



# The Costly Business of Discrimination

The Economic Costs of Discrimination and the Financial Benefits of Gay and Transgender Equality in the Workplace

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Crosby Burns March 2012

Center for American Progress



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# Introduction and summary

There's a price to be paid for workplace discrimination—\$64 billion. That amount represents the annual estimated cost of losing and replacing more than 2 million American workers who leave their jobs each year due to unfairness and discrimination.<sup>1</sup>

A significant number of those workers are gay<sup>2</sup> and transgender individuals who have been treated unfairly simply because of their sexual orientation and gender identity. According to a recent survey, fully 42 percent of gay individuals say they have experienced some form of employment discrimination at some point in their lives. Transgender workers face even higher rates of workplace discrimination and harassment. An astonishing 90 percent of transgender individuals report experiencing some form of harassment, mistreatment, or discrimination on the job, or taking actions such as hiding who they are to avoid it. This includes 47 percent who said they had experienced an adverse job outcome such as being fired, denied employment, or not receiving a deserved promotion because of their gender identity.<sup>3</sup>

Unfortunately it remains perfectly legal in a majority of states to fire someone because they are gay or transgender. Only 21 states and the District of Columbia have outlawed employment discrimination on the basis of sexual orientation, and only 16 states and the District of Columbia have done so on the basis of gender identity. Congress must pass the Employment Non-Discrimination Act, or ENDA, to provide gay and transgender workers uniform and comprehensive employment protections nationwide.

Until then far too many gay and transgender workers enter into the ranks of the unemployed at a time when all families are struggling to stay afloat. But discrimination is not only a problem for gay and transgender workers. Workplace discrimination also imposes significant financial harm on businesses, introducing inefficiencies and costs that cut into profits and undermine businesses' bottom line.

Businesses that discriminate based on a host of job-irrelevant characteristics, including race, ethnicity, gender, age, disability, and sexual orientation and gender identity put themselves at a competitive disadvantage compared to businesses that evaluate individuals based solely on their qualifications and capacity to contribute.

Considering the high rates of discrimination facing the gay and transgender workforce today, discrimination based on sexual orientation and gender identity represents a real threat to the profitability and financial health of businesses large and small throughout the United States.

Specifically discrimination against employees based on their sexual orientation and gender identity negatively impacts the economic performance of businesses in the following ways:

- **Recruitment:** In the business community the new reality is one that puts a premium on talented labor. Consequently, American businesses must make hiring decisions based solely on a candidate's skills and abilities that directly relate to performance on the job if they are to outperform the competition. When employers hire individuals based on job-irrelevant characteristics such as sexual orientation and gender identity, businesses are left with a substandard workforce that diminishes their ability to generate healthy profits.
- **Retention:** Retaining employees is equally important to a company's financial strength. Discrimination, however, forces otherwise qualified gay and transgender employees out of a job and into the ranks of the unemployed. This introduces numerous turnover-related costs since employers must then find, hire, and retrain employees to replace those who have left due to workplace discrimination. This takes significant amounts of time, money, and resources that could have instead been spent on primary business operations. According to a recent study, to replace a departing employee costs somewhere between \$5,000 and \$10,000 for an hourly worker, and between \$75,000 and \$211,000 for an executive making \$100,000 a year.<sup>4</sup>
- **Job performance and productivity:** Sexual orientation and gender identity discrimination in the workplace needlessly compromise maximum labor productivity and workforce output. Discrimination and hostility in the workplace prevent employees from performing their core functions on the job. Moreover, it introduces unnecessary costs by increasing absenteeism, lowering productivity, and fostering a less motivated, less entrepreneurial, and less committed workforce.



Recruitment



Retention



Job performance and productivity

- **Marketing to consumers:** Discrimination can be costly not only in terms of labor supply but also in terms of consumer demand. When companies discriminate and allow unfairness to go unchecked in the workplace, consumers increasingly react by actively choosing to do business elsewhere. This is certainly true of gay and transgender consumers who are especially responsive to corporate social responsibility. Companies simply cannot afford to lose a share of this market that wields a cumulative spending power of nearly \$1 trillion.



Marketing to consumers

- **Litigation:** Workplace discrimination exposes businesses to potentially costly lawsuits. Allowing discrimination against gay and transgender employees can be especially harmful in states that have outlawed gay and transgender workplace discrimination. Businesses, however, are also increasingly liable for discrimination suits even in states that have not outlawed gay and transgender discrimination, making discrimination economically unwise for companies in all 50 states. In 2010 the top 10 private plaintiff employment discrimination lawsuits cost firms more than \$346 million.<sup>5</sup>



Litigation

Given the substantial costs associated with discrimination, Congress and other federal policymakers should take swift action to help combat workplace discrimination against gay and transgender workers. Doing so would help remove inefficiencies in our recovering economy by making sure that otherwise qualified employees are not unnecessarily forced into unemployment based on characteristics completely divorced from their job performance.

But absent federal policy on workplace protections, employers seeking to enhance their financial standing and gain a crucial advantage over the competition can and should take the commonsense steps necessary to ensure a workplace free of discrimination. To do so employers should institute a series of internal human resource policies that prohibit discrimination and harassment against gay and transgender employees. Businesses will realize significant cost savings when they implement and enforce these policies.

In fact companies that don't protect and support gay and transgender workers are increasingly out of step with most of corporate America. Fully 85 percent of Fortune 500 companies have nondiscrimination policies that include sexual orientation, and 49 percent include gender identity. Higher up on the Fortune ladder, 96 percent of Fortune 50 companies have nondiscrimination policies that include sexual orientation, and 74 percent include gender identity.

Employers, however, can and should do more than institute inclusive nondiscrimination policies to realize the significant financial benefits of a gay- and transgender-friendly workplace. Employers should also take proactive steps to promote a positive and inclusive workplace for all of their employees, which, as we detail later in this report, will bring a substantial amount of cash into company coffers. In addition to nondiscrimination policies, employers can and should offer equal health insurance benefits for employees with same-sex partners. Employers can and should also offer health insurance that provides transgender employees the medically necessary care they require. By actively implementing a host of workplace policies such as these—most at zero or negligible cost—employers will reap the significant financial rewards of a qualified, productive, and talented workforce.

Absent these policies, however, employment discrimination will continue to weaken firm performance, productivity, and profits. Inefficient hiring and firing practices will result in a substandard workforce. Hostility on the job will depress overall workforce output. Unfairness can push away large and attractive consumers in the marketplace. And litigation can require significant time, money, and resources that could have been otherwise directed to primary business operations.

In today's economic climate, discrimination is an unnecessary and costly distraction. Businesses simply cannot afford to discriminate against gay and transgender individuals while simultaneously outperforming the competition. America's economic crisis is aggravated when employers allow personal prejudice to trump their businesses' financial interests. That's why businesses should take the commonsense steps necessary to ensure that all employees are judged based on their capabilities and skills, not on characteristics irrelevant to job performance. Leveling the playing field for gay and transgender employees makes businesses more competitive, more profitable, and is ultimately the right thing to do.

To more thoroughly examine this issue of workplace discrimination aimed at gay and transgender Americans, as well as offer recommendations and solutions that are both employee and employer friendly, we have broken this paper into the following broad sections.

First, we detail how workplace discrimination against gay and transgender employees is economically unwise in terms of recruitment, retention, job performance and productivity, consumer marketing, and litigation.

In the second section, we look at the gamut of workplace policies that level the playing field for gay and transgender employees and how businesses small and large agree that implementing and maintaining these policies makes good business sense.

Lastly, we look at best practices and how businesses can leverage the aforementioned gay and transgender workplace policies to support a more qualified, productive, and profitable workforce.



# The economics of discrimination

Discrimination is toxic to profit margins. Every year unfairness on the job wastes billions of dollars by forcing otherwise qualified individuals out of the workplace, suppressing overall job performance, and closing businesses off to lucrative consumer markets.

Discrimination costs businesses cold hard cash, and it can manifest in the workplace at all levels of employment in a variety of forms. Employment discrimination can occur based on a host of characteristics that are completely divorced from an employee's performance on the job. These characteristics include an individual's race, color, ethnicity, sex, gender, age, disability, national origin, religion, veteran's status, or pregnancy status. Discrimination can even occur based on an employee's genetic information such as choosing not to hire someone because his or her family has a history of breast cancer.

Nobody is immune from discrimination, and that is especially true for gay and transgender employees in the American workforce. Fully 42 percent of gay workers say they have experienced some form of employment discrimination at some point in their lives. Transgender workers face even higher rates of workplace discrimination and harassment—an astonishing 90 percent of transgender individuals report experiencing some form of harassment, mistreatment, or discrimination on the job, or taking actions such as hiding who they are to avoid it. This includes 47 percent who said they had experienced an adverse job outcome such as being fired, denied employment, or not receiving a deserved promotion because of their gender identity.<sup>7</sup>

Moreover, gay and transgender people are perhaps the largest demographic of Americans to lack comprehensive legal protections that shield them from discrimination on the job. Without legal recourse, discrimination continues to be a real and present problem for gay and transgender workers, forcing many into the ranks of the unemployed and contributing to the socioeconomic disparities facing this community.

“Economic theory implies that employers who discriminate are at a competitive disadvantage relative to firms that follow a less discriminatory policy.”<sup>6</sup>



**DELL INC.**

“...we’ll continue our efforts advocating for gay, lesbian, bisexual, and transgender equality. It’s part of our global diversity efforts, which aren’t just corporate goals, rather they are a critical component of our leadership and business success.”

Gil Casellas, vice president of corporate responsibility

TB DPB GI SO

Discrimination not only inflicts significant financial pain on victims and their families, but it also significantly detracts from a business’s bottom line. (See “Discrimination and baseball—A case study” in sidebar below.) While businesses are increasingly placing a premium on recruiting the best and the brightest talent, firms that discriminate based on sexual orientation and gender identity will make inefficient hiring and firing decisions that result in a sub-standard workforce. Discrimination and hostile work environments also force gay and transgender people out of jobs, introducing a host of turnover-related expenses that could have been directed toward primary business expenses. Discrimination suppresses productivity and job performance, exposes firms to costly litigation, and closes firms off from new and lucrative consumer markets.

