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Chapter 10: The impact of law firm policies on transgender lawyer retention

By Lisa A. Linsky, Amy S. Beard and Laura S. Olch¹ of McDermott Will & Emery LLP

Introduction

Although 75 per cent of the top 200 law firms in the US have policies barring discrimination based on sexual orientation, fewer than half have policies prohibiting discrimination on the basis of gender identity or expression,² according to a recent report published by the HRC.³ Additionally, while 75 per cent of top firms offer domestic partner benefits, only a miniscule fraction of that number – a mere four per cent – offer any health benefits related to transitioning procedures⁴ for transgender individuals.⁵

As these statistics demonstrate, transgender lawyers and staff still face obstacles to acceptance and equality in the workplace, but there is much law firms can do to create a more welcoming environment, such as updating anti-discrimination policies, extending health benefits to cover transitioning and related medical services, and formalising policies encouraging workplace sensitivity to those who are transitioning or are otherwise gender non-conforming. Not only will non-discrimination policies benefit transgender lawyers and staff, but law firms themselves will profit through improved morale and retention rates.

Obstacles to workplace equality faced by transgender lawyers and staff

Transgender lawyers often experience discrimination and high rates of

unemployment or underemployment.⁶ Several factors account for this: few legal protections against workplace discrimination, misunderstandings about the transitioning process and gender non-conforming individuals, and feelings of discomfort or prejudice toward the transgender employee. “Transgender people are often discriminated against, regardless of their job performance,” says Denise E. Brogan-Kator, managing lawyer and co-founder of Rainbow Law Center, a Michigan firm dedicated to serving the legal needs of the LGBT community.

Brogan-Kator can speak first-hand about discrimination against transgender employees. Brogan, herself a transgender individual, began transitioning from male to female while chief financial officer of a computer hardware and software company. When she felt the transitioning process had reached the point where she should inform her employer, she said, “I told my boss and he was polite, but he did say, ‘I don’t think this is the place for you. I think you need to do this [transition] somewhere else.’”

This experience, along with a previous firing from another company for cross-dressing during her personal time, demonstrated to Brogan-Kator how transgender people are discriminated against notwithstanding that they are vital, contributing employees. “I had a profound belief that my experience was not the way it should be,” she says, referring to losing her jobs for being transgender. “I went to

law school because I believed I could make a difference.”

In addition to open discrimination, transgender, transitioning and other gender non-conforming employees often face bureaucratic difficulties associated with changing one’s name or gender on personnel records, employer uncertainty as to how to address sensitive issues such as restroom or locker room usage, and co-workers who may feel discomfort with or prejudice toward such employees. The gender and name change issue is particularly difficult, says Brogan-Kator, because employer computer systems are large, complex and not always interconnected. This means a name or gender change in one computer system, such as payroll, may not change the information in another system, such as employee insurance benefits, resulting in inconsistent information on the employee within the firm or organisation.

Transgender lawyers also face the problem of being underrepresented statistically. Organisations that collect demographic data – for example, the Law School Admissions Counsel, which collects data on applicants for the Law School Admission Test, or NALP, which collects data from law firms, non-profit organisations, and governmental legal agencies – put lesbians, gays, bisexuals and transgender individuals into one demographic category, ‘LGBT’. “It is not an organizational practice to break the data out further than that,” says James Leipold, executive director of NALP. “The biggest law firms in the biggest cities do a good job giving their lawyers a chance to classify themselves in whatever demographic categories they want, but smaller firms often ‘eyeball’ the situation at their firms, so firms don’t necessarily know who is transgender.”

The business case for welcoming transgender lawyers and staff

Creating an inclusive environment makes good business sense for law firms because it increases morale and productivity, encourages loyalty to the firm and improves the firm’s reputation in the marketplace and the profession. Additionally, implementing non-discrimination policies that protect employees on the basis of gender expression and identity puts the firm ahead of the game legally, as federal non-discrimination legislation that protects transgender employees is pending in Congress, although it has not yet become law.

The more diverse the firm is, the more varied the perspectives, backgrounds and experiences of its lawyers, which, in turn, leads to enhancement of client service and the creation of inclusive firm cultures. “People with diverse backgrounds bring different approaches to leadership and problem solving, generating and sharing ideas, and building relationships, all of which have an impact on the bottom line,” states the Empire State Pride Agenda’s 2009 ‘Best Practices Guide’.⁷ Creating an inclusive environment means that transgender lawyers and staff will feel more welcome and comfortable, which will help increase their productivity. Additionally, inclusive environments attract talented lawyers from a wide array of backgrounds and breed loyalty to the firm, reducing unwanted attrition and the costs of replacing talented professionals.

