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Gender Identity and Sexual Orientation Discrimination in the Workplace

A Practical Guide

**Chapter 44: A Millennial Moment:
Understanding Twenty-First Century LGBT
Workers and Their Allies**

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A MILLENNIAL MOMENT: UNDERSTANDING
 TWENTY-FIRST CENTURY LGBT WORKERS
 AND THEIR ALLIES

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Editor’s Note: Most of the contributors to this treatise grew up during times when “gay bashing” was common in many parts of society—including within schools, churches, and workplaces. One need only look at the discussion in Chapter 16 (The Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973) of the legislative fight just 25 years ago over whether to exclude individuals with HIV, AIDS, or gender dysphoria from the protections of federal laws barring disability discrimination to get a quick taste of the bigotry or ignorance of some legislators. Sadly, “gay bashing” continues,^a and

^aTina Moore, *Gay-Bashing Attacks on the Rise in [New York] City, Could Double Last Year’s Total*, N.Y. DAILY NEWS, Aug. 18, 2013, available at www.nydailynews.com/new-york/gay-bashing-attacks-rise-city-article-1.1430370 (noting that the New York Police Department “is on pace to investigate about twice the number of anti-gay incidents in 2013—from slurs to felony assaults—compared to 2012”).

some employers continue to tolerate gender discrimination against LGBT employees, as is evidenced by the cases discussed in Chapters 14 (Title VII of the Civil Rights Act of 1964) and 20 (Survey of State Laws Regarding Gender Identity and Sexual Orientation Discrimination in the Workplace).

One development that may significantly change the outlook for lesbian, gay, bisexual, and transgender (LGBT) individuals—and that employers need to be prepared for—is the influx of Millennials and their successors^b into the workplace. Today’s youth are growing up, and the young adults who graduated from college during the first 14 years of the third millennium have grown up, in a world that is significantly different from that of their Baby Boomer parents—for example, grammar school students have cell phones and access to social media and thousands of media outlets over the Internet, exposing them to a broad range of life options and social subcultures. The idea of treating LGBT individuals in an inferior manner is foreign to many members of the new workforce, despite whatever political currents may be at work in a society still dominated by a preponderance of older individuals and despite fear-mongering designed to attract conservative voters. And young LGBT workers themselves are more perceptive about their workplace rights, both in terms of filing charges of discrimination and “outing” bad employers via viral media campaigns. In addition to facing adverse publicity affecting their companies and possible lawsuits, employers that do not embrace a LGBT-friendly workplace risk losing the talents of not just the LGBT employees but also their non-LGBT associates, who by and large want to work in socially accepting environments. Both groups have grown up in schools that more often than not have taken steps to welcome diversity, and they expect no less in their workplaces.

Susan Marine, assistant professor and director of the higher education graduate program at Merrimack College School of Education, offers her insights into who the Millennials are, in terms of LGBT Millennials being open about their sexuality or gender nonconformity, non-LGBT Millennials actively supporting their LGBT peers’ right to be free from discrimination and violence, and the need for employers to be ready to adjust to the new reality

^b According to the Pew Research Center, Millennials comprise individuals born after 1980. *The Generations Defined*, PEW RESEARCH SOCIAL & DEMOGRAPHIC TRENDS (Mar. 5, 2014), www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/sdt-next-america-03-07-2014-0-06. As of March 2014, the Pew Research Center had yet to publicly identify what it will call the post-Millennial generation. See Andrea Caumont, *What Would You Name Today’s Youngest Generation of Americans?*, Pew Research Center (Mar. 12, 2014), available at www.pewresearch.org/fact-tank/2014/03/12/what-would-you-name-todays-youngest-generation-of-americans (noting “that that generations typically span about 20 years, so the oldest Millennials, now 33, may not have much in common with today’s very youngest Americans”; the article and readers comments includes an array of possible candidates). My vote is for the “iGeneration.”

that Millennials present. Professor Marine's perspective, in short, is that the LGBT train has "left the station," and employers that do not implement LGBT-friendly policies likely will be left behind in the race to acquire the talented workers of today and tomorrow. Professor Marine's insights are based on her 20 years of experience leading initiatives in higher education for the advancement of women and gender-diverse students and her expertise in student leadership development, violence prevention, diversity initiatives, and advocacy for the LGBT community.