In short, discrimination is a costly business.

**KEY:**

- SO** Sexual orientation nondiscrimination policies
- GI** Gender identity nondiscrimination policies
- DPB** Domestic partner benefits
- TB** Transgender inclusive health benefits

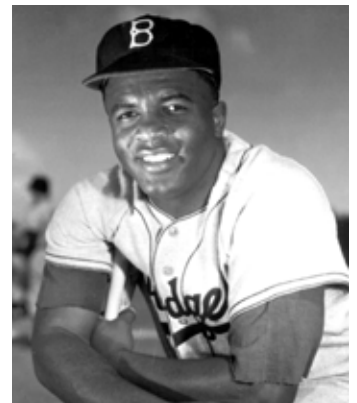
**Discrimination and baseball**

**A case study**

In 1974 economists James Gwartney and Charles Haworth investigated discrimination and its impact on firms’ profits and performance. But instead of looking at traditional “firms” such as American manufacturers and service industries, they looked to America’s favorite pastime: baseball.<sup>8</sup>

Although Jackie Robinson broke Major League Baseball’s color line in 1947, the sport was all too often racially segregated through the late 1950s. From

[continued on next page](#)



Brooklyn Dodger infielder Jackie Robinson poses in May 1952. (AP Photo)

1947 through 1956—the period examined by Gwartney and Haworth in their study—many teams were all white and explicitly excluded black players from joining their ranks. Yet other teams did not segregate on the basis of race, and instead integrated black players with white players. This segregation-integration dichotomy provided the two economists with a natural experiment to evaluate what role discrimination played in the world of baseball and beyond.

What did they find? Gwartney and Haworth’s study revealed that teams that chose not to discriminate gained a competitive advantage over those teams that chose to segregate on the basis of color. “Low-discriminating” teams were able to acquire higher-quality players, had higher attendance at their games, and won more games than “high-discriminating” teams.

Rather than judge players by the color of their skin, low-discriminating teams judged players on how well they played baseball. In doing so, integrated teams were able to assemble the most skilled group of baseball players available, maximizing their teams’ potential for athletic and economic success.

What was true for baseball in the 1940s and ‘50s rings true for businesses in today’s global economy. Employers that allow discrimination to go unchecked put themselves at a competitive disadvantage to employers that value workers based solely on their job performance. Discrimination is a toxic inefficiency that introduces unnecessary costs that ultimately weakens a company’s bottom line. This is true whether workplace unfairness occurs based on someone’s race, gender, age, sexual orientation, or gender identity.



Employment discrimination cripples employers’ ability to recruit talent

Discriminatory businesses put themselves at a competitive disadvantage compared to businesses that value equal opportunity and inclusion in the workplace. This is because discrimination excludes qualified employees who can contribute to their bottom line. Even in our recovering economy, businesses in certain sectors are experiencing significant labor shortages and are struggling to attract and recruit high-caliber employees. This is true in both traditionally blue-collar labor markets such as farming, mining, and shale drilling, and in traditionally white-collar labor markets such as accounting, technology, engineering, and marketing.<sup>9</sup>



### GOLDMAN SACHS GROUP, INC.

“We strive for excellence. To achieve it we must have the best people, and the best people are drawn from the broadest pool of applicants. The people we need can be found only by looking across the full spectrum of gender, ethnicity, national origin, sexual orientation, [and] gender identity.”

[Diversity and inclusion statement](#)



Businesses across the economic spectrum must therefore compete for qualified and skilled labor to strengthen their competitiveness. To attract an optimal workforce, employers must ensure they are hiring from the largest possible pool of qualified labor in their industry. Discrimination, however, will unnecessarily limit the pool of potential candidates for employment by excluding some based on job-irrelevant factors such as sexual orientation and gender identity. When this happens businesses unnecessarily preclude themselves from finding the best and brightest employees.

In hiring and interviewing, discrimination similarly introduces inefficiencies by asking hiring managers to evaluate candidates on nonwork-related characteristics. When this occurs, less qualified individuals are hired, resulting in a suboptimal workforce. Hiring a less qualified employee, for example, simply because he or she is straight means a company will not realize the higher returns it would have had if it had hired a more qualified individual who happened to be gay. The fact that hiring one high-performing worker has the equivalent worth of hiring three mediocre workers underscores that making the wrong hiring decision can cost companies serious cash.<sup>10</sup>

Discrimination can also adversely impact recruitment practices when companies discriminate against their existing employees. Understandably victims of employment discrimination will discourage others from seeking employment with the offending employer. The Level Playing Institute found that one in four individuals who experienced unfairness on the job say their experience strongly discourages them from recommending their employer to other potential employees.<sup>11</sup>

Further, if a company’s discriminatory behavior becomes widely publicized, many fair-minded job seekers—gay or straight, transgender or not—will likely choose not to submit an application for employment with that company. In fact they would very likely apply with a competitor.



**One in four** individuals who experienced unfairness on the job say their experience strongly discourages them from recommending their employer to other potential employees.



Employee discrimination decreases retention rates and introduces turnover-related costs

Retaining existing employees is crucial for developing a capable, efficient, and profit-maximizing workforce. Failing to retain qualified employees, on the other hand, introduces unnecessary turnover-related costs that could have been otherwise directed toward primary business operations.

Employment discrimination results in higher turnover rates by either forcing out employees based on nonwork-related characteristics or by creating a hostile work climate that compels those employees to leave on their own. Unnecessary employee turnover forces employers to spend a significant amount of money recruiting, staffing, and training employees to replace the departing employee. Specific costs include hiring temporary help, advertising costs to announce job openings, background checks, reference checks, drug testing, cost of overtime pay, relocation costs, and salary increases to attract new talent. For highly skilled employees and high-level management, severance pay and signing bonuses can also contribute to high turnover costs.

Turnover costs that result from employment discrimination are significant. According to Peter Hom, professor of management at Arizona State University’s S.P. Carey School of Business, the costs of replacing a departing employee were somewhere between 93 percent and 200 percent of the departing employee’s salary.<sup>12</sup> These estimates comport with one study that calculated the recruiting and staffing costs associated with replacing a departing employee somewhere between \$5,000 and \$10,000 for an hourly worker, and between \$75,000 and \$211,000 for an executive who makes an annual salary of \$100,000.<sup>13</sup> These estimates indicate that turnover-related costs have increased over the past decade with our economy shifting more toward industries that require highly skilled workers.

Discrimination against gay and transgender workers certainly contributes to these turnover-related costs. Due to discriminatory work environments, gay and transgender employees experience higher-than-average turnover rates. Gay men and women, for example, leave their employers due to workplace unfairness at twice the rate of straight white males.<sup>14</sup> The failure to adequately retain gay and transgender employees results in substantial retention-related costs for businesses across the country.



**JOHNSON & JOHNSON**

“We believe that attracting, developing and retaining a base of employees that reflects the diversity of our customers is essential to our success.”

[Our People & Diversity](#)



**Turnover-related costs**



**Hourly worker:**  
Costs between **\$5,000 and \$10,000** to replace



**Executive making \$100,000 salary per year:**  
Costs between **\$75,000 and \$211,000** to replace

Companies that fail to retain qualified employees will also lose on the investments they have made in the departing employee. Discrimination drives out valuable human resources possessing valuable organizational and operational knowledge. Training and developing new employees to attain the same level of knowledge and skills will take a significant amount of time and money on behalf of the employer. Moreover, turnover due to discrimination will deal a double blow should a competitor hire the departing employee and capitalize on his or her skills and knowledge of the industry—skills and knowledge in which the discriminatory employer had invested. (see “IBM—A Case Study”)

## IBM

### A case study

For some companies the failure to retain gay and transgender employees goes far beyond the costs associated with high turnover. IBM, for example, learned the hard way that forcing people out of the job based on their gender identity can cost millions of dollars in unrealized profits:

*Lynn Conway underwent sex-reassignment surgery in 1968 and was fired by IBM for being transsexual. Before her termination, Conway had invented a method by which computer processors make multiple calculations simultaneously and dynamically, which consequently led to the creation of supercomputers that can take enormous amounts of data and compile them to look for patterns. In the 1970s Conway went on to work for the Memorex Corp. at the Xerox Palo Alto Research Center, where her innovations influenced chip design worldwide. Conway has since won many awards and high honors, including election as a member of the National Academy of Engineering, the highest professional recognition an engineer can receive. Conway is currently a professor and associate dean of the College of Engineering at the University of Michigan.<sup>15</sup>*

IBM inexplicably fired Conway based on her gender identity despite the fact that she was a highly skilled employee in a technologically complex sector of the economy. Replacing Conway required IBM to invest treasured company resources into finding, hiring, and training an adequate replacement. But more importantly, IBM lost significant profits by forcing out an employee who would revolutionize an entire industry with her innovations. IBM now includes gender identity in its nondiscrimination policy and is known as a leader in fostering a welcoming and inviting workplace for gay and transgender employees:

*[IBM] ensures that people who are gay, lesbian, bisexual or transgender feel safe, welcomed and valued within the global walls of our business. Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by [gay and transgender] IBMers accrue directly to our bottom line and ensure the success of our business. — Ted Childs, vice president, Global Workforce Diversity<sup>16</sup>*

Further, a company that gains a reputation for workplace discrimination will drive away the growing number of individuals in the labor market who value fairness on the job and a positive workplace climate. When it comes to equality in the

workplace, 8 in 10 straight and nontransgender adults agree or strongly agree that how an employee does his or her job should be the standard for judging an employee, not their sexual orientation.<sup>17</sup>

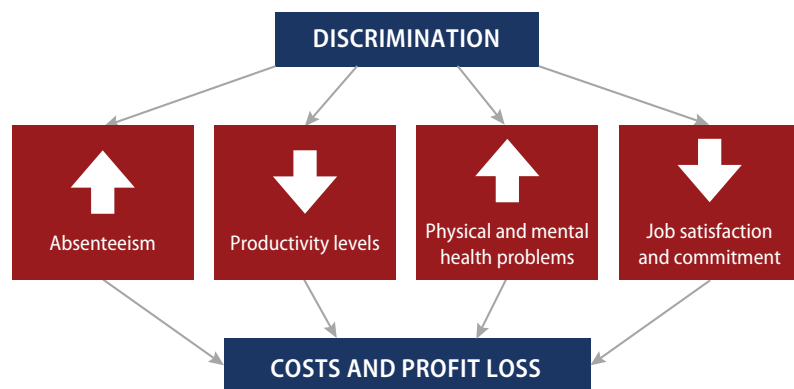
Given this support, large numbers of individuals in the workforce would not be pleased to hear that their current or prospective employer discriminates against gay or transgender individuals. A significant portion of the workforce would look down upon a workplace where coworkers make gay jokes around the water cooler; where transgender coworkers experience harassment from their colleagues; or where individuals are denied promotions simply because they are gay. Some of these fair-minded employees will reevaluate their position with their current employer, and some will leave to go to work for a competitor, leaving their previous employer with a costly vacancy that must be filled.