Welcoming transgender employees also improves a firm’s reputation in the legal and business communities. Law firms must pay attention to their brands and images to attract and retain clients and top talent. One source prospective clients may consult to evaluate a firm’s commitment to diversity is the HRC

Foundation's Corporate Equality Index.

Clients, especially large corporations, who are supportive of transgender employees may be more likely to select law firms which have similar policies of inclusion and equality.

In some jurisdictions, law firms should show their support for transgender lawyers through non-discrimination policies and procedures not just for solid business reasons, but in order to comply with the law. As of early 2009, four countries outside the US,⁸ 13 states within the US⁹ and the District of Columbia¹⁰ have non-discrimination laws which prohibit employment discrimination such as refusing to hire or firing based on gender identity, refusing to refer to transgender employees with their preferred name or pronoun, and forcing transgender employees to comply with the dress code for the employees' birth sex rather than the dress code that matches their gender identity.¹¹

Even where law firms are not obligated by law to establish non-discrimination policies that include transgender and/or gender expression and identity, firms may want to do so in anticipation of changes in the law. Although there is currently no US federal law explicitly protecting transgender employees from discrimination in the workplace, the pending Employment Non-Discrimination Act (ENDA), reintroduced to Congress by US Representative Barney Frank in 2009, if enacted into law, will protect LGBT individuals from employment discrimination. By publicly supporting ENDA and coming into early compliance with it, law firms can position themselves as organisations on the progressive side of cutting-edge legal issues, further improving their reputation among clients and prospective clients, potential new hires and the legal community at large.

Creating a welcoming environment for transgender lawyers and staff

Law firms, particularly large multinational firms, are not always perceived as welcoming or inclusive to diverse lawyers, particularly transgender or gender non-conforming lawyers. Brogan-Kator never worked in a large law firm, and says other transgender lawyers she knows work in small firms or in non-profit public interest and civil rights organisations such as Lambda Legal. "I think that is by choice," she says. "I think they [transgender lawyers] don't apply to the large law firms because there is a sense that we, as transgender people, would not be welcomed."

There is much firms can do to improve their reputation in the LGBT community, from simply expressing support for a transitioning person's process to implementing non-discrimination policies that protect gender expression and identity and healthcare benefits that cover medical expenses associated with transitioning.

Transitioning from one's birth gender to another gender is a deeply personal decision, Brogan-Kator points out. "One thing, first and most important, that firms can do is recognize and honor the individual's choice." A simple expression of support and understanding can do much to reassure a transgender or transitioning employee that his or her job is not at risk for what is ultimately an intensely personal circumstance.

A statement of support to the individual, however, is not enough. "The second thing a firm can do is stand behind the person in some material way," says Brogan-Kator. For example, she says, "To the extent the firm can use a transitioning person's preferred name before it is legally changed, the firm should do so. That would be a powerful show of support." Another way a firm can

show it stands behind the transitioning employee is to have a human resources representative meet with that employee and inquire how the firm can support the employee through the transitioning process, or otherwise make the adjustments easier for him or her.

Firms should remember, however, that the transitioning process is an issue of medical privacy, says Jillian Weiss, principal consultant for Jillian T. Weiss & Associates, a consulting firm that works with organisations on transgender workplace diversity issues. "The same rules apply to any other medical situation," she says. "It's OK to ask how a person is doing, but it is not appropriate to ask about details."

Beyond individual expressions of support for transgender lawyers and staff are firm-wide initiatives that will show support for transgender employees and the transgender community. By adding gender expression and identity as protected categories in firm-wide non-discrimination and diversity policies, the firm tells its lawyers and staff, as well as the public, that employment discrimination against the transgendered will not be tolerated, and this is testament to the depth of the firm's commitment to workplace diversity and inclusion.

