
The Moral Responsibility of Business to Protect Homosexuals from Discrimination in the Workplace

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The US government, through legislation, has provided protection for certain classes of citizens to prevent discrimination in the workplace. Among these protected classes are race, religion, gender, age, disability, etc. However, sexual orientation is not presently covered by the federal government. To fill this void, management should take it upon itself to provide protection in the workplace for the gay community.

Since the 1970s a growing emphasis on the benefits of diversity has permeated management theory and practice in corporate America. The benefits of increased diversity are attributed to enhanced problem solving, increased and customized customer service, and greater organizational creativity.¹ In fact, diversity has become such a large component of the corporation that “diversity management” is a common curriculum now incorporated in nearly every major collegiate and graduate business program. As diversity focus continues to grow in the business sphere, the role and responsibility of corporations to not only ensure a diverse workplace but also to protect the views and beliefs of a diverse constituency becomes a significant area of managerial debate. This analysis focuses on the growing trend of workplace diversity with particular focus on the roles and responsibilities of the corporation with regard to discrimination based on sexual orientation. Throughout this discussion sexual orientation may be referred to as homosexuality. This is not to limit the term “sexual orientation” to that population most ardently focused on in this debate.

The US government has paved the way for increased workplace diversity through the codification and enforcement of laws for several protected citizen classes. Under these laws, known as equal employment opportunity (EEO) laws, certain classes of citizens with certain characteristics are defined as protected. Protection in this instance means the guaranteed security against discrimination based on an individual's demonstration of one or more of the delineated characteristics. The US government acknowledges race, skin color, religion, sex/gender, national origin, age, and disability as protected statuses with regards to EEO laws.² Disparaging employment practices towards any of these defined citizen classes constitutes a federal offence codified in

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Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991.³

Interestingly, sexual orientation is not covered under any laws laid out by the federal government. In fact, the EEO Commission, the body charged with litigious enforcement of EEO laws, states, “The U.S. Equal Employment Opportunity Commission (EEOC) does not enforce the protections that prohibit discrimination and harassment based on sexual orientation ... many states and municipalities do.”⁴ A company therefore can deny a qualified candidate a job, terminate an employee at will, or discriminate against an employee solely based on his or her actual or perceived sexual orientation.⁵

The exception to this unregulated inequitable practice exists in the 15 states where equal opportunity and discriminatory protection measures were adopted for gay and lesbian citizens. These states include California, New Mexico, Minnesota, Wisconsin, Vermont, New Hampshire, New York, Massachusetts, Maine, Connecticut, New Jersey, Rhode Island, Maryland, Hawaii, Washington DC, and, most recently, Illinois.⁶ As Governor Rod Blagojevich stated as he signed Senate Bill 3186 into law, “[This law] extend[s] the guarantee of fairness and equality in the eyes of the law...”⁷

Beyond the law, however, are the 35 states that do not have such legislation, leaving the discretionary measure with regard to sexual orientation in the hands of individual corporations. Subsequently, of the nearly 18 million homosexuals in the US population 18 years or older not residing in the protected states,⁸ the possibility of sexual orientation-based discrimination is a working reality. The possible effects stemming from this lack of legislation may become more focused considering the fact that more than half of the Fortune 500 states are incorporated in Delaware, a state that does not provide sexual orientation anti-discrimination measures.⁹

Many may discredit the validity of corporate and human relations resource allocation towards this issue. Most do so out of an unclear understanding of what can happen (and has happened) to employees for their perceived homosexuality or because they simply believe this is already a covered class of citizens. In fact, 70 percent of the American public believes that homosexuals are already a covered class under federal civil rights law.¹⁰ Framing this inquiry from actual cases affected by sexual orientation-based discrimination, however, illuminates the potential ramifications to businesses and the need for concentrated focus on this issue.

HISTORICAL CONTEXT

To add a depth of perspective to this topic, a historical context is provided.¹¹ This debate’s *history* is not isolated to workplace discrimination

alone but traces its roots in the evolution of the gay rights movement in America.

As more people ventured to the cities of the United States, a greater sense of self and autonomy was realized. This led to the formation of distinct communities of common interests including the emergence of a gay subculture. In 1924, the Society of Human Rights was started in Chicago becoming the first known gay advocacy group. Homosexuality gained a broader recognition as much more common than once believed thanks to the work of Alfred Kinsey in 1948.

By 1951, the first official gay rights organization was led by Harry Hay who is considered the founder of the gay rights movement. During this time, however, the federal government removed gays from service with President Eisenhower establishing an executive order barring gays from all federal jobs in 1953. This governmental tactic encouraged similar disparity by local law enforcements where officers would regularly raid gay bars, often arresting gay patrons.

On June 27, 1969, at the height of the Summer of Love and Flower Power, the New York City police raided a Greenwich Village gay bar, the Stonewall Inn. The homosexual population fought back this time, however, prompting three days of rioting and the public transformation of the gay rights movement as a plight towards equality. By 1973, when the American Psychiatric Association removed homosexuality from its list of mental disorders, there were nearly 800 gay and lesbian organizations in the United States. In 1975, the federal government removed the ban on employment of homosexuals in the workplace.

It was during this period that a bill was introduced into the US Congress that would provide the same discriminatory protections to gays and lesbians as the Title VII Civil Rights Act, Age Discrimination Act, and Equal Pay Act provided to other parties.¹² This bill, and bills that followed nearly every year thereafter, failed to gain passage.