Employee discrimination stifles job performance and productivity

Employment discrimination is economically unwise even if it never results in the loss of a skilled worker. Employees who work for discriminatory employers are unable to fully focus their energy on performing their core responsibilities on the job. Employees who do not feel valued or fear discrimination in the workplace experience a host of negative job attributes that adversely impact their job performance. Employees who fear discrimination exhibit higher rates of absenteeism,<sup>18</sup> are less committed to their current employer,<sup>19</sup> receive fewer promotions,<sup>20</sup> and report more physical and mental health problems than those who were less fearful of discrimination.<sup>21</sup>

### Discrimination stifles job performance



# J.P.Morgan

JPMORGAN CHASE & CO.

“We have a strong commitment to diversity, to inclusion, to meritocracy. Ours is a service business, so it’s all about the quality of the people we hire. In order to attract and retain the best talent, we have to create the most equitable environment we can.”

[Sandy Van Gilder](#),  
senior vice president and  
head of diversity

TB DPB GI SO



### LOCKHEED MARTIN CORP.

“Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential.”

Ken Disken, senior vice president

The relationship between discrimination and job performance certainly holds true for gay and transgender workers who continue to experience high rates of employment discrimination and who report high levels of hostility in the workplace. Can you imagine the impact on a lesbian employee who overhears her colleagues sharing offensive jokes about gay people, or that same employee being subjected to a boss who uses a derogatory term to describe gay individuals?

In hostile environments such as these, gay and transgender individuals must constantly censor themselves out of fear of unfairness and discrimination. Further, it is not hard to understand why gay and transgender employees would be less committed to their employer, more dissatisfied with their job, and less productive as a result of a hostile work environment. And when their work suffers, so too does the company’s profitability. In aggregate, one study estimates that hostile work environments cost companies \$1.4 billion in lost output each year resulting from a reduction in gay and lesbian workers’ productivity.<sup>22</sup>

Controlled experiments have shown that hostile work environments for gay and transgender workers can also impact the productivity of their straight and nontransgender counterparts as well. When gay and transgender workers are unable to bring their full selves to work due to a discriminatory work environment, it is likely that the job performance of their straight and nontransgender peers also significantly suffers.<sup>23</sup>

One study estimates that hostile work environments cost companies \$1.4 billion in lost output each year resulting from a reduction in gay and lesbian workers’ productivity.





### CVS CAREMARK

“By considering all the diverse talents and traits that our current and potential colleagues bring to our business ... whether it’s a difference of age, gender, family status, race, ethnicity, religion, disability, sexual orientation, appearance, thought, or mannerisms, we recognize the importance of these differences in making us a better company and meeting the needs of the diverse customers we serve.” [Diversity statement](#)



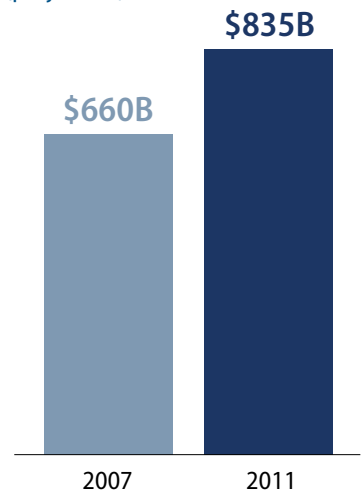
### Workplace discrimination limits access to consumer markets

Companies that discriminate against gay and transgender people unnecessarily close themselves off to an economic powerhouse of consumers in the marketplace. Gay and transgender individuals have a cumulative buying power of nearly \$1 trillion. In 2007 gay consumers spent \$660 billion on goods and services. In 2011 that number was projected to rise to \$835 billion, a 21 percent increase in just four years.<sup>24</sup> More broadly the gay consumer market has a sizeable footprint worldwide and accounts for 6 percent of all sales across the globe.<sup>25</sup> Given their spending power no company can afford to ignore the profitable gay and transgender consumer market.

Hiring and firing employees because they are gay or transgender will hurt businesses’ ability to appeal to gay and transgender consumers. One of the most important reasons businesses look to hire from a diverse pool of applicants is that the diversity of a workforce must reflect the diversity of consumers in order to most effectively tap into those consumer markets.<sup>26</sup> To penetrate the gay and transgender consumer market, companies must have gay and transgender employees since those employees best understand the everyday needs and preferences of gay and transgender buyers. Conversely, when companies make firing and hiring decisions based on sexual orientation and gender identity, they are crippling their ability to reach out, tap into, and capitalize on the gay and transgender consumer market.

### Gay consumer buying power

The amount gay consumers spent on goods and services, 2007 and 2011 (projection)



Discrimination not only limits firms' ability to appeal to new gay and transgender consumers; it will actively push away existing consumers as well. Gay and transgender individuals are increasingly making purchasing decisions based on how businesses treat gay and transgender employees as well as their broader engagement with the community. Specifically gay and transgender consumers often avoid stores and brands that discriminate against gay and transgender employees, fail to put those employees on equal footing with their straight and nontransgender counterparts, or engage antigay and antitransgender organizations.<sup>27</sup> The gay and transgender community has even flexed its considerable market power by boycotting companies such as Target Corp. and Chick-fil-A for engaging in discriminatory antigay behavior.<sup>28</sup>

Discrimination may alienate consumers in less overt ways as well. One study found that many employees who experienced unfairness at work indicate that they would not recommend the goods and services provided by their employer.<sup>29</sup> So when a lesbian is fired from her job, for example, she'll most likely tell her friends and family to not patronize her former employer.

Similarly, when companies do not treat their gay and transgender employees equally, the damage on the consumer side is not limited to gay and transgender individuals. Antigay corporate practices alienate the growing ranks of fair-minded and inclusive consumers who are attuned to businesses' treatment of gay and transgender people and issues.

In these ways discriminating against gay and transgender employees have impacts that trickle down to straight and nontransgender consumers.

### Costly legal ramifications of workplace discrimination

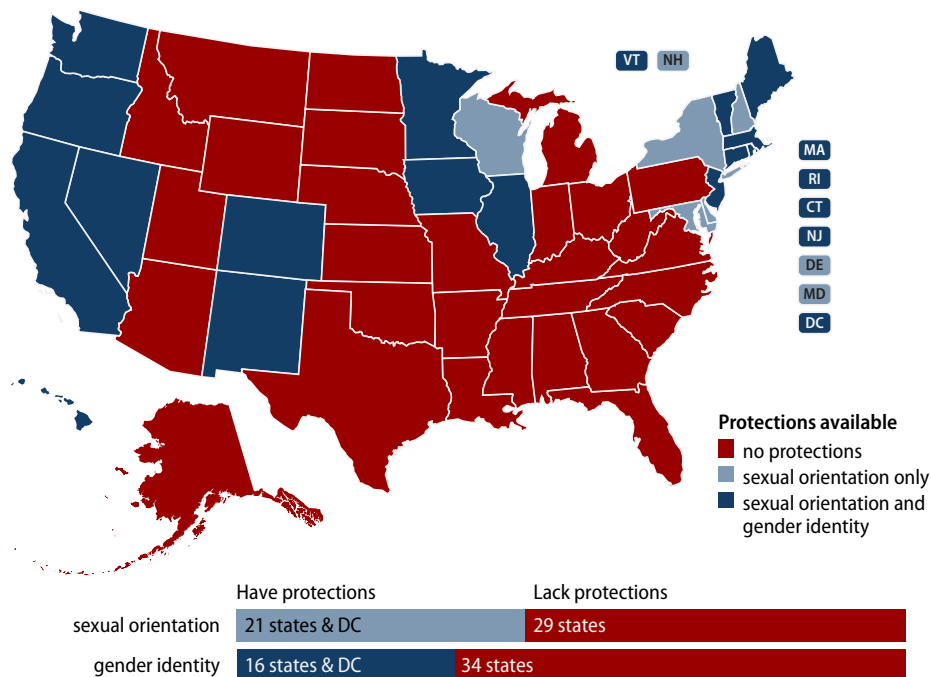
Employment discrimination exposes firms to potentially costly litigation. The top 10 private plaintiff employment discrimination lawsuits in 2010 alone cost firms \$346.4 million, a fourfold increase from the year before.<sup>30</sup>

Allowing discrimination against gay and transgender employees to go unchecked can be especially harmful in states that have outlawed employment discrimination on the basis of sexual orientation and gender identity. Currently 21 states and the District of Columbia prohibit workplace discrimination on the basis of sexual orientation. Sixteen of those states and the District of Columbia do so on the basis

The top 10 private plaintiff employment discrimination lawsuits in 2010 alone cost firms \$346.4 million, a fourfold increase from the year before.