Adjusting healthcare benefits to cover medical expenses associated with transitioning is another firm-wide policy change that will make the firm stand out as a welcoming and inclusive community. Offering insurance plans that cover medical expenses associated with transitioning ensures equal healthcare coverage for transgender and non-transgender employees. This change has the potential to improve the firm's reputation not just with its own lawyers and staff, but with clients, prospective clients and prospective job candidates, as well. The HRC Foundation

recently revised its Corporate Equality Index criteria relative to transgender employees; the changes go into effect on the 2012 survey. Under the new criteria, a firm will not receive a 100 per cent rating unless it offers a health plan that (1) covers transgender-specific treatment and (2) affirmatively recognises the World Professional Association for Transgender Health standards of care in determining eligibility. According to the 2007-08 HRC 'The State of the Workplace' report, only eight of the AmLaw 200 law firms had implemented transgender-inclusive health insurance at that time.¹² The new criteria aim to increase these numbers significantly by 2012.

Firms can also show support for transgender and gender non-conforming employees by implementing gender-neutral dress codes. For example, instead of stating that men should wear suits and women dresses or pants suits, dress codes can simply state, "Our office observes a business-attire dress code. Appropriate attire would include business suits, dress slacks, dress skirts, dress shirts, business-appropriate sweaters and blouses."

When amending policies and procedures in order to become a more inclusive environment, law firms, like any other business, are likely to have concerns about the logistics of change. "Companies and firms can have all kinds of questions about how to deal with a transitioning employee," says Weiss. "Issues cover everything from dealing with social security and insurance issues to what to do about bathrooms."

Firms need to be sensitive to the legal implications transitioning carries for transgender employees. For example, says Weiss, the procedure for changing one's name varies widely from jurisdiction to jurisdiction. "At the simplest level, it's as easy as filing a paper with the county clerk,

but even when it is that easy, that is not the same as changing one's gender," she says. "Just because a person has changed their name, that does not mean agencies will recognize that as a gender change, and more effort will have to be involved."

Firms should also develop policies related to bathroom and locker room facilities. "As a person undergoes their transition, even before surgery, using the old bathroom can become problematic for the transgender person and their coworkers," says Brogan-Kator.

Weiss agrees. "For many, surgery is the dividing line on the bathroom issue, which bathroom a person should use, but that isn't satisfactory for a lot of people," she says. Law firms should establish specific policies to follow when an employee is transitioning ('gender transition guidelines') and should recognise that not all transitioning people are immediately ready to use the new bathroom, but neither do all want to wait until after sex reassignment surgery, especially since many transgender people do not undergo surgery.

HRC recommends that firms permit their lawyers and staff to use whichever bathroom and locker room facilities correspond to his or her gender presentation.¹³ Such a policy would allow a transitioning individual to change his/her bathroom use as the individual adjusts his/her gender expression, and would avoid uncomfortable – and possibly illegal – questions about whether a transgender person has undergone surgery.

Weiss notes that, if co-workers are uncomfortable sharing communal bathrooms with transgender employees, it is the co-workers who should change bathrooms, not the transgender employee.

Finally, one very public way a firm can express its support for diversity and the transgender community in particular is to

become involved in *pro bono* activities that support the transgender community. Partnering with groups such as Lambda Legal, Immigration Equality, and Gay & Lesbian Advocates & Defenders on *pro bono* legal matters and making monetary donations to groups such as the Transgender Legal Defense and Education Fund and TrueChild signal to the transgender community and the legal profession as a whole that a firm is a welcoming, inclusive place for transgender and gender non-conforming employees.

Conclusion

Law firms, by adjusting policies and procedures to prohibit discrimination against and express support for transgender or gender non-conforming lawyers and staff, have the opportunity to bolster their reputation in the eyes of the transgender community and the business and legal worlds. Firms should "honor the individual and understand that, when an employee changes his or her gender expression or identity, that does not project anything negative onto the firm," says Brogan-Kator. Welcoming transgender lawyers and staff makes good business and legal sense, but it is also the right thing to do.

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Chapter 11: A case study in diversity: McDermott Will & Emery LLP

By Lisa A. Linsky of McDermott Will & Emery LLP

Introduction

In 2005, during a diversity presentation to summer associates by the chairs of McDermott Will & Emery's Gender and Racial/Ethnic Diversity Committees, the summer associates asked numerous questions about LGBT lawyers and their presence at the firm. From such simple beginnings eventually grew McDermott's LGBT Diversity Committee.

