits (to monitor the effects of hormone therapy and associated lab procedures)
- Medically necessary surgical procedures
- Short-term leave for surgical procedures

**SMALL
BUSINESS
BASICS**



Building and Maintaining an Inclusive Work Environment

Day-to-day responsibilities and limited resources do not always allow small businesses to provide formal, extensive diversity training on gay, lesbian, bisexual and transgender workplace issues.²¹ But owners and managers are still responsible for the well-being of all their staff members, including ensuring they are aware of issues that could prevent GLBT employees from feeling safe and welcome. A diversity plan must effectively address these issues while also managing time and resource restraints.

All businesses face the challenge of translating their formal policies into respectful, appropriate work environments for all employees. The difficulty of managing work environments often stems from the large number of employees and mid-level managers who may need to watch their actions and incorporate the guiding principles into their behavior. In many cases, if senior-level employees buy in to the importance of this process, their support can have a trickle-down effect.²²

Compared to larger companies, small businesses have the advantage of more visible senior leadership with a flatter business structure. This structure can increase the rate at which employees buy in to the desired culture and maintain the intended work environment. By providing effective baseline diversity training, ensuring that senior management sets the tone for inclusive environments and arming managers with the tools to combat workplace discrimination or other unwelcome behavior, small businesses may develop rich, lasting, fair workplace cultures where employees feel proud and empowered to do the best work for the business.

Building Inclusion

The approach that will most significantly influence an employee's behavior varies from person to person. As a result, small businesses must establish formal processes that can be administered consistently for all employees.

- Review the business' diversity policies during the hiring process to establish the importance of these policies. Make sure new employees sign off on having reviewed the policies at the beginning of employment.
- Use training videos as a uniform and cost-effective method for acclimating new hires to the company's inclusive culture.
- Ensure that any diversity training includes GLBT issues, or that you provide GLBT-specific diversity training as part of an overall training effort.
- Consider bringing in members of local GLBT organizations to talk about current issues facing the GLBT community to ensure that marketing or recruitment efforts are culturally sensitive.

**SMALL
BUSINESS
BASICS**

- Engage in team-building activities to build personal relationships among employees and break down stereotypes.
- Ask for help from the Human Rights Campaign, the National Gay and Lesbian Chamber of Commerce and other organizations which can provide advice on training resources. Some resources may be available free of charge.
- Keep in mind that the term *sexual orientation* is preferred over *sexual preference*.
- Use the phrase *gay, lesbian, bisexual and transgender* rather than the word *homosexual*.
- Distributing anonymous surveys to employees to assess workplace comfort levels.

Monitoring

Small business owners and managers may believe they are so attuned to their workplaces that they would know if an employee felt that his or her safety had been violated. However, due to the limited legal protections for gay, lesbian, bisexual and transgender employees, those who feel at risk or wronged may fear raising the issue to management. A proactive approach to minimizing workplace issues is preferable. And it does not require much, if any, additional effort from management. Steps include:

- Opening dialogue sessions where management demonstrates their commitment to inclusive values.
- Communicating an open-door policy and assurance of confidentiality, where possible.
- Using inclusive language:
 - Ensure that invitations to company events use terms like *partner* or *significant other* rather than *spouse*.

Addressing Problems

In some cases, regardless of the steps businesses have undertaken to create inclusive work environments, situations may arise when employees feel discriminated against based on sexual orientation or gender identity. To minimize the negative impact and costs in terms of time and financial resources, management must have the tools to quickly analyze and address concerns of discrimination. These tools should include:

- An employee manual with harassment policies that staff members may use as a reference throughout their tenure.
- Forms to officially document incidents and follow-up.
- A defined path of escalation from the direct manager to a more senior leader.

Any disciplinary actions should always be taken uniformly across the company.



Recruiting and Marketing to the GLBT Community

Small businesses that connect with the gay, lesbian, bisexual and transgender community for recruitment or marketing purposes reap the benefits of that community's intellectual power and market capitalization.

By 2011, the GLBT market in the United States is projected to represent \$835 billion.²³ A recent poll found that 78 percent of GLBT consumers would switch brands to companies that advertise in GLBT media.²⁴ However, some small business owners are hesitant to approach this market for fear of being labeled as a “gay company.”²⁵ Businesses can mitigate these concerns by prominently including GLBT issues within their larger diversity strategies.

Recruiting GLBT talent also goes hand-in-hand with marketing to the GLBT community.

Employee Recruitment

1. Include diversity policies and benefits, along with those that impact GLBT employees, in job announcements.
2. Place job announcements in outlets that reach the GLBT community.
3. Send hiring representatives to GLBT events where potential employees will recognize your commitment to the community, such as GLBT pride events or film festivals. This will also

give potential candidates the opportunity to interact with your employees.