## Gay and transgender employment protections by state

States prohibiting gay and transgender discrimination in employment, housing, and public accommodations (including health care)



of gender identity. In these jurisdictions gay and transgender victims of workplace discrimination have a clear legal recourse to sue employers when they fail to maintain a hostile-free workplace environment devoid of discrimination based on sexual orientation and gender identity. Litigation often results in costly attorney and court fees, time spent away from the business, and unwanted media attention. These costs are usually significant regardless of the outcome of the case.

In addition firms are liable for discrimination even in states that have not outlawed discrimination against gay and transgender employees. Gay and transgender victims of employment discrimination may file Title VII employment discrimination claims based on sex and gender employment discrimination under federal law. Such cases have been increasingly successful over the past decade and have cost businesses substantial time and money to litigate. As such, companies put themselves at a financial disadvantage when they do not combat transgender workplace discrimination, even in states where gender identity is not an explicitly protected class.<sup>31</sup>

## Discrimination and Don't Ask Don't Tell

Under the military's now-defunct ban on openly gay soldiers, otherwise known as "Don't Ask, Don't Tell," our nation learned the hard way that discrimination is wasteful, inefficient, and costly. Since the policy's inception in 1993, our military discharged over 14,000 otherwise qualified soldiers from the armed forces. Many of these soldiers held mission-critical skills and included pilots, combat engineers, and Arab linguists.<sup>32</sup> Moreover, this policy not only hurt our national security but also our fiscal security. The cost of discharging and replacing gay and lesbian soldiers, as well as losing the financial investment made in training those soldiers, stripped serious cash from our nation's coffers, costing American taxpayers \$363.8 million over the last two decades.<sup>33</sup>

Our military and our national security suffered by forcing these individuals out of the military based on their sexual orientation, a characteristic that has no bearing on their ability to do their jobs and

complete their missions. Alternatively, removing this policy from the books has enhanced our military's ability to recruit and retain qualified soldiers who want to serve their country. According to Admiral Robert Papp, Commandant of the U.S. Coast Guard and member of the Joint Chiefs of Staff—"Allowing gays and lesbians to serve in the Coast Guard openly...remove[d] a significant barrier to those Coast Guardsmen who [were] capably serving, but who [had] been forced to hide or even lie about their sexual orientation."<sup>34</sup>

Don't Ask Don't Tell was a disaster. It sanctioned discrimination and in doing so, weakened our national security, our financial stability, and our common values of honesty, fairness, and justice. Just as policymakers voted to end discrimination against gay people in the military, policymakers should do the same for Americans in the public and private civilian workforce as well.

### Lessons learned

Discrimination against the gay and transgender workforce results in hiring inefficiencies and introduces unnecessary costs for businesses that reverberate throughout the entire economy. For businesses discrimination is wasteful, costly, and inefficient. It results in substandard recruitment, retention, workplace productivity, and consumer marketing, ultimately putting severe limitations on a company's profit potential.

As businesses struggle to stay afloat and as our economy continues its recovery, businesses small and large more than ever must recognize that workplace discrimination represents a serious threat to their financial vitality and competitiveness. Considering the size of the gay and transgender workforce, as well as the high rates of discrimination based on sexual orientation and gender identity in the American workplace, discrimination against gay and transgender employees is certainly a major and a significant threat to a company's performance and profitability.

# The economics of fairness

In our recovering economy businesses must do all they can to ensure discrimination does not create artificial barriers to securing the best, brightest, and most productive employees the market has to offer.

Employers seeking to enhance their financial standing and gain a crucial advantage over the competition should ensure that discrimination has no place at any level of employment. By instituting a series of low-cost commonsense workplace policies, businesses can minimize discrimination against gay and transgender workers and realize numerous cost savings as a result.

But there's more to the story. Employers should not only work to prevent discrimination in the workplace to avert profit loss; they should also take proactive steps to promote a positive and inclusive workplace for all of their employees. By actively implementing a host of workplace policies—most at zero or negligible cost—employers will reap significant financial rewards by getting the very most out of their human capital.

## FORD MOTOR COMPANY

“Ford continues to attract a highly skilled committed workforce that reflects a broad spectrum of culture ... and sexual orientations. ... diversity is one of our founding principles, an important part of our business strategy today and key to our future success. ... in the end, our company is more successful and all our employees benefit.”

[Rosalind Cox, manager diversity and worklife planning](#)

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## Policies that level the playing field

Given the range of inefficiencies and costs associated with employment discrimination against gay and transgender workers, companies have a vested financial interest in preventing discrimination based on sexual orientation and gender identity. Implementing, maintaining, and enforcing nondiscrimination policies that include sexual orientation and gender identity is the most important step businesses can take to promote workplace equality while protecting their bottom lines from the costs of discrimination.

To fully capitalize on the talents of the gay and transgender workforce, however, employers must do more than simply prohibit discrimination. Employers must actively work to level the playing field for gay and transgender employees to get the very most out of their workers. Fortunately employers have numerous tools at their disposal to do so, especially in terms of equal benefits. Employers, for example, can and should offer health insurance benefits to gay employees and their families (often referred to as “domestic partner benefits”) if they offer those benefits to straight employees and their families. Further, companies should ensure their employer-sponsored health insurance plans cover all medically necessary care for their transgender employees, including health care related to gender transition. (see “Transition-Related Health Care”) These and other workplace policies are outlined below:

### Gay- and transgender-inclusive workplace policies

#### Nondiscrimination policies

- Develop nondiscrimination policies that include sexual orientation and gender identity
- Incorporate sexual orientation and gender identity into antiharassment action plans
- Include gay and transgender issues into diversity training regimens
- Develop policies for transgender employees to safely and comfortably transition on the job

continued on next page



#### MICROSOFT CORP.

“We value the ideas and leadership of all our employees. An inclusive approach is crucial to our business.”

[Steve Ballmer, chief executive officer, Microsoft Corporation](#)



### Benefits

- Offer health insurance benefits to employees' same-sex spouses and domestic partners
- Offer health insurance benefits that also explicitly cover all dependent children
- Ensure parity for gay and transgender employees in other benefits, including retirement and savings benefits, relocation assistance, bereavement and sick leave, life insurance, adoption assistance, and employee memberships and discounts
- Offer transgender-inclusive health care benefits, including comprehensive care related to gender transition, and ensure that employee health insurance policies do not discriminate in benefits or coverage on the basis of gender identity or transgender status

### Outreach

- Recruitment outreach to prospective employees at gay and transgender job fairs
- Corporate engagement and philanthropy at gay and transgender community events

These and other policy changes go a long way in signaling that a company offers a safe and welcoming space to gay and transgender employees and places that company in a position to reap significant financial rewards for employers as a result. That is why America's largest and most successful companies have instituted these policies, often directly drawing the connection between workplace fairness and profit margins.

### Top businesses support inclusive workplace policies

America's largest and most successful companies have recognized the inherent value in supporting their gay and transgender employees. Their equal employment policies protect their gay and transgender employees from discrimination and harassment on the job. They fully recognize families headed by same-sex couples by offering their employees' partners and their children the full range of benefits they currently offer to straight employees and their families, including crucial health insurance benefits. Perhaps most importantly, these companies work to infuse their corporate culture with the values of fairness and inclusion for all workers, gay or straight, transgender or not. And they do so not only because it is the right thing to do but also because they are in the business of turning a profit.



#### BANK OF AMERICA CORP.

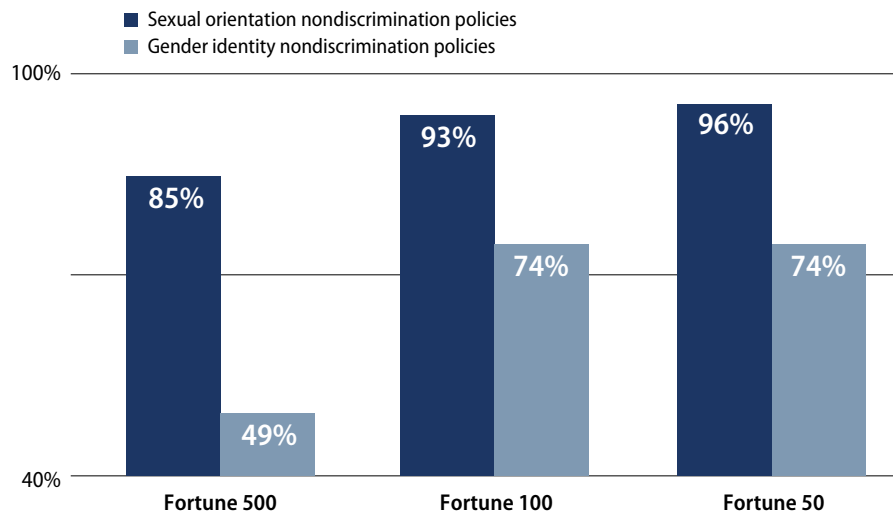
"Encouraging a diverse, inclusive workplace gives you the business advantage of understanding and meeting the needs of diverse customers, clients and shareholders."

Geri Thomas, diversity and inclusion executive



## Gay and transgender policies at *Fortune* companies

The more successful a company is, the more likely it is inclusive of gay and transgender employees. That's no coincidence.