At the 2005 presentation, the summer associates wanted to know if McDermott had openly gay lawyers in its ranks. Were there gay associates with whom the students could speak to gain a better understanding of the firm culture? Were there gay partners with whom the students could speak to learn more about the path to partnership and whether being out in the firm would in any way hinder career advancement? Did the firm participate in *pro bono* activities with LGBT organisations? Questions like these spurred firm leaders to take another look at McDermott's diversity programmes and determine that the firm needed a third diversity committee devoted to specifically to LGBT diversity.

The processes of forming and working with diversity committees will differ, sometimes significantly, from law firm to law firm. The purpose of this case study is to describe how McDermott formed its

LGBT Diversity Committee; provide firms with practical tips for establishing their own effective diversity committees that can address the needs, concerns and questions of LGBT employees; and describe why such initiatives are important for law firms to undertake.

McDermott: Overview and history

McDermott is a premier international law firm with a diversified business practice that has been providing legal services for 75 years. The firm has more than 1,000 lawyers in offices in Boston, Brussels, Chicago, Düsseldorf, Houston, London, Los Angeles, Miami, Milan, Munich, New York, Orange County, Rome, San Diego, Silicon Valley and Washington, DC, as well as a strategic alliance with MWE China Law Offices in Shanghai.¹

The firm has hired and promoted women to the partnership ranks since 1957, and was the second major US law firm to elect a woman to partnership. The firm has a deeply rooted commitment to diversity, inclusion and equality.

McDermott's diversity commitment

McDermott has three diversity committees: Racial and Ethnic Diversity, Gender Diversity, and LGBT Diversity. However, the firm's commitment to diversity, inclusion and equality go far beyond the committees and their membership. In the firm's diversity brochure, 'McDermott Momentum', the firm chair writes:

“Our firm culture values excellence, collegiality and client focus and responsiveness. We are committed to attracting and retaining exceptional talent to our global practice. With this commitment in mind, McDermott has prioritized the development and implementation of strong diversity programs and practices. We have operated under the principle that it is not enough to value diversity; we must ensure that the best policies and practices are in place to create an inclusive, professional environment for the long-term benefit of our colleagues and client relationships.”²

At McDermott, diversity means more than mere differences in gender, race, ethnicity, sexual orientation, and gender expression and identity, and encompasses the depth and breadth of ideas, perspectives and experiences needed to resolve complex problems warranting creative approaches. Indeed, diversity and its companion principles of inclusion and equality are business and cultural imperatives at McDermott, and this message is communicated throughout the firm by its leaders.

Communications regarding the firm’s diversity programmes and accomplishments are regularly announced through memos from the firm chair and chairs of the diversity committees. News about the firm’s diversity initiatives and accomplishments is also discussed at firm meetings, training sessions and other programmes. Diversity committees meet regularly and keep firm management informed of emerging trends, issues and topics of concern to firm employees and clients. McDermott’s management fully supports McDermott’s three diversity committees, and such support is a critical component to the success of diversity programmes in any organisation.

Formation of McDermott’s LGBT Diversity Committee

After the 2005 diversity presentation to McDermott’s summer associates demonstrated the need for an LGBT Diversity Committee, the next task was to find a leader to form the committee and shepherd it through its initial growth. One of the partners on the firm’s Gender Diversity Committee approached me to be this leader. At that time, I was a trial partner in the firm’s New York office; I was also an open lesbian with a long-term domestic partner and child, as my office photo gallery of family members demonstrated.

While I could see that starting the LGBT Diversity Committee was an excellent opportunity to assume a leadership position within the firm and create something that could enhance the firm’s culture, I also saw that such an undertaking meant coming out in an arena much larger than the New York office – the entirety of an international law firm – which was a daunting thought. Furthermore, I knew this was not a task I could do alone: I would need the help and support of many within the firm to create a sustainable committee that would be an active, vibrant part of the firm as a whole. Drawing inspiration from Abraham Lincoln’s words, “Determine that the thing shall be done, and then we shall find the way,” I decided to accept the challenge.

Creation of the committee involved addressing many questions. Where to find committee members? How to encourage and enroll firm leaders and members of management and show their support? How to determine the budget the committee would need, and how to obtain that budget? What action items should be on the initial agenda? All these issues, and more, had to be considered in order to get the fledgling committee off the ground and soaring.