4. Join and support your local GLBT chamber of commerce. Visit www.nglcc.org for a directory.

Consumer Marketing

1. Place advertisements with GLBT media outlets, and consider tailoring your message so it resonates with GLBT consumers.
2. Sponsor GLBT organizations and events to familiarize the GLBT community with your products and services, which can spark business relationships with attendees and other sponsors.
3. Donate products or services to local GLBT organizations as a way of providing exposure to your company.
4. Communicate with the media about the ways your business is reaching out to the GLBT community with these tailored promotions, products or services.

**SMALL
BUSINESS
BASICS**

**SMALL
BUSINESS
BASICS**



About the Human Rights Campaign Foundation Workplace Project

The Human Rights Campaign Foundation Workplace Project is a national source of information and guidance on gay, lesbian, bisexual and transgender issues in the workplace. The project produces accurate, timely research on issues confronting employers on GLBT diversity initiatives. It provides decision makers with cutting-edge research, expert counsel, online resources, best practice information

and on-site training and education. Project staff act as business consultants for diversity professionals seeking to position their company as an employer of choice. Staff serve as trusted allies to hundreds of executives in corporate America. The project also makes available the expertise of the HRC Business Council for trusted peer-to-peer advice.

See www.hrc.org/workplace for more.

**SMALL
BUSINESS
BASICS**

About the National Gay and Lesbian Chamber of Commerce

The National Gay and Lesbian Chamber of Commerce represents the interests of the estimated 800,000 to 1.4 million lesbian, gay, bisexual and transgender-owned businesses in the United States. Through its network of 45 U.S.-based affiliate chambers and nine international chambers, the NGLCC is the largest LGBT business development and economic advocacy organization in the world. As the

business voice of the LGBT community, the NGLCC is committed to forming a broad-based coalition representative of the various interests of LGBT chambers of commerce, LGBT-owned businesses, professionals, corporations, allied businesses and students of business.

See www.nglcc.org for more.

**SMALL
BUSINESS
BASICS**



Acknowledgements

Thanks to HRC staff members Jonah Pozen and Samir Luther and NGLCC staff members Kate Karasmeighan and Jessica Heads for authoring this document, and for conducting the focus groups and individual interviews that made this resource possible. Additional thanks to HRC staff member Robin Reed for her editing; HRC Business Council members Wes Combs, co-founder of NGLCC-certified Witeck-Combs Communications; Jamison Green, board member of the World Professional Association for

Transgender Health; and John Isa, of Paul Hastings LLP, for their invaluable review of this publication.

HRC and NGLCC also extend their gratitude to the NGLCC affiliates that arranged focus groups for this resource: North Texas GLBT Chamber of Commerce (Dallas), Twin Cities Quorum (Minneapolis/St. Paul), Greater Seattle Business Association (Seattle), Potomac Executive Network — Metro D.C.’s GLBT Chamber of Commerce (Washington, D.C.).

**SMALL
BUSINESS
BASICS**

**SMALL
BUSINESS
BASICS**



Appendix A: Frequently Asked Questions

What are the tax implications of offering domestic partner benefits?

The Internal Revenue Service has ruled that domestic partners cannot be considered spouses for tax purposes. Thus, employers are obligated to report the fair market value of the domestic partner coverage as income to the employee. The employee must pay income tax on that money. Domestic partner benefits may be considered non-taxable only if the domestic partner meets the IRS definition of a “dependent.” Internal Revenue Code Section 152 defines a “dependent” as someone who resides in the employee’s household and who receives at least half of his or her support from the employee. For more information on small business taxation, see the IRS website at www.irs.gov/businesses/small.

Where can I find legal advice about my businesses?*

National Lesbian and Gay Law Association
601 Thirteenth St., N.W., Ste. 1170 South
Washington, D.C. 20005-3823
202/637-6384
www.nlgla.org

How do I get further information about making my business more GLBT-friendly?

Human Rights Campaign Foundation Workplace Project
1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
202/628-4160
www.hrc.org/workplace

How do I certify my business as “GLBT-owned”?

National Gay and Lesbian Chamber of Commerce
Dupont Circle, 2000 P St., N.W., Ste. 300
Washington, D.C. 20036
202/419-0440
www.nglcc.org

**The Human Rights Campaign and the National Gay and Lesbian Chamber of Commerce are not responsible for any attorney’s conduct, statements or legal advice or for the terms (including fee and payment terms) governing any attorney-client relationship resulting from connections made through the resources listed here. HRC and NGLCC disclaim all liability for any damages or loss caused by the statements, conduct (professional or otherwise), actions or omissions of any attorney contacted through these resources. You should make your own determination as to whether a specific firm or lawyer is qualified to meet your legal needs.*

**SMALL
BUSINESS
BASICS**

**SMALL
BUSINESS
BASICS**



Appendix B: Defining Domestic Partnerships

An employer can either define its own requirements or rely on legal documentation such as a domestic partner registration, civil union or marriage.