In 1994, a version of the bill that applied to anti-discrimination in the workplace for gays and lesbians reached Congress. This bill became known as the Employment Non-Discrimination Act (ENDA). In 1995 it was formalized as HR 1836. It guaranteed no provisions with regards to benefits, specifically prohibited quotas and special treatment, and exempted religious institutions and the armed forces from its jurisdiction. The bill also provided for enforcement under the EEOC and disallowed individual state immunity.¹³

ENDA had a wide array of supporters from corporations such as Eastman Kodak, Xerox, and AT&T to religious institutions such as the National Council of Churches and the Southern Christian Leadership Conference. It was supported by President Bill Clinton who stated, "all Americans, regardless of their sexual orientation, can find and keep their jobs based on their ability to work and the quality of their work."¹⁴ In line with these supporters, 84 percent of the voting population actually supported equal rights for gays and lesbians according to a *Newsweek* poll.¹⁵

When the Defense of Marriage Act, which espoused marriage between a man and a woman alone, was introduced by the Senate, an attempt to attach the ENDA to the bill was made. The two bills were eventually separated and were voted upon separately. This time the bill arrived on the Senate floor where it was narrowly defeated 49 to 50. This left the mandate of sexual orientation–based anti-discrimination on individual states or communities should they deem the measure relevant. If not, the onus fell to corporations, where it currently resides in the 35 states that currently do not have anti-discrimination policies for homosexuals.¹⁶

In more recent news, the issue of sexual orientation discrimination has once again been raised at the federal government level. In light of heightened security measures taken after the September 11th terrorist attacks, the Bush Administration has rewritten the rules regarding security clearance for federal employees. During the Clinton era, the rule specifically stated that sexual orientation “may not be used as a basis” for denying clearance. Under the Bush Administration, the rule now states clearance cannot be denied “*solely* on the basis of the sexual orientation of the individual.”¹⁷ Despite firm assurance from the White House that this constitutes no change in policy, Democrats and gay and lesbian advocacy groups intend to closely monitor the implementation of this new guideline.

International Precedent: Global Policies

The range in protection from discrimination for homosexuals varies across the globe. In places such as Iran, where two teenage boys were executed on July 21, 2005, for the crime of homosexuality, workplace anti-discrimination policies are not even remotely plausible or currently sought.¹⁸ Here, the basic concept of human rights is still the main plight—be it gays, women, or religious tolerance.

In the vast majority of Europe, however, sexual orientation–based anti-discrimination is not simply policy, but the law. As stipulated by the European Union’s (EU) Department of Employment, Social Affairs and Equal Opportunity, employment and occupation are paramount to a sustainable society. Only through protection of both can citizens truly realize their full potential and interact with the economy and culture.¹⁹

The EU enacted the Employment Framework Directive in 2000 which prevents the discrimination of individuals based on religious beliefs, disability, age, or sexual orientation. These common legal protectorates were to be fully implemented into national law for all EU countries by the end of 2003.²⁰ Escalating penalties included legal proceedings before the European Court of Justice and severe financial penalties for the member state.²¹

Interestingly, no such anti-discrimination policy exists for gender. These laws do follow citizens, however, as they travel in and among any of the EU member states.²²

THE ARGUMENTS

So far, a large portion of this examination has focused on the issue of sexual orientation–based anti-discrimination policies in American corporations under the context of law. This makes the otherwise morally driven/biased discussion easier to dissect as there is a clear cut outcome from each instance. In such instances, whether an outside party agrees or not, there is a clear cut right vs. wrong outcome. Outside of the jurisdiction of state or local government legal context, however, the argument becomes much more polarized between those that support, and those that oppose such anti-discrimination policies.

At the very heart of this debate resides the friction between doing what is right for a corporation and its stakeholders, and doing what is right for the greater society at large. When examining matters of sexual orientation it is unclear whether common ground can exist between the dictation of certain societal norms and their permeation of business ideology and the superordinate corporate goal of driving increased profitability.

It must be noted that the scope of this examination does not include the debate on homosexuality (*i.e.*, choice versus genetics). It does not seek to qualify or deny homosexuality as a practice but simply the corporation's roles and responsibilities, if any, with respect to this community.

Perspective: Proponent

Those in corporate America who favor sexual orientation anti-discrimination policies are leading the way for the permeation of this ideology in America as a whole. While the federal government has had some form of proposed legislation introduced to Congress every year for the past 32 years, with no enforceable legislation resulting, many major American corporations have taken a progressive stance on the issue of discrimination.

In 2005, 83 percent of Fortune 500 companies included sexual orientation in their non-discrimination policies.²³ Inherent to this support are two primary motivators: (1) the genuine desire to protect gays and lesbians; and (2) the desire to create sustainable competitive advantages in the marketplace.

The first motivating driver of the pro-anti-discrimination platform suggests a higher moral purpose of the organization in society in general. Support of this subset of the greater platform derives from two moral beliefs: equality and capability.

It has been argued that the foundation of American values is derived from the Declaration of Independence which implicitly states that "all men are created equal" and, as such, "they are endowed ... with certain unalienable Rights, that among these are Life, Liberty and the pursuit of

Happiness.”²⁴ This document, it is contended, stipulates the foundation of independence based on equality for everyone. Leveraging the language used in the European Union, this argument contends that someone is only able to contribute to society in as much as he or she is able to participate as citizens in economic, social, and cultural life.²⁵ At the very core of this argument is the issue of fairness as a basic American value. This is perceived as an inalienable right that all must have in the pursuit of life (which includes occupation and subsequently the workplace) to ensure their ability to participate in the larger democracy.