I. INTRODUCTION

The chairs are being arranged, the cookie trays laid out, and the moment has arrived. Fifteen or twenty college juniors and seniors file into the room, looking both eager and relaxed in khakis and knee-grazing skirts. I note with interest how many have pierced eyebrows, visible tattoos, or pink or orange streaks in their hair. Others in the group look indistinguishable from their "straight" peers. The only clue that they are not the same as any other student at this particular college is that they have willingly walked into a "career night" targeted at LGBT students—who sometimes also refer to themselves as "queer"¹—to discuss the various costs and merits of being "out" in the workplace and strategies for presenting the reality of their identities to prospective and actual employers.

I have sat on these panels (along with other "out" folks from many walks of professional life) many times, and am always impressed with the depth and thoughtfulness of the students' questions. The legacy of the era of the Stonewall Riots² means that they have a sense of freedom and entitlement to a safe and welcoming society—school, sports field, church, workplace, and political party—that most of us who are older have only recently, if ever, enjoyed, despite the fact that they are still likely to have experienced at least some adverse reaction from society at large, and perhaps even from other family members, while growing up. Today's newest members of the workforce—known as the "Millennial generation," born

¹The term "queer," historically considered a pejorative term applied to LGBT people or those perceived to be LGBT, has been reclaimed by many in the past 30 years, particularly youth who have attended college and participated in the academic study of LGBT history and social movements. Many feel it is a positive term that signifies the fact that LGBT people are actively defying restrictive social norms of sexual and gender expression. See generally Chapter 2 (The Transformative Power of Words).

²The Stonewall Riots, named for the New York City bar (the Stonewall Inn) where they originated, represented a key historical moment of resistance to police (and societal) mistreatment of LGBT people. When police raided the Greenwich Village bar for no reason on June 28, 1969, aiming to "round up" and arrest the patrons, the patrons, along with hundreds of supporters, fought back, actively standing up to the brutality. Although the riots have frequently been attributed to gay men, it is now well documented that the resistance effort was largely led by Sylvia Rivera, a well-known transgender activist.

between 1980 and 1998³—are often characterized as driven, focused, and committed to improving the world through both their vocation and volunteerism. On the flip side, they are often derided for being superficial, materialistic, and unwilling to “pay their dues” in professional situations, expecting instant respect and involvement in high-level projects even when they are very green in their new roles. None of these particular characteristics depends on whether the individuals concerned are LGBT or straight.

Millennials today face a difficult employment landscape, and, according to the Bureau of Labor Statistics, 24.5 percent of workers under age 20 were unemployed in May 2013—a significantly higher percentage than in the general population.⁴ According to the Northeastern University Center for Labor Market Studies, fully 50 percent of those with a bachelor’s degree who are under age 25 are working in a job that does not require them to have such a degree.⁵ The picture is grim, and all signs point to a slow ascent out of the current doldrums for these young go-getters. It’s tempting to think of Millennials as an undifferentiated mass of twenty-somethings, but to do so doesn’t really honor the nuances of their situations. Given their diversity of class, race, gender, and educational background, what can we say about Millennials who identify as LGBT? And what might we need to better understand about them as they make their way into the workplace? And what can we say about their straight peers and their perspectives on LGBT people in their own generation?

II. FOUR REALITIES ABOUT MILLENNIALS

What follows are four realities about the Millennial generation of LGBT students that I have gleaned from working with them on a daily basis over the past 15 years and watching as they transition into the workforce. Although these articulated realities are not applicable as a generalization to every Millennial, they provide a starting point for thinking about their skills, needs, and expectations in the workplace.

A. Reality No. 1: LGBT Millennials Have Come Into Their Own at an Earlier Age

The combined effect of access to viewing and hearing increased positive images in the mainstream media and the ability to participate in an endless array of online communities is that LGBT young people are able to understand and claim their identities at far younger ages than those of us

³NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* (2000).

⁴U.S. Department of Labor Bureau of Labor Statistics, *The Employment Situation—May 2013*, Report No. USDL-13-1102 (June 2013), available at www.bls.gov/news.release/pdf/empsit.pdf.

⁵Zack O’Malley Greenburg, *How Millennials Can Survive and Thrive in the New Economy*, FORBES, Nov. 16, 2011, www.forbes.com/sites/zackomalleygreenburg/2011/11/16/how-millennials-can-survive-and-thrive-in-the-new-economy.

who came of age in the decades just after Stonewall. They may express their identities more overtly—in terms of dress, mannerisms, and accessorizing—reflecting the reality that many queer youth subcultures eschew anything considered “mainstream” or “normal.” Visible tattoos, piercings, colorful hair and clothing, and other markers of queer identity are not simply ways to assert one’s identity and make one’s self more uniquely attractive—they are political manifestations of resistance to straight culture and norms. It would not be accurate to assume that they signify frivolity or “acting out”; rather, they might be best understood as ways that these young professionals declare individual allegiances within the larger LGBT movement, and, in so doing, make an effort to break the large LGBT world down into something that more closely resembles community.