The Human Rights Campaign Foundation encourages employers to treat all beneficiaries equally when requesting documentation to determine eligibility. For example, if an employer requires documentation for partner benefits, they should similarly request documentation for spousal benefits.

Government Recognition

Rather than requiring employees to submit various forms of documentation to the employer, many employers now rely on a government form of recognition of relationships, such as local or state domestic partner

registrations, state-level civil unions or marriages or partnerships entered into in other countries. Leaving the definition up to local or state government entities

takes the legal burden of defining eligibility for partner benefits off the employer, although it does require employees to determine which forms of recognition are most suitable for them, as the laws and eligibility associated with the various government entities vary. Doing so also significantly decreases the burden on the employee and employer

should an employer need to perform an audit of its benefits plan and beneficiaries.

Domestic Partnership Affidavits

Many employers have gone the route of creating a domestic partnership affidavit, which spells out eligibility requirements as defined by the employer. While a January 2005 Business & Legal Reports study found that the number of employers utilizing domestic partnership affidavits is in decline overall, many employers still use them.²⁶

For those employers who do require documentation, common stipulations for the couple establishing a domestic partnership include that the individuals:

- Be 18 or older
- Be unmarried
- Not be related to each other
- Have an intimate, committed relationship of mutual caring of at least six months' duration
- Not currently have a different domestic partner or spouse
- Agree to mutual fiscal and legal responsibility for each other

If an employer does go the route of affidavits and decides to include a co-habitation requirement, the Human Rights Campaign Foundation encourages employers to keep such a requirement to a maximum of six to 12 months. The 2005 Hewitt Associates

Many employers have gone the route of creating a domestic partnership affidavit, which spells out eligibility requirements as defined by the employer.

**SMALL
BUSINESS
BASICS**

study found that 52 percent of companies require a period of one year, while 44 percent require a period of six months.

Same-Sex and Opposite-Sex Partners

The majority of employers — 58 percent — offer benefits to the same- and opposite-sex partners of their employees.²⁷ The Human Rights Campaign Foundation primarily considers whether or not an employer offers same-sex partner benefits. However, because of the varying state laws and policies per-

taining to changing the sex marker on identification papers or birth certificates, some transgender people have trouble obtaining marriage licenses and would need opposite-sex partner coverage for their partners.

Eligible Dependents and Beneficiaries

Employers that recognize an employee's domestic partner for benefits purposes should ensure that the domestic partner's children are covered as eligible dependents when possible. Employers should also ensure that their policies surrounding beneficiaries include domestic partners when possible.



Appendix C: Terminology

Bisexual

A person emotionally, romantically, sexually and relationally attracted to both men and women, though not necessarily simultaneously; a bisexual person may not be equally attracted to both sexes, and the degree of attraction may vary as sexual identity develops over time.

Coming Out

The process in which a person first acknowledges, accepts and appreciates his or her sexual orientation or gender identity and begins to share that with others.

Cross-Dressers

Transgender people who wear clothing and/or make-up and accessories that are considered by society to correspond to the “opposite sex.”

Gay

A word describing a man or a woman who is emotionally, romantically, sexually and relationally attracted to members of the same sex.

Gender Expression

How a person behaves, appears or presents oneself with regard to societal expectations of gender.

Gender Identity

The gender that a person claims for oneself which may or may not align with his or her gender assigned at birth.

GLBT

An acronym for “gay, lesbian, bisexual and transgender.”

Lesbian

A woman who is emotionally, romantically, sexually and relationally attracted to other women.

Outing

Exposing someone as being gay, lesbian, bisexual or transgender to others, usually without their permission; in essence “outing” them from the closet.

Sexual Orientation

A person’s enduring emotional, romantic, sexual and relational attraction to someone else, which is different from an innate sense of gender.

Transgender

An umbrella term that applies to a broad range of people who experience and/or express their gender differently from what most people expect.

Transition

A process through which some transgender people go when they decide to live as the gender with which they identify, not the one assigned at birth. This may or may not include hormone therapy, sex-reassignment surgery and other medical components.

Transsexual

A person who — with or without medical treatment — identifies and lives his or her life as a member of the gender opposite the one he or she was assigned at birth.

Transvestite

An outdated term — often considered pejorative — used to refer to people who cross-dress.