Equality does not, according to proponents, equate to special rights or privileges for homosexuals, nor does it stipulate the implementation of quotas under the guise of affirmative action.²⁶ In fact proponents are staunch about seeking equal, not preferential, treatment with regard to employment. This means it becomes codified that a claim on the basis of discrimination must be proven. As Rick Garcia, director of gay rights group Equality Illinois stated, “You have to be able to prove [a discrimination case] and there is a high burden of proof.”²⁷

It is also noted by advocates that anti-discrimination policy is not a means to pave the way for equal benefits and gay marriage.²⁸ Those are separate arguments that, although valid and touched upon later, are not the core focus of equality with regard to discrimination. Instead, proponents see anti-discrimination policies as the means for leveling the playing field, allowing all persons to compete for jobs and promotions in an environment that protects their contribution to the corporation. This then turns the argument to the capability of a person in the workplace.

Capability describes a person’s ability to perform the tasks to which he or she is assigned. This stipulates that from a greater moral standard, Americans have the right to be judged in the workplace by the “quality of their performance and not by completely unrelated factors.”²⁹ The American Civil Liberties Unions defines “unrelated factors” as “whom they [all citizens] choose to love.”³⁰ This refers to choice with regards to a life partner not a lifestyle. Using capability as a directorate, it is argued, removes unfair employment practices based on perceived or real characteristics of a person that have little bearing on at work performance in so much as the entire composition of a person (race, ethnicity, gender, and sexual orientation) creates his or her identity which then communicates his or her capability.³¹

The second pillar of the pro argument centers on the more quantifiable aspects of business in the form of sustainable competitive advantage. While many would care to believe a corporation always acts in the most altruistic manner, the reality in a capitalist society is that profitability is paramount. As such, the argument that corporate anti-discrimination policies for homosexuals are beneficial to a business’s competitive advantage is supported leveraging the following: capitalism, employment security, and Darwinian survival.

The principles of capitalism state that humankind requires only one thing from fellow humans: the right to act freely.³² These rights, it is argued, are absolute and required for an individual to support his or her life. As such, rights are morally defined to ensure a means of freedom in a social context.³³ By this very definition the act of discrimination counters the premise of an individual's ability to act in his or her own best interest to support his or her life. The corporation is little more than the collection of individuals with rights that are manifested in corporate management practice. The goal of the corporation in the capitalist perspective is to embrace the rights of the individual by treating the corporation as an individual so as to drive profitability. Thus, it is argued that by setting written or unwritten codes that prevent equal participation by a defined group of individuals (*i.e.*, discriminating against homosexuals in this case), the corporation prohibits itself from achieving its superordinate goal of recognizing the rights of the individual and his or her contribution to the goal of the corporation.

This perspective is illuminated in the recent support Illinois businesses gave to Senate Bill 3186, which protects homosexuals from discrimination. Under the guise of capitalism the government is in place to assure and promote the rights of the individual.³⁴ Therefore, if this law was counter to the rights of the individual and subsequently, the corporation, capitalism argues businesses would never have supported such legislation. As Rick Garcia stated, "If it was bad for business, they would not have supported it."³⁵ Thus, capitalism supports anti-discrimination since employees are assured the right to work, which is a right to pursue their definition of life.

Proponents link this employment security with greater productivity, which is directly measurable. A poll of 191 employers found that 18 percent would fire and 26 percent would refuse to promote a person perceived to be gay.³⁶ This mentality makes for a hostile working environment not only for homosexuals but for anyone accused of being a homosexual. In essence, without corporate anti-discrimination policies protecting homosexuals, employment is no more secure for any employee than living in Salem was during the infamous witch trials. This insecurity permeates the workforce, especially for homosexuals, causing undue stress.

To quantify the effects of this added and undue stress in corporate America consider the following model. Stress is responsible for 19 percent of absenteeism and 40 percent of turnover.³⁷ On a given day between two and four percent of Americans are absent from work.³⁸ Based on current employment statistics this equates to roughly 5.7 million workers a day, 1.08 million directly due to stress.³⁹ The direct costs from this absenteeism to businesses are estimated at \$30 billion annually, \$5.7 billion attributed to stress.⁴⁰ If homosexuals represent 11.9 percent of the workforce,⁴¹ this means just over one million gay employees are missing work each day, of which 190,000 are missing

due to stress-related issues. This translates to \$678 million of direct costs to business from stress-related absenteeism from gay and lesbian employees.

Couple absenteeism with turnover, which the US Bureau of Labor calculated at 20.2 percent in 2004, and the picture becomes much grimmer. Of the gay workforce, 3.5 million employees are churned each year.⁴² Statistically this costs a business twice an employee's annual salary to replace them.⁴³ In 2002, the average US salary was reported at \$32,764.⁴⁴ This means turnover costs for a business from gay and lesbian employees alone is roughly \$229.3 billion of which \$91.7 billion is directly related to stress.