B. Reality No. 2: Discrimination Against LGBT Youth Remains a Concern

It is important to realize that, although tremendous progress has been made in countries such as the United States in creating a world that is at least accepting of and sometimes affirming for LGBT young people, these individuals continue to face significant challenges in the process of coming of age. A 2012 nationwide study of 10,000 LGBT youth conducted by the Human Rights Campaign (HRC) revealed that 92 percent reported hearing negative messages about being LGBT at school and from peers, 51 percent reported having experienced verbal harassment at school, and 17 percent reported having been physically attacked. Forty-two percent reported that they felt that their identity was not welcome in their community, and almost a third reported feeling as if they did not have an understanding adult to speak with in their lives. Despite these challenges, LGBT youth also reported drawing from a number of personal and community resources to bolster themselves and look ahead to the future; the vast majority expected to be happy, to have a good job, to raise a family, and to be an active part of their communities.⁶

C. Reality No. 3: LGBT Millennials Have Been Exposed to a Wider Array of Depictions of Themselves—Many of Them Positive—Than Any Previous Generation

Although the evidence noted above suggests that queer youth continue to face discrimination and mistreatment, they are also part of the broader cultural shift happening, and, in many cases, are driving it. Thanks to changes in both mainstream and alternative media, today’s young professional has grown up watching *Queer Eye for the Straight Guy*, *Will and Grace*, *The Ellen Show*, *The Office*, *30 Rock*, and many other programs featuring LGBT

⁶HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS (June 2012), available at www.hrc.org/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf.

characters at the center of the shows' storyline. These characters are, by and large, healthy, successful, and attractive—although they are often depicted as chronically single or in less-than-optimal romantic relationships. The Fox Network's *Glee*, known for not only its hip artistry and unforgettable sing-alongs but also for its multiple LGBT characters, provides many alternative role models who are thriving in the subculture of the show choir, offering an especially riveting (if somewhat unrealistic) alternative to the punishing social castes of high school. Out popular musicians—such as Lady Gaga and *American Idol*'s Adam Lambert—fill the airwaves with LGBT messages and images, providing anthems of strength and solidarity, and another compelling antidote to marginality. The very real impact of the combination of celebrity and success with LGBT identity cannot be underestimated—the options that such visibility offers young people have opened their eyes and their worlds to entirely new possibilities for self-expression. Such “mainstreaming” has also openly validated LGBT people in the eyes of their straight peers and made it more acceptable to have such individuals as friends, just as Millennials find nothing uncomfortable about having members of racial and ethnic minorities as friends and acquaintances.

D. Reality No. 4: Social Media Has Transformed LGBT Youth and Their Allies

Related to this shift is the fact that technology has radically “amped up” the ways young professionals and would-be professionals can (and do) relate to each other. LGBT Millennials are highly attuned to social media—and highly effective in accessing it to participate in community with other queer youth. Facebook, Twitter, LGBT youth-oriented websites, and popular media sites like Jezebel, Towleroad, TMZ, and others depict gay identity and gender-affirmed and gender-diverse people in a multiplicity of ways and help youth of all sexual orientations to understand the language, norms, and informal and formal conventions of what it means to be a queer adult. Online communities such as COLAGE, for the children of LGBT parents—affectionately referred to as “queerspawn”—have sprung up, providing supportive spaces for straight youth whose parents have come out. Although not without risk, just like their straight peers, LGBT youth also access sexual and romantic connections online, through sites such as OKCupid, Grinder, and Craigslist. Although the safety of such online dating practices is questionable at best (for all people, regardless of their sexual orientation), these avenues for connection and community building are essential aspects of LGBT youth self-definition—particularly for those who have grown up outside of metropolitan areas that have large and visible queer adult populations. The popularity of Dan Savage's viral campaign affirming LGBT identities, the It Gets Better Project, is a particularly striking example; such sites also bring the issues and concerns of the LGBT community to the attention of the community at large, generally resulting in greater understanding and acceptance of this particular minority. The project

features more than 50,000 video testimonies of gay, gender-affirmed, and gender-diverse adults and youth, urging those who experience mistreatment in their home communities to hang on for a better and happier future.⁷ Adept at integrating real life and the lives available to them online, LGBT young adults have a degree of savvy about their identities that social media allows them to continuously revisit and negotiate. Ultimately, “[t]hey effectively—though not without cost—suture the queer social worlds they find in their hometowns, on television, and online.”⁸