The committee began as a sub-committee under the auspices of the Gender Diversity Committee. Within its first year, the LGBT Diversity Committee became a full-fledged standing diversity committee with a firm-wide reach. Also within its first year, the committee made significant progress in enhancing the firm's culture of inclusion. The committee instituted an annual in-house survey in which LGBT members of the firm are invited to self-identify. The committee also reviewed multiple firm policies and procedures and made numerous suggestions to bring policies and procedures in line with the firm's diversity statement and which set forth McDermott's commitment to diversity, inclusion and equality.

Although the committee is titled LGBT Diversity Committee, membership is not restricted to LGBT individuals; committee members may be LGBT or straight, and there are currently straight and LGBT members of the committee. The overarching mission of the LGBT Diversity Committee is to ensure that the firm welcomes LGBT lawyers and staff, provides equal access to client development activities and mentoring opportunities, approaches work assignments in a fair manner and maintains a zero-tolerance policy for any kind of discrimination and/or harassment.

The LGBT Diversity Committee holds formal meetings by conference call once a month. These meetings provide committee members the opportunity to share information and to discuss best practices related to diversity; current LGBT-related *pro bono* matters; LGBT events and activities occurring locally and nationally; opportunities for community leadership; diversity training; firm policies to be reviewed and revised; and questions and issues raised by firm employees regarding LGBT-related diversity matters. In between formal meetings, I, as chair, regularly

communicate with the other members of the committee about diversity surveys that must be completed at the request of clients and various organisations, public-speaking and writing opportunities, and other firm and community projects.

In addition to the formal LGBT committee, McDermott is home to an LGBT Affinity Group, which consists of LGBT and straight legal and non-legal staff who are interested in keeping abreast of diversity-related news and other developments pertaining to the firm and broader LGBT communities. Members of the affinity group receive frequent announcements via an anonymous e-mail distribution list informing members of LGBT-related news in the mainstream press, local bar association news and announcements, social events, and visits to the firm's various offices by the LGBT Diversity Committee chair.

McDermott saw almost immediate public recognition for its LGBT diversity initiative. In 2006, the first year the committee was operational, McDermott received a 100 per cent score on the HRC Foundation's Corporate Equality Index, one of only 12 law firms in the country to earn that distinction.³ Earning a place on the HRC Foundation's Corporate Equality Index is akin to receiving the 'Good Housekeeping seal of approval' for law firms who seek to attract top legal talent and clients who likewise value diversity.

Creating a diversity committee: Getting started

Structure

Whether an organisation opts for one diversity committee or multiple groups, to address how to best support diverse lawyers and staff is an individual firm decision. Whatever the structure, the diversity committee or committees should include an LGBT component, sub-committee or stand-alone committee to represent this particular

diverse group of lawyers and staff. This will send a message of inclusion to those within the firm, as well as to law students who are prospective summer associates, lateral candidates, clients and potential clients. If the firm chooses to create multiple committees or sub-committees devoted to diversity, it is essential that the leadership of each group communicate with one another to ensure consistent messaging both within and outside the firm and provide additional resources and support for all of the diversity programmes.

Take stock: Implement in-house surveys

As mentioned above, one of the earliest projects undertaken by the McDermott LGBT Diversity Committee was to create an annual survey, circulated to all lawyers and staff, which allows LGBT individuals to self-identify if they choose and allows the committee to gather data about LGBT individuals at the firm. The survey also enables the firm to report, as accurately as possible, statistics about LGBT associates and partners to requesting entities such as NALP or clients. Participation in the survey is optional, and while LGBT lawyers and staff are encouraged to self-identify, they may nonetheless complete the survey anonymously.

One of the first tasks of a newly-formed LGBT diversity committee should be to institute such a survey, if the firm does not already have one. The survey should ask lawyers and staff to complete the short survey and indicate their sexual orientation and gender identity (lesbian, gay, bisexual, transgender, heterosexual or other) and:

- Whether they hold leadership positions in LGBT organisations;
- If they are lawyers, whether they are willing to meet with LGBT candidates who request to speak with LGBT lawyers;
- Whether they wish to be added to

an affinity group, if the firm has or is forming one;

- Whether they are interested in working on LGBT-related *pro bono* matters;
- Whether they are interested in being considered for a position on the committee; and
- Any ideas for initiatives or other projects that the committee might undertake.

Update the equal employment opportunity policy

Another early task for burgeoning LGBT diversity committees is to examine their firms' equal employment opportunity policies to ensure that sexual orientation and gender expression and identity are protected categories.