This model is only sufficient in looking at stress as a whole as it relates to the gay population. Stress from the possibility of discrimination and the subsequent cost to profitability is not calculated in this equation. Instead, it serves to show the macro effects of stress on the gay workforce, directly costing businesses nearly \$92 billion annually. If 14 percent of this is directly related to increased stress from discrimination based on the number of gay employees reporting discrimination at work in 2000,⁴⁵ this equates to a \$12.9 billion cost to corporate America due to discrimination against homosexuals in the workplace. Proponents of anti-discrimination policies in the workplace suggest this number could be dropped to almost zero if employees were able to work in environments where they were valued for their performance and did not have to worry if revealing their personal life would dictate their professional future.⁴⁶

Larger corporations that have adopted such policies provide competitive advantage as the final pillar for anti-discrimination as a means of competitive advantage. By assuring that their employee base is diverse, corporations are able to: better serve their clients by reflecting their customer base in the workforce; expand globally by internally understanding various cultures, including gay cultures across ethnogeographic divides, and personifying that understanding in their global competitive strategy; and access, recruit, and retain the best talent in the marketplace.⁴⁷ According to Ted Childs, Vice President of Global Workforce Diversity for IBM, the adoption of such anti-discrimination is "consistent with IBM's goal to have the most talented workforce and remain the company of choice in the marketplace."⁴⁸

The argument for competitive advantage through anti-discrimination policies for homosexuals, however, does not imply that a corporation condones nor approves of homosexuality. In fact, proponents of such policies freely acknowledge that an employer is free to hate homosexuality and homosexuals.⁴⁹ What such policies seek to provide, however, is a protected environment where the employee is able to contribute his or her fullest capability towards the greater good of the corporation either in spite of or because of their homosexuality, whether perceived or real. John Challenger, CEO of Chicago firm Challenger

Gray & Christmas, Inc., summarizes this point stating, "There's a war for talent out there right now. The companies that gain a competitive edge are the ones willing to put aside stereotypes."⁵⁰

Perspective: Opposition

Those opposed to anti-discrimination policies for homosexuals in the corporate sphere have a strong base, influential in a number of corporations and most ardently, the political landscape. Typically this sentiment is directly correlated to the ardently vocal Christian Coalition and politically conservative Right Wing. As evidenced by the 49 to 50 Senate defeat of the Employment Nondiscrimination Act in 1996,⁵¹ the political debate surrounding anti-discrimination is exceptionally close. This determined majority, however, demonstrated at the federal governmental level, directly reflects the typical views and sentiments of those opposed to such policies in the business environment. Following their lead, businesses have leveraged the government's stance to define internal reasons to oppose anti-discrimination measures beyond the context of the law.

Three key points are characterized as the foundation of the opposition's argument regarding gay and lesbian anti-discrimination policies, and are as follows:

1. Gay and lesbian anti-discrimination policies endow special rights and privileges to a class of people based on recognized behavior rather than inherent and immutable human traits;⁵²
2. Anti-discrimination policies require people to accept, condone, and/or endure behavior they find objectionable, immoral, and even perverse;⁵³ and
3. Changes to accommodate this population of employee places an undue burden on the corporation.

The first argument tackles two distinct, but not unrelated, facets of the homosexual anti-discrimination battle. First, it addresses the notion of "special rights." The second idea focuses on the inherent and ongoing argument of whether homosexuality is an elected lifestyle or genetic construct. For the purposes of this investigation, for reasons already described, the later component of this argument will be discussed only to the extent that it involves and supports the more clearly defined and business-driven first.

The most prevalent adverse argument is centered on the idea that anti-discrimination policies in the corporate sphere extend *special rights* to the gay and lesbian individuals.⁵⁴ Special rights in this instance are defined as a set of standards or permissions granted to individuals in

the gay and lesbian population that would garner them an unparalleled advantage in a business environment. In short, this argument says that should an anti-discrimination policy come into play and two like individuals are facing the same given business scenario—whether that is an open job position, promotion within a firm, disciplinary action, or other defined business state of affair—the homosexual party will be given a definitive and unfair advantage over the equally qualified heterosexual.⁵⁵ This sort of preferential treatment then, in turn, paves the way for the interpretation of the policy to include quotas in workforce.⁵⁶

Illinois House Representative Mike Bost said of his opposition to SB 3186, which prohibits discrimination based on a person's sexual orientation for the state of Illinois, that these measures "didn't address the issue of civil rights but rather gave special rights to gay and lesbians to cry discrimination when things don't go their way."⁵⁷ A civil right, it is argued, is meant to protect those things which are deemed inborn, involuntary, immutable, and innocuous.⁵⁸ Since science has not codified the proverbial "gay gene" offering definitive proof of homosexuality as an inherited trait, it is argued that it is not a clearly defined characteristic based upon the aforementioned benchmarks.

As a minor concern wrapped in this larger context of "special rights," some opposition voices equate homosexuality-based anti-discrimination policies as protectorates that might loosely be interpreted to defend acknowledged sexual perversions. Opponents routinely cite frequent incidents of homosexuals as predators of women and children.⁵⁹ Additionally the argument is made that homosexuality is linked to higher incidences of drug and alcohol abuse, promiscuity, and violence.⁶⁰ This is evidenced in headline-making news, such as the recent arrest of a senior staff member at Chicago's Howard Brown Health Center for possession with intent to sell of the increasingly popular drug methamphetamine.⁶¹ Enacting policies that protect the perpetrators of this sort of deviant behavior, it is argued, opens corporations to unnecessary and potentially catastrophic liability and compromises the very foundation of corporate integrity.