Source: [http://sites.hrc.org/documents/CorporateEqualityIndex\\_2012.pdf](http://sites.hrc.org/documents/CorporateEqualityIndex_2012.pdf)

Looking at the Human Rights Campaign's annually released Corporate Equality Index, or CEI, which measures corporate America's commitment to gay and transgender equality in the workplace, we see that the more profitable a company, the more likely it is to have gay- and transgender-friendly policies on its books.<sup>35</sup>

Eighty-five percent of Fortune 500 companies have enacted nondiscrimination policies that include sexual orientation, and 49 percent include gender identity. Looking at the very top of the Fortune ladder, the proportion of companies offering employment protections in the Fortune 100 skyrockets to 93 percent for sexual orientation and 74 percent for gender identity. For Fortune 50 companies, 96 percent have sexual orientation nondiscrimination policies, and 74 percent have gender identity nondiscrimination policies.

With respect to benefits 60 percent of Fortune 500 companies, 86 percent of Fortune 100 companies, and 90 percent of Fortune 50 companies offer equal health insurance benefits to gay employees and their families.

Companies are also increasingly recognizing the need to ensure that employer-sponsored insurance plans are fully inclusive of transition-related care for transgender employees. The number of Fortune 1000 companies offering such benefits jumped from 85 in 2010 to 207 in 2011.



## Transition-related health care

Many transgender people with health insurance today are still unable to access the full spectrum of medically necessary care they need. Most health insurance plans explicitly exclude coverage of any services related to gender transition even when the same or comparable services are routinely covered for other medical purposes for people who are not transgender, and these exclusions are frequently expanded in practice to also include care unrelated to transition. A transgender man, for example, who breaks his arm may be denied coverage for medical care through existing loopholes excluding people who have transitioned.

These exclusions have no basis in medical science and create a dangerous gap in access to quality and affordable care for

transgender people. Moreover, they are out of date. The 2011 Corporate Equality Index indicates that inclusion of coverage for transgender individuals in private insurance plans is increasingly common at companies around the country.

Most importantly, offering these services has proven to be cost effective for employers seeking to ensure a welcoming and hospitable workplace that attracts the best and brightest individuals. This is why companies like Google, AT&T, Aetna, and many others offer health care plans that are fully inclusive of their transgender employees.<sup>36</sup> Other employers should follow this industry trend of ensuring that the health insurance plans they offer to their employees do not include exclusions restricting access to care for transgender individuals.

Why have America's largest and most profitable companies instituted these gay and transgender-friendly workplace policies? A recent study from the Williams Institute shows that more than 90 percent of the country's largest companies directly state that diversity policies and inclusive benefits packages have a positive financial impact on their business:

*Overall, we find that almost all of top 50 Fortune 500 companies and the top 50 federal government contractors (92 percent) state that, in general, diversity policies and generous benefit packages are good for their business. In addition, the majority (53 percent) have specifically linked policies prohibiting sexual orientation and gender identity discrimination, and extending domestic partner benefits to their employees, to improving their bottom line.<sup>37</sup>*

Across the board more and more companies are recognizing the financial returns of gay- and transgender-friendly workplace policies. The higher a company is on the financial food chain, the more likely it is to have enacted and maintained the host of policies that create a fair workplace for their gay and transgender employees. And these companies do so not only because it is the right thing to do, but because they are in the business of producing healthy profits for their investors. This comports with a recent study showing that companies have seen their stock

prices rise following the implementation of their sexual orientation and gender identity nondiscrimination policies.<sup>38</sup> The market rewards workplace fairness.

Big businesses are not the only ones who believe gay- and transgender-workplace policies make good business sense. According to a Center for American Progress poll of small businesses, a clear majority of small businesses already have sexual orientation and gender identity nondiscrimination policies.<sup>39</sup> Seven out of 10 small businesses prohibit discrimination on the basis of sexual orientation, and 6 out of 10 small businesses already prohibit discrimination on the basis of gender identity.<sup>40</sup> Similarly, 75 percent of small businesses already offer equal partner benefits to their gay employees or would do so if employees asked.<sup>41</sup>

### Gay and transgender workplace policies are cost effective

Opponents of fairness incorrectly argue that gay- and transgender-friendly policies have prohibitive costs that outweigh the numerous benefits of these policies. An examination of these policies, however, shows that the vast majority of these policies have extremely small or often no costs associated with their implementation and maintenance. Even when a cost is associated with a policy such as extending health benefits to same-sex partners and spouses, those costs are negligible in the short term and are mitigated by the high returns realized in the medium and long term.<sup>42</sup> This is why big businesses have increasingly begun to implement these policies and why small businesses almost never cite costs as a deterrent to adopting those policies.

### Nondiscrimination policies are inexpensive

Most small businesses report that there have been absolutely no costs associated with the initial inclusion of sexual orientation in their nondiscrimination policies.<sup>43</sup> Sixty-seven percent said there were zero costs associated with the initial inclusion of sexual orientation within their nondiscrimination policies. Of the 25 percent of companies that said there were costs associated with implementation, 65 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures for the initial inclusion of gender identity in their nondiscrimination policies.

Even fewer of these small businesses cited costs associated with maintaining their company's sexual orientation nondiscrimination policy. Eighty percent said there were no costs associated with maintaining their policy prohibiting discrimination against gay workers. Only 12 percent said there were costs associated with

# J.P.Morgan

**JPMORGAN CHASE & CO.**

"As a global organization serving a diverse client base, building and sustaining an inclusive workforce makes economic sense. At J.P. Morgan we see diversity as a competitive advantage. ... this is why we work hard and invest in attracting and retaining a diverse workforce."

[Diversity statement](#)

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its maintenance. Looking at just this 12 percent, 68 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures associated with maintaining gender identity in their nondiscrimination policies.<sup>44</sup>

But what about those small businesses that do not have these policies on their books? Of those small businesses that do not specifically prohibit discrimination based on sexual orientation, only 2 percent said costs deterred them from offering protections to gay employees. Only 4 percent cited costs as a deterrent to prohibiting discrimination on the basis of gender identity. Most of these businesses said that they simply never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace.<sup>45</sup>

#### *Equal partner benefits are inexpensive*

While short-term costs are associated with offering equivalent health insurance benefits to gay employees and their family members, employers report that the utilization rate for these benefits is extremely low, as are the costs themselves. When companies offer these benefits, an average of 1 percent of eligible employees elect coverage for a domestic partner. In addition to the low utilization rate, 88 percent experience an impact of less than 2 percent. This is equivalent to the costs associated with benefits for straight employees and their eligible dependents.<sup>46</sup>

Looking solely at small businesses, most that offer health care benefits to straight employees and their family members either already offer those benefits to gay employees and their family members, or would do so if a gay employee asked for those benefits. For the few businesses that do not or would not offer equal health insurance benefits to gay employees and their family members, costs were the least cited deterrent to doing so. Only 4 percent cite costs as a reason for not offering parity in health insurance benefits to gay employees and their families. Instead, most of these small-business owners say they simply do not have employees in same-sex partnerships.<sup>47</sup>

#### *Employers report no moral or religious concerns with nondiscrimination or benefits*

Some erroneously argue that businesses that do not have gay and transgender-friendly policies choose not to have those policies out of religious or moral concerns. CAP's survey of small businesses, however, shows that religious or moral issues were some of the least cited reasons for not implementing policies that level the playing field for gay and transgender employees. Only 9 percent of small businesses without these policies said that moral or religious beliefs deterred them from having a



#### PEPSICO

"While a diverse workforce is important, we must also create an inclusive environment where everyone—regardless of race, gender, physical ability or sexual orientation—feels valued, engaged, and wants to be part of our growth. It is only through inclusion that we will fully unleash innovation and growth for our business."

[PepsiCo annual report](#)



## The gay and transgender workforce

Gay and transgender Americans are an integral part of our country's labor force. There are an estimated 8 million gay individuals and an estimated 700,000 transgender individuals in the United States today, though the actual number of gay and transgender Americans is likely much higher.<sup>48</sup> Gay Americans are found in every congressional district and are found in more than 99 percent of all counties in the United States.<sup>49</sup>

Beyond its size the gay and transgender labor force also fills unique and important roles that contribute to the vitality of our economy. While gay and transgender workers exist throughout the country, they tend to concentrate in urban areas where international businesses are usually located. The public policy think tank The Williams Institute breaks gay and transgender employment down by sector:

*Individuals in same-sex couples in the U.S. are more likely to work in the private sector: 74 percent of individuals in same sex couples work in the private sector, compared to 71 percent of married [straight] individuals; 16 percent of individuals in same-sex and married [straight] couples work in the public sector; and 11 percent of individuals in same-sex couples are self-employed, compared to 12 percent of married [straight] individuals.<sup>50</sup>*

Further, gay and transgender Americans exhibit many of the characteristics that employers value in prospective and current employees such as ambition, motivation, and eagerness for career advancement. According to the Center for Work-Life Policy, 88 percent of gay and transgender workers said they are "willing to go the extra mile for their company," 71 percent said they were "ambitious," and 66 percent were "eager to be promoted." Moreover, these responses were comparable and sometimes higher than their straight and nontransgender respondents.<sup>51</sup>

nondiscrimination policy that included sexual orientation.<sup>52</sup> Even fewer (7 percent) said moral or religious beliefs deterred them from including gender identity in their nondiscrimination policy. More often, these businesses said they did not have these policies because they did not have any gay or transgender employees.<sup>53</sup> In fact, many of these businesses said that if they did hire such employees, they would likely institute gay- and transgender-inclusive nondiscrimination policies, as well as offer equal health benefits to those employees and their families.

### Lessons learned

Most big businesses and most small businesses recognize that discrimination is a distraction from optimal and efficient business operations. Businesses small and large acknowledge that gay- and transgender-friendly workplace policies make good business sense. Most have implemented a range of policies aimed at making the workplace a fairer and more inclusive space for gay and transgender employees and most have done so at little to no cost. In fact these businesses realize that policies that level the playing field for gay and transgender employees yield numerous cost savings and financial benefits. In the following section, we look at how these policies help businesses become more profitable and gain a crucial advantage over the competition.

# Best practices

Companies will gain a competitive edge when they actively signal to their employees their commitment to fairness in the workplace and foster a safe and welcoming corporate culture for all. This is true for both businesses large and small. Specifically, companies can leverage gay- and transgender-inclusive policies to promote both fairness and profitability.