McDermott's employment policy had included sexual orientation as a protected classification prior to the creation of the committee. When the committee was first formed and conducted a comprehensive review of all of the firm's policies, the members realised that gender expression and identity had not been included in the employment policy. The committee members understood that, if the committee was to help create a workplace that was based on inclusion and equality, the firm had to extend protection from discrimination to gender non-conforming employees, regardless of sexual orientation. Firm management was open to discussing these changes and agreed to revise the employment policy to be more inclusive.

Newly-formed LGBT diversity committees need to understand that updating firm equal employment opportunity policies to add sexual orientation, and gender expression and gender identity as protected categories, will likely require the committee to educate members of the firm on the distinctions between sexual orientation and gender

expression and identity. Revising these policies, however, will be consistent with an overall commitment to inclusion and equality at the firm.

Review and update the firm's diversity statement

New LGBT diversity committees should review diversity statements posted on their firms' websites and in marketing brochures and suggest revisions in order to ensure that sexual orientation and gender expression and identity are included, and that all firm messages regarding LGBT diversity are consistent.

McDermott's website has an entire section devoted to diversity at the firm. Through various links provided on the Diversity Overview page,⁴ readers can learn about the firm's commitment to diversity, read descriptions of the three diversity committees, view contact information for committee members and read about diversity-related leadership positions held by lawyers within the firm and in outside organisations, as well as McDermott's diversity awards, recognitions and statistics.

Keeping the momentum going: Projects for established LGBT diversity committees

The work of LGBT diversity committees does not stop – or even slow – once the committees are up and running. There are a variety of programmes and initiatives LGBT diversity committees should undertake once the committees are established and initial projects are completed.

Offer diversity training programmes

A primary task of LGBT diversity committees – whether newly-formed or long-established – should be to offer diversity training and related programmes. These programmes are another way

to educate members of the firm about distinctions between sexual orientation, gender expression and gender identity and to discuss the firm's equal employment opportunity and other workplace policies. In addition to implementing diversity training, LGBT diversity committees can also encourage their firms to include sexual orientation and gender expression and identity in their anti-harassment policies and training sessions.

As noted in the second edition of the *Pride in My Workplace*⁵ 'Best Practices Guide', "One way to create an inclusive work environment in your organization is to offer diversity trainings that provide comprehensive education to employees... including sexual orientation and gender expression and identity... Diversity training should, at a minimum, address inclusiveness through the lens of your organization's [equal employment opportunity] policy and local and state law."⁶ LGBT diversity committees should strive to implement these best practices at their firms.

Because of the efforts of McDermott's LGBT Diversity Committee to include gender expression and identity in the firm's equal employment opportunity policy and diversity trainings, McDermott has been featured in several publications, including the second edition of the *Pride in My Workplace* 'Best Practices Guide' and the Empire State Pride Agenda's 'Transgender Issues in the Workplace: Lessons From Across New York State'.⁷

Update dress codes and provide gender transition guidelines

LGBT diversity committees should review their firms' dress codes and recommend changes wherever necessary in order to ensure that the dress codes are gender-neutral throughout the firm.

Additionally, LGBT diversity committees should recommend that their firms implement gender transition guidelines to address issues that may arise during the gender transitioning process for a transgender lawyer or staff member and to delineate workplace policies and procedures to ensure the maximum amount of support for and sensitivity toward transitioning individuals.

At McDermott, the LGBT Diversity Committee recommended, and management implemented, gender transition guidelines to provide such advice. McDermott's guidelines include recommendations for employees, supervisors and human resource personnel on how to provide a welcoming and supportive environment for employees undergoing gender transitions.

Update new employee data collection forms

LGBT diversity committees can ensure that a message of workplace inclusion and equality is sent to new lawyers and staff from their first day on the job by reviewing and suggesting revisions for new employee data collection and other human resources forms. For example, at McDermott, the LGBT Diversity Committee reviewed and revised the firm's data collection forms to make certain that new employees have the opportunity to identify their sexual orientation and gender identity if they chose to do so. Additionally, on forms requesting information about marital status, 'domestic partner' is now one of the options, along with spaces for new employees to indicate the names of their partners, spouses and children.

Recommend offering domestic partner benefits

Another project ripe for LGBT diversity committees' involvement is reviewing and

updating healthcare and other benefits policies in order to ensure that LGBT employees and their spouses or partners are offered the same healthcare and other benefits offered to heterosexual employees and their spouses.