Opponents also suggest such special rights given to homosexuals through the enactment of anti-discrimination policies in their very nature favor the employee over the employer. Should a discrimination case be brought against an employer who has adopted such policies, the employer will typically be the disadvantaged party. In places where laws force these policies, such cases are typically heard before a single administrative law judge acting on behalf of the Department of Human Rights. In most cases the disparaged employee is the key or only witness and since he or she is only convincing a single person instead of a jury of 12 with their individual biases, the employer's ability to defend itself becomes increasingly difficult.⁶²

This leads to the second supporting issue of the acceptance or condoning of behavior that is in direct conflict with the goals and ideals of the organization as a whole. The most ardent support of this argument

is found in the context of marriage. Many opposing anti-discrimination policies in the workplace believe that such measures are either directly in line with, or set the stage for, corporate support of gay marriage, an issue that has no place in the corporate realm.⁶³ For example, under these policies should benefits be offered to a straight male employee and his wife, the homosexual employee is going to cite discrimination if he or she is not offered the same benefits, even though the provider company recognizes marriage as a means of extended coverage. To keep in line with its policy of protection, a company either has to discriminate against its gay employee or support gay marriage. The lines become that black and white in this instance.

These policies, it is argued, infringe on the corporation's right to practice free speech. Even though homosexual-based non-discrimination in the workplace is not federally mandated, many federal branches have voluntarily adopted them of their own accord. This has led to the stifling of the organization and its employees, removing the inalienable rights proponents suggest these policies seek to provide. For instance, the US Postal Service enacted a code of conduct, requiring all employees to sign it. The code strictly prohibits all employees from discriminating against homosexual employees not only at work, but during off-duty hours as well. "One postal worker said the code could prevent him from opposing same-sex marriage or a homosexual pastor at his local church."⁶⁴

The final supporting case cited by opponents to homosexual anti-discrimination policies in the workplace argues that corporations endure undue burdens in the accommodation of homosexuals. First, it requires staunchly conservative industries to shift and adapt more than they are able to accommodate a policy that will have little benefit to their corporation. For example, engineering firms have slowly adopted the idea of diversity in their hiring practice, but the argument is made that due to the nature of the work a great number of biases are inherently present. If these discrimination policies are enforced in this industry, does that then mean that every employee who makes a disparaging remark about homosexuals will be dismissed? Opponents laugh at this suggestion noting the number of vacant jobs that would inevitably go unfilled in such a scenario.

Further support of the undue burden on businesses is evidenced in the requirements a business must go through in order to accommodate homosexuals. First, a corporation must rewrite its discrimination policy, which seems unobtrusive. But, if the policy is written so broadly that it infringes upon the religious tolerance of another employee, the company could face either losing that employee or religious discrimination charges.⁶⁵ The company must then train its managers to become more sensitive to this protected population in management decisions. The manager then is turned from his duties to promote the best interests and profitability of the firm, becoming a policeman for wrongdoing such

as gay jokes.⁶⁶ The firm must also train managers in conflict resolution between matters of homosexuality and religion. This places the burden now squarely on the shoulders of the manager who, when faced with this issue, will inevitably have to take the side of homosexuality. In this example, the policy will dictate that it is a greater hardship on the business to allow a person to practice their religious-based discrimination of homosexuals than it is to accommodate their religion, even if their religion cannot accommodate homosexuality. Essentially, after instating and then removing the stature to accommodate a religious belief, it would be a form of discrimination against the homosexual. Religion is not discriminated against in this instance because the person is making the conscious choice to discriminate under the auspice of religion. Under such a policy the latter could not be tolerated and the firm risks either losing the employee who is expressing his or her religious concern or jeopardizing the future relationship between said employee and the manager.⁶⁷ Additionally, inherent to the sensational nature of journalism with regard to perceived inequity is the possibility of negative press and media coverage.

The final burden to the firm, opponents say, comes at the sake of the customer. If a company enacts anti-discrimination policies for homosexuals, then it is not able to meet the specific needs of its customers who might request service from a non-homosexual employee. Under the policy such a request could not be accommodated as it would be a form of discrimination.⁶⁸ In the end, the corporation is made to ignore the most fundamental tenet of customer relationship management: the customer is always right. The corporation then loses the profits from that particular sale and the subsequent sales that might have spawned from word-of-mouth. In the end, opponents say such anti-discrimination policies for homosexuals have far reaching effects in the corporate sphere that stifle the ability of a corporation to remain flexible, adaptable, and competitive in an increasingly intense climate.

PROPOSAL

Evaluation of Relevance: Reframing the Question

The most difficult part of any business ethics discussion is ratifying a solution that leaves both sides satisfied without hindering either's integrity or infringing upon the greater firm's ability to conduct business. However, oftentimes it is revealed in the midst of the discussion that the wrong question is being asked and the entire argument is poorly framed. Such is the case of arguing the moral responsibility of the corporation regarding the protection of a class of citizens, namely homosexuals, from discrimination in the workplace. Having laid out both the proponent and opposition stances on this issue, there are two ways to approach a possible resolution.

For the first approach, in the simplest of terms, using the theory of *laissez-faire* (despite it being used by the proponent's argument), a corporation has no moral responsibility to protect homosexuals or any other class of citizens beyond what the law prescribes. Such inclusion would infringe on the rights of one segment of individuals for the perceived benefit of another (benefit in this instance is not connotative of preferential treatment) propagating the removal of one's ability to work in and for one's own best interests. As such, the corporation would be adversely affected and the entire construct of capitalism would be jeopardized. This theory states that the free market economy is the best way for achieving efficiency and, as such, should the market perceive inequities, it will deal with them in a more swift and effective manner than any policy, regulation, or legislation could elicit. This inefficiency can be anything from pricing to personnel practices, focusing on homosexuality in this discussion.