A fair and inclusive workplace gives companies a competitive edge in the following areas:

- Recruitment and retention
- Productivity and job performance
- Consumer and supplier markets
- Litigation



## Recruiting and retaining the best and the brightest

Recruiting and retaining the best and the brightest employees is crucial to establishing a solid financial framework for any company looking to turn a profit. This is why America's largest and most successful companies cast a wide net when recruiting potential employees and why they actively work to retain qualified and skilled employees once they are hired. It is also why those same companies take proactive steps to create an inclusive and welcoming corporate culture that appeals to all employees, including those that are gay and transgender.

In terms of recruitment adopting nondiscrimination policies that include sexual orientation and gender identity is a critical first step to ensure that nobody is automatically disqualified for employment because they are gay or transgender. Making potential recruits aware of this policy on job applications and other recruitment materials will signal a company's commitment to hiring the most qualified employees regardless of sexual orientation or gender identity.

Employers should further train their hiring staff and make them aware of potential biases in the hiring process.

Taking similar steps internally will also ensure existing employees remain with their current employer. It is important for employers to foster a welcoming and inclusive corporate culture, making it known that discrimination against gay and transgender people will not be tolerated in the workplace. Incorporating gay- and transgender-specific issues in diversity training regimens and human resource guidelines are crucial aspects of creating this culture.

Taking these and other commonsense steps will maximize an employer's ability to recruit and retain the best and brightest the market has to offer. In fact businesses that actively welcome gay and transgender employees are rewarded by experiencing an increase in applications from qualified gay and transgender professionals who tend to actively look for gay- and transgender-friendly employers. Further, companies that institute these policy changes report higher levels of retention and lower levels of turnover among gay and transgender employees, avoiding the gamut of turnover-related costs when gay and transgender individuals are forced out of a job.

This is why companies such as General Electric have taken proactive steps to ensure discrimination plays no role in the recruitment process, including discrimination against gay and transgender candidates: "Having an environment in which fair employment practices are implemented and executed helps GE compete for and attract a high quality and increasingly diverse workforce."<sup>54</sup>

Three workplace policies in particular are especially effective at recruiting and retaining qualified gay and transgender employees:

- Equal and inclusive health insurance benefits
- Gay- and transgender-inclusive nondiscrimination policies
- Diverse working environment that includes gay and transgender employees

### Equal work, equal benefits

Employee benefits are a crucial component of employee compensation. Benefits can include retirement savings benefits, dental and vision insurance, employee memberships and discounts, and relocation assistance, among many other possible workplace benefits. Benefits packages comprised 31 percent of total



#### IBM

"Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT [gay, lesbian, bisexual, and transgender] IBMers accrue directly to our bottom line and ensure the success of our business."

Ted Childs, vice president,  
global workforce diversity





### GENERAL ELECTRIC

“It’s very important for us to have an inclusive culture where everyone feels comfortable that they can get any job when they walk through the door and people can prosper in this company...that’s been true about gender and about race and it’s going to be true in the future about gay and lesbian rights.”

Jeffrey Immelt, former chairman and chief executive of GE, on offering domestic partner benefits to gay and lesbian employees

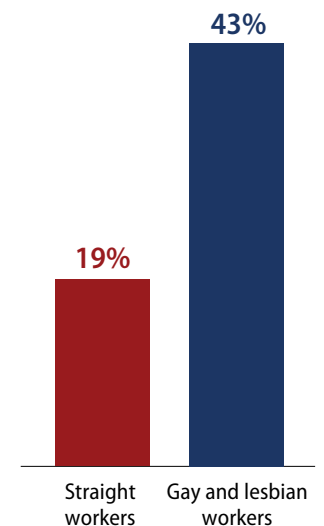
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compensation for workers in the private sector in December 2011. The most important benefit an employer can offer its employees in terms of compensation is health insurance benefits for employees and their family members. Health insurance benefits usually account for more than any other benefit offered.<sup>55</sup>

Employer-sponsored health insurance benefits become all the more important considering the high costs of privately purchased health insurance. Employer-sponsored health insurance is generally cheaper than privately purchased health insurance. In 2007 the average deductible for a family plan in the individual market was \$2,753, more than twice the average deductible of a comparable plan purchased through an employer. Moreover, employer-sponsored insurance and privately purchased health insurance rarely offer comparable coverage.<sup>56</sup>

Health insurance benefits are an important component of employment compensation to all workers, but they are especially important to gay and transgender employees. In fact offering employees health insurance benefits for their same-sex partners and other dependents is one of the most important ways a company can effectively recruit and retain qualified gay employees. Compared to 19 percent of straight workers, 43 percent of gay and lesbian workers said they would have stayed with their former employer had they been offered better benefits.<sup>57</sup> A similar study found that half of gay and transgender employees who left their employer due to unfairness reported that if their employer had offered more or better benefits, they would have remained.<sup>58</sup> And yet another study found that 7 out of 10 workers said their benefits package was the reason they joined their company, and 8 out of 10 said their benefits package was the reason they remained with their current employer.<sup>59</sup>

Better benefits =  
Better retention



Compared to 19 percent of straight workers, **43 percent** of gay and lesbian workers said they would have stayed with their former employer had they been offered better benefits.



#### LOCKHEED MARTIN CORP.

“We felt this [extending domestic partner benefits to its employees] was a good business decision that will contribute to our success in the future. We want to attract and retain talented employees.” Megan Meriman, Lockheed Martin spokesperson



In addition to equal health benefits for same-sex couples, many businesses recognize that offering transgender-inclusive health insurance plans is increasingly necessary to attract and retain talent. These plans have proven to be cost-effective for employers seeking to ensure a welcoming and hospitable workplace that attracts the best and brightest individuals.

Businesses themselves recognize that offering equivalent and inclusive health insurance benefits to gay and transgender employees and their families is key to optimal recruitment and retention. A 2005 Hewitt Associates study of businesses found that the primary reason they offered health insurance benefits to gay employees and their families was to attract and retain employees.<sup>60</sup> Additionally, over the past decade the number of businesses offering equal health insurance benefits for gay employees and their eligible dependents has increased every year, representing a growing recognition that equal health benefits are necessary to recruit the best and the brightest.<sup>61</sup>

#### Nondiscrimination policies

Employment protections based on sexual orientation or gender identity send a strong message to gay and transgender job seekers. If a transgender engineer goes to fill out an application for employment and sees “gender identity” among the list of protected categories in the employer’s equal employment opportunity policy, that job seeker is more likely to submit an application and contribute to the pool of applicants from which the employer selects. Alternatively when companies do not have gender identity among their list of protected categories, the same engineer is

A 2005 Hewitt Associates study of businesses found that the primary reason they offered health insurance benefits to gay employees and their families was to attract and retain employees.





#### GENERAL MOTORS CORP.

“General Motors is proud to be a part of this ever-growing group of businesses that recognize that nondiscrimination policies and practices help attract and retain talented employees.”

[Rod Gillum, vice president for corporate responsibility and diversity](#)

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less likely to submit an application knowing that his or her transgender status is not subject to the same employment protections as others.

Survey after survey of gay and transgender workers tells us that inclusive nondiscrimination policies are crucial to attracting qualified gay and transgender workers. Sixty-seven percent of gay and transgender employees say that it is extremely or very important to work for a company that has nondiscrimination policies that include sexual orientation. Only 49 percent of straight and nontransgender people thought similarly.<sup>62</sup> The presence or absence of these nondiscrimination policies also impacts an employer’s ability to retain qualified employees. Gay and lesbian professionals and managers, for example, cite workplace unfairness as the only reason they left their employer almost twice as often as heterosexual Caucasian men.<sup>63</sup>

It also appears that the best places to work are those that value a work environment free of discrimination. Every single company on *Fortune* magazine’s list of the “100 Best Companies to Work For” includes sexual orientation in their nondiscrimination policy.<sup>64</sup> More than half of these companies include gender identity in their nondiscrimination policy.<sup>65</sup> These companies realize that prohibiting discrimination against gay and transgender workers is a vital component of attracting and keeping top talent in the marketplace.

#### Diversity

Diversity is an important business strategy for any business looking to enhance profit margins. A diverse workforce breeds innovation and creativity and promotes effective problem solving among groups of employees. (see “Capitalizing on diversity”) Additionally, having a diverse workforce throughout a company’s ranks also helps attract the best and brightest employees, and this is certainly true

Every single company on *Fortune* magazine’s list of the “100 Best Companies to Work For” includes sexual orientation in their nondiscrimination policy. More than half of these companies include gender identity in their nondiscrimination policy.

for gay and transgender employees. More so than their straight and nontransgender counterparts, gay and transgender employees value diversity when looking for a job or deciding to remain with an employer:

- Eighty-one percent of gay and transgender workers say that it is important that they work for a company that promotes and develops senior managers who come from diverse backgrounds compared to 61 percent of straight and nontransgender workers.<sup>66</sup>
- Seventy-nine percent of gay and transgender workers say that it is important that they work for a company whose senior executives welcome, hire, and encourage a diverse workforce compared to 66 percent of straight and nontransgender workers.<sup>67</sup>

## Capitalizing on diversity

Diversity is a core business strategy, and gay and transgender workers are an increasing and important part of that strategy. Diversity enables employers to bring together workers from different backgrounds, each equipped with a unique set of skills and experiences that help them contribute on the job. Moreover, having a diverse workforce unleashes a host of positive outcomes that benefit businesses' bottom lines.

Heterogeneous workplaces are better able to adapt, problem-solve, and innovate compared to homogenous workplaces.<sup>68</sup> By hiring and maintaining a diverse workforce, studies show that businesses can also capitalize on a more productive and creative workforce that encourages collaboration and teamwork rather than stasis on the job.<sup>69</sup>

Having employees from a variety of backgrounds will also give businesses new opportunities to appeal to an increasingly diverse consumer market. Similarly, a diverse workforce yields more opportunities in the supply chain. One study out of the University of Vancouver, for example, found that more inclusive and diverse businesses have less difficulty finding cost-efficient suppliers in the market.