The Gay and Lesbian Alliance Against Defamation also offers a more detailed glossary, tailored for the media but also helpful for individuals looking to learn more, at: www.glaad.org/media/guide/transfocus.php.



Endnotes

- ¹ “Number of Firms, Number of Establishments, Employment and Annual Payroll by Employment Size of the Enterprise for the United States and States, Totals,” U.S. Census Bureau, 2004. Available at www.census.gov/epcd/susb/latest/us/US—.HTM.
- ² McMackin, Emily. “The Lure of Small,” May 25, 2006.
- ³ “2007 Working for a Small Business Survey,” Salary.com Inc. Jan 29, 2007. Available at www.salary.com/aboutus/layoutscripts/abt_l_default.asp?tab=abt&cat=cat012&ser=ser041&part=Par587&isdefault=0.
- ⁴ Dennis, William J. “National Small-Business Poll: The Changing Search for Employees,” National Federation of Independent Businesses, Volume 1, Issue 1, 2001.
- ⁵ Dennis, William J. “National Small-Business Poll: Competition,” National Federation of Independent Businesses: Volume 3, Issue 8, 2003.
- ⁶ “Majority of All Adults Agree That Companies Should Have Freedom to Decide the Benefits Offered to Employees and Their Spouses and Partners,” Harris Interactive, May 22, 2006. Available at: www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=1059.
- ⁷ “Employee Discrimination in the Workplace,” The Gallup Organization, Nov. 10, 2005. Available at www.shrm.org/hrresources/surveys_published/Employee%20Discrimination%20In%20The%20Workplace%20Poll%20by%20Gallup%20Organization.pdf.
- ⁸ Witeck-Combs Communications / Harris Interactive, December 2004.
- ⁹ Witeck-Combs Communications Inc. and Packaged Facts, “The Gay and Lesbian Market in the U.S.” 2007.
- ¹⁰ NGLCC / HRC small-business focus groups.
- ¹¹ Charles R. McConnell, “Formal Policies to Cover Your Business,” National Federation of Independent Businesses, July 10, 2006.
- ¹² “Majority of All Adults Agree That Companies Should Have Freedom to Decide the Benefits Offered to Employees and Their Spouses and Partners,” Harris Interactive, May 22, 2006. Available at: www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=1059.
- ¹³ “State of the Workplace 2006-2007,” Human Rights Campaign Foundation, June 2007.
- ¹⁴ “Changes in Employer-Sponsored Health Insurance Sponsorship, Eligibility and Participation: 2001 to 2005,” Kaiser Commission on Medicaid and the Uninsured, December 2006.
- ¹⁵ Paul Fronstin, “Small Employers and Health Benefits: Findings From the 2002 Small Employer Health Benefits Survey,” Employee Benefit Research Institute, January 2003.
- ¹⁶ Bruce D. Philips, “Small Business: Problems and Priorities,” National Federation of Independent Businesses, June 2004.
- ¹⁷ Paul Fronstin, “Small Employers and Health Benefits: Findings From the 2002 Small Employer Health Benefits Survey,” Employee Benefit Research Institute, January 2003.
- ¹⁸ “Trends and Indicators in the Changing Health Care Marketplace,” Henry J. Kaiser Family Foundation, 2005.
- ¹⁹ National Association of Professional Employer Organizations.
- ²⁰ Catherine Sheehy, “Transgender Issues in the Workplace: A Tool for Managers,” Human Rights Campaign Foundation, 2004.
- ²¹ NGLCC / HRC small-business focus groups.
- ²² David A. Thomas, professor of organizational behavior and human-resource management at the Harvard Graduate School of Business Administration.
- ²³ Witeck-Combs Communications Inc. and Packaged Facts, “The Gay and Lesbian Market in the U.S.” 2007.
- ²⁴ Witeck-Combs Communications / Harris Interactive December 2004.
- ²⁵ NGLCC / HRC small-business focus groups.
- ²⁶ “2005 Survey of Employee Benefits,” Business & Legal Reports, January 2005. Available at www.shrm.org/hrnews_published/archives/CMS_011484.asp.
- ²⁷ “Benefit Programs for Domestic Partners & Same-Sex Spouses,” Hewitt Associates. Lincolnshire, Ill.: July 2005.



**National Gay and Lesbian
Chamber of Commerce**
Dupont Circle, 2000 P St., N.W., Suite 300
Washington, D.C. 20036
phone 202/419-0440
www.nglcc.org



**HUMAN
RIGHTS
CAMPAIGN
FOUNDATION**
Human Rights Campaign Foundation
1640 Rhode Island Avenue, N.W.
Washington, D.C. 20036
phone 202/628-4160
TTY 202/216-1572 fax 866/369-3348
hrc.org/workplace workplace@hrc.org