The reality of using *laissez-faire* theory, either for or against anti-discrimination, is that such a construct does not exist in a pure state. Instead, the US economy is a mix of individuals working towards their goals and developing their personal ideals, mixed with the legislation of the government which seeks to promote the moral stance of the majority. The role of the corporation in this instance is a collection of individuals all working together for the betterment of themselves, which translates to the organization as a whole; if the organization does well, the individual does well. As such, the corporation is expected to live and abide by a similar set of governmental regulations as the individuals that compose said institution.

Since the individual is the backbone of the corporation, it must be noted what types of individuals should be acknowledged when developing policies such as those that protect homosexuals in the workplace. Modern business theory at its most fundamental level will say the sole responsibility of the corporation is to drive profitability for its shareholders. The idea is that the shareholder bears the burden or financial risk in the organization. Granted, under corporate law, shareholders are exposed to a very limited liability in direct correlation to the amount they invest in the company. Nonetheless, more than any other party the shareholder bears most of the risk of the corporation and as such holds the greatest power to dictate the business principles under which the corporation should function. As such, the shareholders demand that the corporation act in their best interest to increase their "wealth." For the sake of clarification, assume that wealth includes not only financial return on investment, but the goodwill of a firm's positive presence in society at large and the subsequent benefit going to the shareholder from this societal perception.

Most managers agree that working in the shareholders' best interest is accomplished through the development of sustainable strategies that allow them to compete in the marketplace over the long-run. General

management theory suggests a few key areas of achieving sustainable competitive advantages, one of which is the management of human assets or employees. Using Joseph Pfeffer's model of creating high performance workplaces, this means assuring selective hiring based on appropriate skills and attributes that reflect how a corporation addresses its market, which are difficult skills and attributes to acquire through training, and that differentiate the corporation's employee base from the generalized applicant pool.⁶⁹ In short, Pfeffer is stating that the successful use of human assets as a strategic driver comes only from the recognition and definition of what human assets a company needs to achieve its superordinate goal of shareholder wealth, and then seeking that population proactively. Once hired, the company then has a responsibility to ensure the security of the employee's job as long as the employee delivers on his or her promise to promote the best interests of the firm.

This is at the very heart of the argument regarding anti-discrimination policies for homosexuals in the corporate environment and provides the more viable second approach towards a possible resolution. Though the language uses terms like "homosexual" to assure that the appropriate parties are covered, what the policy really seeks to do is assure that corporations have access to the best and most appropriate talent to ensure the firm's ability to compete to the fullest extent in the marketplace. To do this means to remove bias from the employment selection process, and instead focusing on the capabilities of the individual with regards to providing the appropriate skills as outlined by the firm. These skills may be hard or they may be soft; that is superfluous. The skills, however, are defined by the strategic vision of the organization, which requires an increasingly global perspective and respect for the various cultures that interact within that global marketplace regardless of class, race, gender, sexual orientation, religious affiliation, age, or disability. Focusing on the skills of the individual brings in the best and the brightest people to fulfill the defined strategic initiatives of the organization regardless of their personal characteristics within the confines of the law. Once inside the organization, then, the individual has the ability to use his or her whole self, which includes race, religion, gender, age, and sexual orientation to help the firm become more flexible, more adaptable, and more global.

Thus, in the simplest of terms, using *laissez-faire* theory, the corporation has no moral responsibility to protect the rights of homosexuals from discrimination in the workplace. The marketplace, however, is not simple and the superordinate goal of the corporation stipulates that the firm has not only a responsibility, but an obligation, to act in the best interest of its shareholders. This means creating competitive advantages, or translated, to assuring the best talent pool (which may or may not include homosexuals) and then ensuring their job security. From this perspective, a corporation has the moral responsibility to do any and everything within the confines of the law to assure it acquires the best

employees in the marketplace. Regardless of sexual orientation, a person may possess the right skills and attributes for a job and thus he or she should have the opportunity to fulfill that job without fear that one's personal life, which functions well within the confines of the law, is a possible liability. In fact, the key to truly achieving the best talent pool means reframing the issue. The question is not whether a company should protect homosexuals; the question is how should the corporation define and then acquire the *best* talent in order to promote the strategic initiatives of the firm, create inimitable firm advantages on which to compete, and ultimately reward the shareholders from bearing the risk that allows the firm to operate.

Rewards of Reframing the Argument

Inherent to the inclusion of homosexuals in the macro firm talent pool are the possible rewards that come from a focused effort on the part of the corporation that implements high performance employment and human resources efforts. To this end, the discussion turns to collected research by organizational behavior expert, Jeffrey Pfeffer.

Though it has been discussed in earlier sections of this article, it is important to reevaluate the impact gay and lesbians have on current employment numbers. Using statistics from the US Bureau of Labor there are 143.6 million Americans currently on payroll across the United States with a 4.7 percent unemployment rate.⁷⁰ In the United States there are approximately 18 million homosexual men and women age 18 or older.⁷¹ Assuming the same unemployment statistics hold true, this would roughly equate to just over 17 million homosexuals in the job market. This equates to roughly 11.9 percent of the US working population.