According to David Austin, chief diversity officer at AIG:

*[Diversity] is crucial. Without diversity, we don't have innovation. ... you look at companies who have people from different backgrounds and you come up with different solutions. Whether you are increasing diversity of your employees, [or] your products, or your services, or your clients, or your suppliers, making sure that you have new and creative ideas is what's important. There's a huge business case. Of course, and I know we all agree, diversity is the right thing to do, but there is a huge business case for diversity at the corporation.<sup>70</sup>*

Gay and transgender individuals bring unique experiences to the table that help contribute to unique innovative solutions to complex business problems. American urban studies theorist Richard Florida argues that gay and transgender individuals make up a large part of the "creative class," a fast-growing and highly educated group whose members place high value on individuality, creativity, and difference of opinion. Florida has found that growth in this segment of the workforce is associated with an increase in corporate profits and economic growth.<sup>71</sup> Companies will realize significant financial gains from fostering a diverse workforce that includes gay and transgender workers at all levels of employment.

- Forty-seven percent of gay and transgender workers say that it is important that they work for a company that supports community nonprofit organizations that represent the diversity of the workforce compared to 35 percent of straight and nontransgender workers.<sup>72</sup>

To attract the best and the brightest gay and transgender employees, employers should actively seek a diverse workforce and promote a diversity of experiences and backgrounds in the workplace.



### Optimizing workplace productivity and job performance

Finding, hiring, and retaining the best and the brightest remains a key priority for businesses seeking to maximize profit margins. In addition to achieving optimal recruitment and retention levels, employers have another incentive to implement gay- and transgender-friendly workplace policies throughout their company—enhancing worker productivity and job performance.

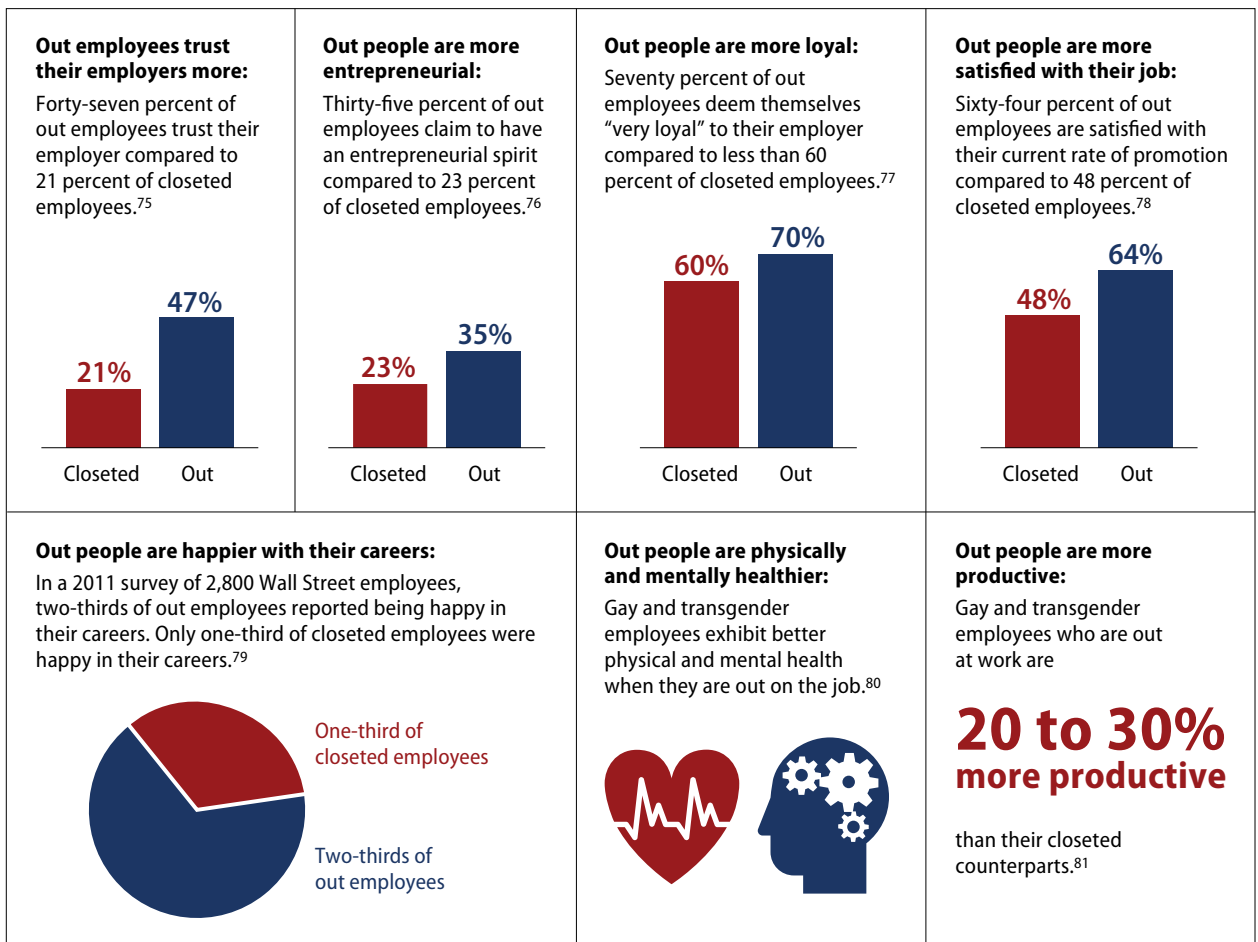
Employees who feel secure on the job and valued in the workplace are better able to fully engage themselves with their work. These employees report higher productivity levels, increased job satisfaction, higher attendance rates, and a stronger commitment to their career compared to employees who fear discrimination in the workplace.<sup>73</sup>

To optimize the productivity of their workforce, employers must therefore proactively implement policies that make their workers feel valued and secure in the workplace to fully capitalize on their human resources. Small—but important—policy changes can send strong signals to gay and transgender employees as well as to the rest of the workforce that accomplish this goal. Including sexual orientation and gender identity into existing equal employment opportunity programs, for example, will clearly indicate that discrimination and harassment against gay and transgender employees will not be tolerated. Ensuring gay employees and their family members have equal access to health insurance benefits will further demonstrate an employer's commitment to a safe and inclusive workplace for all. And verifying that employer-sponsored health plans are transgender inclusive will boost employee health and make the workplace a more transgender-friendly environment, all while being cost effective.

Policy changes such as these make a dramatic difference in gay and transgender employees' performance on the job. More specifically, businesses can unleash the full potential of their gay and transgender employees when those employees feel

comfortable enough to talk freely and openly about their sexual orientation or gender identity should they choose to do so.

According to the Center for Work-Life Policy, there are business consequences “for those hiding their sexual orientation. ... they are more likely to feel that they are stalled [and] more likely to distrust the organization. And they are more likely to feel isolated.”<sup>74</sup> The center’s study finds that as a consequence, such workers are less productive and more likely to leave the company. Alternatively, employers will get the most out of their employees when they are out to their coworkers and supervisors. Being able to acknowledge one’s sexual orientation is beneficial in the following ways:



Trusting, entrepreneurial, satisfied, happy, healthy, and productive are all positive and profit-yielding qualities that employers seek in their employees. For gay and transgender employees, it is easy to understand why being out on the job would

increase these positive qualities. These employees can freely talk about that trip they recently took with their partner rather than their “friend.” They can have a picture of their family on display in their cubicle rather than keeping it tucked away in a drawer. Most importantly, they can work in a climate where they are free to talk about their personal lives instead of constantly censoring themselves out of fear of unfairness and discrimination.

But while many gay and transgender employees are out on the job, others choose to not disclose their sexual orientation or gender identity to most, if any, of their colleagues. Approximately 51 percent of gay and transgender employees hide their identity to most at work,<sup>82</sup> with 28 percent not open to anyone with whom they work. Only 27 percent of gay and transgender employees are open to all of their colleagues.<sup>83</sup> These statistics match similar estimates by the Center for Work-Life Policy, which found that 52 percent of gay and transgender employees are out on the job, and 48 percent conceal their identity on the job.<sup>84</sup>

Given the host of positive attributes associated with gay and transgender employees that are open about their sexual orientation and gender identity, employers can and should take steps to create welcoming and inclusive workplace climates for all employees. These steps include gay- and transgender-inclusive nondiscrimination policies and equal health care benefits for gay employees and their family members. These workplace policies will encourage more gay and transgender employees to come out of the closet, maximize per-capita productivity, and optimize profit margins as a result. Companies that have not instituted gay- and transgender-friendly workplace policies, however, will fail to reap the financial rewards of a motivated and productive workforce.

### *Inclusiveness increases overall job performance*

Some argue that openly gay and transgender employees will actually result in a less hospitable work environment by making straight and nontransgender employees feel uncomfortable in the workplace, thereby undermining overall morale and performance on the job. Surveys, social experiments, and real-life examples from the business world show this is undisputedly false. When gay and transgender employees work in environments where they do not have to hide their sexual orientation and gender identity from their coworkers, everybody’s productivity is enhanced, including straight and nontransgender colleagues.

Surveys consistently show that straight and nontransgender workers simply do not care if they are working side by side with a gay or transgender individual.

### **MORGAN STANLEY**

“By empowering our people and prospective employees to bring their full selves to the table, we leverage differences to drive best-in-class business results and enhance the development of our talented professionals. Our proud commitment to LGBT [lesbian, gay, bisexual and transgender] diversity fully incorporates each of these foundational Morgan Stanley principles.”