McDermott had been offering health, vision and dental benefits to same-sex domestic partners since 2002, but when the LGBT Diversity Committee first reviewed the same-sex domestic partner benefits policies, the committee recommended a number of revisions and updates to the policies to ensure that the benefits offered to same-sex domestic partners were equal to those offered to spouses in opposite-sex relationships. Because of the recommendations of the LGBT Diversity Committee, LGBT employees and their same-sex domestic partners and spouses receive the same additional benefits as all other employees in areas such as:

- Life insurance;
- Continued healthcare coverage to their same-sex spouses or domestic partners upon termination of the LGBT employees' coverage in the firm health plan, similar to that provided to heterosexual employees and their opposite-sex spouses under the US Consolidated Omnibus Reconciliation Act of 1985 (COBRA);
- Leave similar to that offered employees under the Family Medical Leave Act to permit an LGBT employee to take paid time off from work to tend to an ill same-sex domestic partner or child of his/her domestic partner;
- Bereavement leave for LGBT employees;
- Adoption leave;
- Employee discounts; and
- Employee assistance programmes.

Participate in recruiting events

Participation at career conferences and job fairs for top LGBT legal talent is another important way the members of a diversity committee can assist the firm in building a diverse workforce which will ultimately enhance firm culture. Firm members who attend these recruiting events should be firm leaders who can answer difficult questions and provide information on the firm's programmes and environment, particularly as they affect diverse lawyers.

Every fall, two partners from McDermott participate in the National LGBT Bar Association's annual career fair and conference (Lavender Law), which hundreds of LGBT law students and lateral candidates attend. Additionally, the numbers of legal employers attending the career fair increases steadily each year because the event provides a cost-effective way to meet and interview a large number of diverse candidates and to showcase firms and their diversity programmes.

Lavender Law is only one example of the many ways LGBT diversity committees can assist their firms' recruiting efforts. Members of LGBT diversity committees can also meet top LGBT legal talent by hosting 'meet and greet' events at the firm; attending bar association job fairs such as the one sponsored by the Lesbian, Gay, Bisexual, Transgender Law Association of Greater New York and connecting with LGBT student groups at law schools from which the firm recruits.

Participate in summer associate diversity presentations

Diversity presentations to summer associates are valuable opportunities to showcase a firm's diversity achievements and committees to summer associates who, if successfully

recruited, form the next generation of a firm's associate ranks.

As chair of McDermott's LGBT Diversity Committee, I send a welcome e-mail to the summer class early each summer to introduce myself and invite the students to join the LGBT Affinity Group. I often receive responses from several summer associates interested in joining the affinity group or working on an LGBT-related *pro bono* project. The firm's three diversity committees host a diversity presentation as part of McDermott's summer associate training programme. All of these measures help build morale and a sense of community with the summer associates, some of whom have indicated that these were the deciding factors for accepting offers to join the firm.

The importance of firm management support

An LGBT diversity committee needs the support of firm management in order to achieve its goals of creating and maintaining an environment of inclusion and equality. According to Rosabeth Moss Kanter, a professor at Harvard Business School who has written extensively on topics such as business and management, including innovative leadership, "Leaders are more powerful role models when they learn than when they teach." Firm leaders who resist learning about diversity, inclusion and equality, or who are not willing to support these values, doom both the diversity programme and the organisation to failure.

In addition to management's willingness to engage in honest and open conversation regarding a firm's diversity commitments and programmes, firm leaders must put their money where their mouths are. Financial support is a crucial element to a successful and effective diversity programme. Funding a firm's diversity events, supporting LGBT-

related organisations with whom the firm partners on *pro bono* matters, and providing other firm resources to support diversity programmes are actions that help to establish the credibility of the firm's diversity programmes. Without such support, employees and potential hires and clients quickly realise that the firm's commitment to diversity, inclusion and equality is an empty promise, and consequential business opportunities will be lost.

At McDermott, the firm's chair was supportive of the LGBT Diversity Committee from the start. He sent firm-wide memos announcing the formation of the LGBT Diversity Committee, explaining its importance and expressing the firm's continual commitment to workplace diversity. Our firm chair funded a committee budget and attended LGBT Diversity Committee events held at associate and summer associate retreats. Our chair has publicly supported the work the committee has done to enhance the culture at the firm. This support from the chair, as well as from the firm's executive and management committees, sends a compelling message to partners, associates and staff that we are all accountable for creating and maintaining the values of inclusion and equality that our organisation and clients expect.