According to Pfeffer, an increase in one standard deviation, or 16 percent, on emphasis to high performance work principles such as recruiting top talent, appropriate training, and employment security increases shareholder wealth by up to \$41,000 per employee.⁷² Using the rough employee numbers above, this translates to an approximated 14 percent market value premium and roughly \$703.3 billion in shareholder wealth.⁷³ To put this in perspective, that's more than the gross domestic product of Australia.⁷⁴

Additionally, of those companies that devote significant time and energy to assuring the aforementioned high performance workplace principles compared to those that do not, there is a nearly 20 percent greater likelihood of their existence five years after an IPO compared to those organizations that did not focus on the human relations aspect.⁷⁵ Needless to say, not only are these principles necessary to assuring the best return on shareholder investment, but applying them to the homosexual workforce population has a direct impact on the ability of the firm to fulfill its fiduciary and fiscal duties.

A MODEST PROPOSAL

Thus far the proposal has centered on reframing the question away from homosexuality (and every other form of diversity for that matter) and on the most appropriate way of promoting the betterment and focused management of the greater corporation and its duties. The reality of completely dropping homosexuality from a frame of reference in this or any debate that challenges the personal values of the individual in a business setting is unlikely—human nature demands a causality. This proposal recognizes that reality, but sought, up to this point, to prescribe the *best* way to frame the issue for the greatest and most prolific results for the firm. Since, however, homosexuality cannot be completely abandoned from the debate, and since it is defined that managers in the firm have a moral responsibility to do any and everything they can to promote the best interests of the shareholders, meaning a focus on talent acquisition and retention including but not limited to the homosexual working population, the remainder of this discourse seeks to provide a means for the corporation and its constituents to manage homosexuality in the workplace. This proposal focuses on what each party, the employer (corporation) and the employee, should do in the management of homosexuality in the workplace.

The employer has the onus of preparing the organization for the inclusion of diversity and, in this argument, homosexuality, in the workplace. In order to do this, it must first define what it perceives as diversity and the importance of inclusion of these policies as a means of achieving the firm's strategic vision. It is recommended that this not be a solely executive initiative but share the voice of the constituents of the firm. This is easier in small to mid-sized corporations of no more than 150 employees. Once the corporation exceeds that size, middle management should be used as the voice of those in entry-level or subordinate positions.

Upper management should leverage the daily, hands-on perspective of the firm to integrate a solid understanding of what diversity already exists, what is missing as a reflection of the marketplace the corporation serves, and the importance or conflict that such diversity has on the workplace. While many managers will be tempted to confine discussions of diversity to those characteristics covered under federal mandate (*e.g.*, age, race, etc.), it is encouraged that management take a more long-term perspective and include characteristics such as sexual orientation and sexual identification (*e.g.*, transgender, pansexual, etc.). While this may be a difficult topic to broach, it is a topic which will become ever more prevalent as diverse cultures are given a greater platform for exposure, such as media (*e.g.*, Logo Gay Network) and entertainment (*e.g.*, *Brokeback Mountain*). In these discussions, and as the firm defines what it perceives as diversity and the benefits thereof, it may want to investigate and analyze the diversity composition of its

customer base, the cost to the corporation both internally and externally to changing its diversity practices, the cost of losing talent to a competitor, the cost of losing and gaining customers that are diversity-sensitive, and other such factors.

Once the definitions of diversity have been defined, the corporation should prepare the organization to embrace and manage these populations. First, it should be made clear that by valuing and promoting diversity, quotas will not be instituted with regard to hiring. Instead, goals will be set since goals are objectives that can vary according to circumstance and are able to change overtime.⁷⁶ This assures that positions are not created to meet an arbitrary quota or a gay person is hired over a straight person simply to meet this quota even when skills do not match job expectations.

Xerox has led the way in preparing its organization for the responsibilities of diversity management through the utilization of caucuses. These caucuses are groups that represent the diverse interests of the organization by giving a voice to the employee. These groups are created with the sole purpose of advocating diverse interests in the firm such as ethnicity, sexual orientation, gender, and race.⁷⁷ Because of this concerted effort on the part of Xerox, the diversity of the firm's workforce has been maintained even in downsizing since the firm recognizes the importance of diversity.⁷⁸

In addition to giving a voice to diversity, the firm must train its employees to not only manage, but value the benefits of diversity as prescribed in the preparatory stage of driving diversity in the workplace. With regard to this change and sexual orientation, especially homosexuality in the workplace, it is suggested that the firm concentrate on the 60 percent. This thinking stems from the idea that "20% of the people are for you, 20% against you and 60% are persuadable—concentrate on the 60%."⁷⁹ This means the firm must know it cannot persuade or change everyone's viewpoints but must be prepared to handle the tough questions of those who are persuadable. These questions might include issues such as how homosexuality and religion can coexist, and how sexual orientation exists, or has any right to exist, in the workplace. Journalist Mark Kaplan makes an interesting observation on this point. He notes that:

anyone who has kept their sexual orientation a secret at work (usually to preserve their career) can tell you that it is not easy and comes with a price. If people who are heterosexual could imagine trying to hide from their coworkers the fact that they have a spouse and family they could begin to understand the pain that their [gay, lesbian, bisexual and transgender] colleagues experience.⁸⁰

The proactive firm will recognize the cost to the corporation for such inequities and work to make the workplace accessible, safe, and open for all employees.

Then, once the organization is prepared to manage diversity to the best of its ability and has brought diversity into the workplace, it must create a means of assuring that all employees feel safe and have a secure work environment. Safety means a workplace free from discrimination, and security means a workplace where an employee does not fear losing his or her job for who one is. The workplace rather only focuses on what employees do and how they can do it to the best of their ability.