[Jeffrey Siminoff,](#)  
[global head of diversity](#)  
[and inclusion](#)



Ninety-three percent of straight adults indicated in one survey that they would react positively or neutrally if a coworker told them they were gay or lesbian. Only 8 percent said they would react negatively.<sup>85</sup> Considering the strong support among young adults for gay and transgender individuals, comfort around gay and transgender employees is likely to increase over time, and discomfort is likely to decrease. The argument that straight workers would feel uncomfortable working with gay and transgender employees simply does not have merit and is in fact blatantly false.

Additionally, two studies recently published in the *Journal of Experimental Social Psychology* link poorer job performance with uncertainty about a coworker's sexual orientation. These twin studies paired straight males with male partners who were either explicitly gay or whose sexual orientation was more ambiguous. Experimenters at the University of California, Los Angeles, then asked each pair to complete a task that required a high degree of interaction between the two partners. The researchers found overall pairs performed significantly better when the straight participants were aware of their partner's sexual orientation and did significantly worse when there was ambiguity. These two studies strongly suggest that job performance is enhanced for both gay and straight individuals when working in an inclusive and open atmosphere.<sup>86</sup>



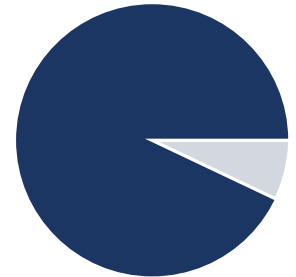
### Attracting new consumer and supplier markets

Recruiting talented gay and transgender employees, retaining those employees, and ensuring they are performing at optimal levels enhances profitability and diminishes unnecessary costs associated with employment discrimination. These labor-supply factors provide companies with strong financial incentives to cultivate a welcoming and inclusive culture for their gay and transgender employees. Additionally, consumer-demand factors further provide companies with financial incentives to institute gay- and transgender-friendly policies in the workplace.

#### *Gay and transgender consumer clout*

The gay and transgender consumer market wields a cumulative spending power of nearly \$1 trillion per year in the United States. Tapping into this consumer market has proven extremely profitable, not just because gay and transgender consumers have significant aggregate buying power but also because they are an especially brand-loyal cohort of consumers. Gay and transgender consumers, for example, are 25 percent more likely than straight and nontransgender consumers to stick with a brand even when its price increases.<sup>87</sup> They are also 33 percent more likely to ask for brands by name rather than a generic good (“Nike” versus “running shoe”).<sup>88</sup>

#### Everybody favors fairness



**Ninety-three percent** of straight adults indicated in one survey that they would react positively or neutrally if a coworker told them they were gay or lesbian.

Brand loyalty ensures a consistent stream of revenues from consumers who remain committed to specific products. This is why companies invest millions of dollars in marketing campaigns attempting to secure brand-loyal customers. Additionally, studies show that brand-loyal customers are more likely to buy larger quantities of goods and stick with brands even given a price increase.<sup>89</sup> Companies reap significant financial rewards from gay and transgender consumers given their brand commitment.

To appeal to this brand-loyal group of consumers, companies must ensure that they have gay and transgender employees to appeal to gay and transgender consumers. This means enacting gay- and transgender-inclusive nondiscrimination policies and enforcing those policies on a day-to-day basis. Prohibiting discrimination and actively ensuring gay and transgender representation at all levels of employment will help businesses appeal to and attract this economically powerful consumer market. Similarly, this will better enable businesses to appeal to the most cost-effective business partners in their supply chain.

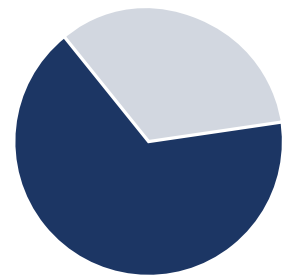
#### *Gay and transgender consumer behavior*

Gay and transgender consumers also make purchasing decisions based on how companies engage the gay and transgender community and treat gay and transgender employees. Gay and transgender adults report that they would be very or somewhat likely to remain loyal to a brand they believed to be friendly and supportive to the gay and transgender community. Sixty-six percent of gay and transgender adults said they would purchase goods from businesses friendly to their community even when less friendly companies offer lower prices or are more convenient.<sup>90</sup>

Additionally, 74 percent of gay and transgender adults say that they are likely to support companies that support gay and transgender causes or nonprofits. Of that 74 percent, 41 percent say they are extremely or very likely to patronize these companies. Further, 23 percent of gay and transgender adults report switching products because a competing company openly supported gay- and transgender-related causes.<sup>91</sup>

An even more important factor than supporting gay- and transgender-related causes is providing an equal and supportive workplace environment for gay and transgender employees. Eighty-seven percent of gay and transgender adults say that they are likely to buy from brands that provide equal benefits to their employees, including those that are gay or transgender. Of that 87 percent, 49 percent of gay and transgender adults said that they are extremely likely or very likely to consider buying from these companies.<sup>92</sup>

#### **Gay and Transgender buying power**



**Sixty-six percent** of gay and transgender adults said they would purchase goods from businesses friendly to their community even when less friendly companies offer lower prices or are more convenient.

## Gay and transgender policies at the federal government

As the largest employer in the United States, the federal government has led the way in ensuring a fair and equitable workplace for gay and transgender employees.

In 1998, President Clinton issued an executive order barring discrimination in federal employment based on sexual orientation. President Obama further enhanced the federal government's ability to recruit the best and the brightest when he prohibited discrimination against transgender workers in 2010.<sup>93</sup> These were two crucial steps that signaled to gay and transgender workers as well as to all Americans that taxpayer dollars would not be used to discriminate against qualified employees.

Unfortunately, discriminatory laws like the so-called "Defense of Marriage Act" (DOMA) prevent the federal government from offering the full-range of employment benefits to gay employees, specifically health insurance benefits for same-sex partners or spouses. Nevertheless, President Obama has leveraged his authority to extend other benefits to gay and transgender federal employees and their families where permissible by law. These benefits include child care services, relocation expenses, and other family assistance services.<sup>94</sup> Our government understands that in order to secure the best and most qualified talent, it must treat all of its employees—gay or straight, transgender or not—equally and fairly in the workplace.

### *Marketing to gay and transgender consumers*

Businesses can tap into the powerful gay and transgender consumer market through targeted advertising to the community. Gay and transgender individuals are especially responsive to gay- and transgender-specific marketing campaigns. In 2011 47 percent of gay and transgender adults said they were more likely to switch to a company that uses advertising addressed to "a gay audience with gay imagery and people and speaks to me as a gay person." This is compared to 40 percent who agreed with this statement when asked in 2007.<sup>95</sup> Moreover, nearly 4 out of 10 gay and transgender individuals prefer to purchase products from businesses that advertise in gay and transgender media markets.<sup>96</sup>



### Avoiding costly litigation

Businesses that prohibit discrimination against their gay and transgender employees will realize significant cost savings by insulating themselves from potential discrimination litigation. As mentioned earlier litigation is time consuming and costly. Moreover, it is easily avoidable. By instituting gay- and transgender-inclusive nondiscrimination policies, companies can signal to their entire workforce that discrimination will not be tolerated. More importantly, companies must vigorously maintain and enforce those policies to fully mitigate the risk of litigation. This includes incorporating gay and transgender issues into existing human resources and diversity guidelines, as well as responding immediately to reports of workplace discrimination and harassment based on someone's sexual orientation or gender identity.



# Conclusion

In today's economy gay and transgender discrimination in the workplace is more than a distraction—it is costly. Ensuring that everyone be given a fair shot at making a living in this country regardless of race, color, ethnicity, age, sex, national origin, religion, disability status, sexual orientation, and gender identity is an inviolate principle.

Yet discrimination threatens the economic security and emotional wellbeing for far too many gay and transgender workers and their families, and the damage doesn't end there. For businesses, discrimination limits a company's ability to recruit and retain high-quality workers, as well as diminishes the overall productive capacity of their workforce. For our economy as a whole, discrimination based on sexual orientation and gender identity prevents the aggregate labor market from unleashing its full potential, restraining overall economic growth at a time when our economy is slowly recovering from one of the worst recessions in U.S. history.

More than ever we need to optimize our human capital to remove inefficiencies like discrimination from the market to bolster economic growth. America's economic crisis is aggravated when employers allow personal prejudice to trump their businesses' financial interests. Businesses large and small simply cannot discriminate against gay and transgender workers and at the same time maximize profits and outperform the competition.

To make our economy stronger and more efficient, state and federal lawmakers should enact the necessary policy reforms to combat discrimination in the workplace against gay and transgender workers. And for their part businesses themselves should take the commonsense steps necessary to ensuring employees are judged based on their capabilities and skills and not on characteristics irrelevant to job performance. Leveling the playing field for gay and transgender employees will make businesses more competitive and more profitable.

And ultimately, it is the right thing to do.

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## About the author

**Crosby Burns** is a Research Associate for the LGBT Research and Communications Project at the Center for American Progress in Washington, D.C. Burns has helped develop CAP's strategic policy and communications agenda to advance equality and fairness for LGBT Americans through congressional and administrative action. He has led CAP's efforts to combat discrimination based on sexual orientation and gender identity by advocating for laws and policies that extend legal employment protections to the gay and transgender workforce. While at CAP, Burns has documented discrepancies in the higher education financial aid system that impact gay and transgender applicants for financial aid, as well as applicants with same-sex parents. Burns also has monitored the "Don't Ask, Don't Tell" repeal process to ensure a swift and efficient implementation of repeal.

Prior to joining CAP, Burns worked at the U.S. Department of Justice, where he helped investigate mergers and acquisitions in the telecommunications and media markets. He holds a B.A. in political science and psychology from the University of California, Berkeley. His work has been covered in *The New York Times*, *The Hill*, *the Chronicle of Higher Education* and *Inside Higher Education*, and will soon be published in the *Journal of Homosexuality* and the Harvard Kennedy School's *LGBTQ Policy Journal*.

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