It is likewise important that those who are appointed by firm management as the chairs of LGBT and other diversity committees be strong, vocal leaders. Creating and maintaining effective diversity committees involves an extensive amount of hard work, and leaders must be willing to invest the time and energy necessary to see their projects succeed.

Using diversity committees to showcase your firm's successes

When successes occur, they should be

publicised. At McDermott, regular diversity announcements are circulated throughout the firm to inform lawyers and staff of awards and recognition the firm or individual lawyers receive, case victories and public speaking events or symposia in which firm lawyers participate. The firm also distributes press releases to LGBT and mainstream media to publicise diversity-related firm victories and announcements such as appointments of McDermott lawyers to LGBT organisations' boards of directors. McDermott's website is also frequently updated to include these diversity-related announcements.

McDermott has been recognised by a number of organisations for the work we have done to promote LGBT diversity within the legal profession and on behalf of LGBT organisations. To name just a few examples, the firm has received a 100 per cent rating on the HRC Foundation's Corporate Equality Index every year since 2006, and HRC has also named McDermott a 'Best Place to Work for LGBT Employees'; the firm is a recipient of the 'Commitment to Diversity Award' presented by the Center for Halsted, Equality Illinois and Parents, Families & Friends of Lesbians and Gays; and in 2009, the firm received the 'Safe Haven Award', presented by Immigration Equality, for the firm's overall excellence in representing LGBT asylum-seekers.

The visibility of the committee – both within the firm and in the outside world – reinforces the authenticity of the firm's commitment and raises the firm's profile in meaningful ways. Such visibility often leads to various opportunities, including partnering with LGBT organisations on high-profile civil rights cases, participating on boards of LGBT community and legal organisations and attracting top talent and clients.

Conclusion

At McDermott, we recognise that great leaders inspire others and enroll them in the organisation's mission and vision. Great leaders understand and advocate for excellence and know that this is only achieved in an environment where diverse opinions from diverse people can flourish. McDermott's leaders have continually recognised that diversity, inclusion and equality are cornerstones of our business, intersect with every aspect of our operation and are critical to our strategic vision. Our diversity committees are part of this vision and enable the firm to continue to excel.

Law firms that do not yet have diversity committees, or lack an LGBT diversity committee, should recognise that these committees, chaired by respected firm leaders and supported by firm management, are effective tools for attracting, advancing and retaining diverse lawyers and creating cultures where respect, collaboration and integrity are paramount. LGBT diversity committees and their members, in particular, are agents of change: they keep firm management and co-workers educated about the issues that matter to LGBT employees, conduct workplace awareness trainings and participate in the broader legal and LGBT communities. Firms that do not yet have an LGBT diversity committee should take the first step and commit to creating such a group. With management support, dynamic leadership and clearly defined goals, positive culture change will surely follow.

References

1. See <http://www.mwe.com> for a full description of McDermott's practice areas.
2. Freishtat, H., 'Chairman's Message', 'McDermott Momentum: Diversity Commitment, Leadership and Progress',

- p1, available at http://www.mwe.com/info/diversity/momentum_brochure.pdf.
3. Human Rights Campaign Foundation, 'Corporate Equality Index 2006', pp39-40, available at <http://www.hrc.org/documents/HRCCorporateEqualityIndex2006.pdf>
4. See <http://www.mwe.com/index.cfm/fuseaction/diversity.home/index.cfm>.
5. Pride in My Workplace is a programme of the Empire State Pride Agenda Foundation, a non-partisan, non-profit research, education and advocacy organisation. The mission of Pride in My Workplace "is to encourage workplaces in all sectors of the workforce throughout the State of New York to be free of discrimination and to affirm the presence and contributions of their lesbian, gay, bisexual and transgender employees. The program seeks to develop relationships with employers and build strong alliances with business leaders to further the goal achieving equality and justice for all LGBT New Yorkers." See www.prideagenda.org.
6. Empire State Pride Agenda, 'Pride in My Workplace Best Practices Guide for New York State Businesses to Support Lesbian, Gay, Bisexual and Transgender Employees', 2nd edition, p17, available at <http://www.prideagenda.org/Portals/0/pdfs/espabpg.pdf>.
7. *Ibid*, p2.