The question then arises, the initial question posed in this investigation: if the company goes through the effort described above does it have a moral responsibility to include these practices in its policy? This proposal offers a resounding, Yes! In such codification it should not be so broadly stated as to infringe upon the rights of others. For instance, a policy that includes sexual orientation should not be so broadly worded that it infringes upon other protected characteristics like gender and religion.⁸¹ Instead, the policy should promote the ideas of diversity and the goal of the firm to protect that ideology to the fullest extent possible within the confines of the law.

Once implemented, however, the process is only beginning. The firm should then prepare a means of evaluation by focusing on the following pillars:⁸²

- Cost reduction from lower turnover and absenteeism;
- Talent acquisition based on those offered positions compared to those that accept positions;
- Creating a workforce that reflects the marketplace a business seeks to serve;
- Increases in creativity with regard to innovation;
- Increased breadth of analytical and problem solving skills from a wider array of perspectives; and
- Improvements in flexibility to adapt to both internal and external environmental changes.

From these evaluative measures the firm can become more responsive and adapt its working practices in areas that lag to assure the highest possible return on this diversity initiative investment.

The onus, however, is not squarely on the shoulders of the employer. The employer has a responsibility to understand the environment in which it works and to adapt itself to that environment as long as it is not compromising its ability to do good and productive work. At the same time, employees also share some responsibility and should consider the following guidelines before entering a position and while working for a firm.⁸³

First the employee should become familiar with the corporation long before he or she signs the dotted line on an employee contract. A company may profess to be diversity oriented and include homosexuality in its corporate policy; however, these policies can only be upheld to the extent that a corporation chooses to do so. Therefore, the potential employee should look for like-minded employees to ask relevant questions before joining, he or she should investigate any charges potentially brought against the company for infractions of discrimination law/policy, and determine the fit of his or her personal goals and expectations with the ability of the firm to provide as such. Especially with regard to sexual orientation, there is no protection beyond those states and communities that have signed anti-discrimination laws. As such, if a corporation does not include or uphold its corporate policy with regard to homosexuality, there is little recourse for discrimination.

In firms that do note sexual orientation as a protected class of diverse employees, a potential employee should use caution with regard to leveraging their sexual orientation as a means of entering the firm. Sexuality should be a part of who they are and to that extent any accomplishments they've made because of this are relevant in the interview process. But the goal of an interview is to place an applicant with the right skills and capabilities in a position that will allow him or her to flourish.

There are also resources that provide individual employees with information about a company's policies regarding sexual orientation. Many third-party organizations take note of companies working towards a more diversity driven workplace environment. For instance, the Human Rights Campaign publishes an annual report card of over 200 corporations regarding their practices with regards to sexual orientation. As consumers have a responsibility to become informed on their purchases, employees have a responsibility to become informed about the companies they want to work with and for.

Benefits of This Proposal

Adopting the suggestions set forth in this proposal does not come without benefit to the corporation. In a recent study it was revealed that most homosexuals become aware of gay-friendly firms and organizations due to word of mouth (45 percent) or gay-specific media (58 percent).⁸⁴ Of this population identifying as gay, seven in ten (70 percent) said they were extremely or very likely to consider a brand that is known to provide equal workplace benefits for all of their employees, including gays and lesbians. Half (51 percent) of gay respondents also report they are extremely or very likely to consider brands that support nonprofits and/or causes that are important to them as homosexual people. While this is not directly correlated to workplace policy and anti-discrimination, the lines can be drawn between a company's treatment of homosexuals and the willingness of the homosexual population to patronize the

corporation. This may seem unimportant until dollars are overlaid onto the equation.

In 2006, the estimated buying power of the roughly 18 million homosexuals in the United States was \$641 billion.⁸⁵ This is comparable to the Asian and African American purchasing power, except for the fact that both of those populations represent nearly twice as many constituents. Essentially this means half the number of people have the same disposable income as two larger populations in the minority segment of America.

Coupling the purchasing power of the gay population with the direct benefit to shareholders with increased focus on high performance workplace initiatives, the total benefit to corporate America is roughly \$1.3 trillion or 8 percent of the US gross domestic product.⁸⁶ These numbers are staggering and will cause employers to take notice and investigate the diversity interests of the firm with regards to employment, including sexual orientation.

CONCLUSION

John Hancock, first president of the US Continental Congress in 1775, once stated, "The greatest ability in business is to get along with others and to influence their actions."⁸⁷ Truly this is at the heart of the debate as to the moral responsibility of the corporation to provide a discrimination-free workplace for homosexual employees. The goal of business is to promote the interests of those who bear risk to assure the future of an organization.

The argument in this discussion should not be whether sexual orientation should be included in anti-discrimination policies across corporate America. The issue is far greater than that and asks the corporation to do everything in its power to serve the interests of the invested hands of the firm. Unfortunately, personal values can trump corporate initiative, often to the detriment of the firm. As such, the progressive and strategically responsive firm will take note of diversity and understand the resulting benefits to the firm. The proactive firm will lead the way in preparing the organization to manage this diversity. The forward-thinking firm will declare this initiative to all shareholders in the business environment. In turn, the firm will attract the best and brightest talent to lead its strategic initiatives and reap the rewards of increased flexibility, reduced costs, customer focus, and myriad other benefits. Only then will business reflect the population it serves, increase the wealth of the shareholders and subsequently the "wealth" of all stakeholders.

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