III. WHAT THESE REALITIES MEAN FOR EMPLOYERS

What do these realities mean for the LGBT Millennials’ participation in the workplace? Simply put, they know who they are, and they typically expect to have their needs and interests represented—and more importantly, respected—by employers. Depending on the nature of the position, they will present their identities openly in their résumés, as well as in interviews, and ask pointed questions about climate and community for LGBT individuals in the workplace.⁹ If they are particularly savvy or have experienced discrimination in the past, they may ask questions about policies and procedures for reporting biased treatment from others. And as for queer couples, with each passing year, political advocacy groups related to LGBT interests are more vocal about the discriminatory economic treatment of queer couples.¹⁰ Young LGBT workers are very aware that if they are partnered, in a majority of the states they will experience a tax differential for accessing health benefits that is not levied on their straight counterparts,¹¹ and they may expect employers to remedy this disparity. Recent activism and advocacy by the growing community of “out” trans and otherwise gender-variant folks means that persons going through gender affirmations will seek medical coverage for the treatment that they need—including access to hormone therapy and surgeries. It is crucial for employers to understand

⁷IT GETS BETTER PROJECT, www.itgetsbetter.org/pages/about-it-gets-better-project.

⁸MARY L. GRAY, *OUT IN THE COUNTRY: YOUTH, MEDIA, AND QUEER VISIBILITY IN RURAL AMERICA* 15 (2009).

⁹Many colleges require that employers who conduct on-campus job interviews have broad antidiscrimination policies, including nondiscrimination against LGBT individuals. Several associations work to help encourage colleges and universities to provide equality to LGBT students while in school and searching for employment, such as the Consortium of Higher Education Lesbian Gay Bisexual Transgender Resource Professionals (www.lgbtcampus.org).

¹⁰To read more about the economic effects of discrimination against LGBT people, see Chapters 37 (Employee Benefit Issues) and 40 (Employment Discrimination Against LGBT People: Existence and Impact).

¹¹As of May 2014, a majority of the states do not permit or recognize same-sex marriages. However, this may change in view of the steadily increasing number of court decisions, discussed in the Preface and in Chapters 20 (Survey of State Laws Regarding Gender Identity and Sexual Orientation Discrimination in the Workplace) and 37 (Employee Benefit Issues), that have held state law prohibitions against same-sex marriage to be unconstitutional. Most of these decisions have been stayed pending appeal.

that gender-affirming medical care for individuals is not cosmetic in nature and should not be viewed as “elective” treatment.¹² Gender-affirmed persons who are entering the workforce have grown up using the bathrooms that match their gender identity, and they will expect to continue doing so in their workplaces. Genderqueer individuals—those who live outside of the gender binary entirely¹³—will feel most comfortable accessing bathrooms that are not “gendered” (that is, not marked as male or female) in any way.¹⁴

Beyond the changes being wrought by Millennial LGBT individuals in the workforce, what is the effect of their straight peers entering the workforce? Another shift these cultural changes have ushered in is that we know that straight and normatively gendered Millennial people, as a group, are far more accepting of their LGBT peers than previous generations. The Cooperative Institutional Research Program at the University of California, Los Angeles, surveying 203,000 students in 2011, found that 71.3 percent agreed that same-sex couples should have the right to marry.¹⁵ Many college-educated straight young adults are very accepting of their LGBT counterparts, and indeed count them among their friends, and similarly expect employers to treat all employees with respect, regardless of sexual orientation or gender identity or expression. LGBT and straight students have witnessed a steady stream of “coming outs,” not just from their peers and from celebrities but also from their parents, teachers, and school administrators and highly respected public figures. To most of them, the idea of *not* treating LGBT persons—indeed, all employees—equally, including in terms of equal benefits, or denying gender-affirmed individuals the right to use the restrooms that correspond with their gender identity, is simply unacceptable.

Attracting and keeping talented and committed Millennials as employees thus means being ahead of the curve on these issues. Just as the second wave of the feminist movement of the 1960s and 1970s advanced an agenda of changing the workplace to meet the specific health, gender-equity climate, and lifecycle needs of women, now, thanks to four decades of increased visibility for LGBT individuals and corporate America’s recent acceptance of the business (and often legal) need for more flexible workplace policies responsive to the need for “Mommy tracks,” reasonable accommodations, and family and medical leave obligations, the contemporary workplace is

¹²See *O’Donnabhain v. Commissioner of Internal Revenue*, 134 T.C. No. 4, Tax Ct. Rep. (CCH) 58,122, 2010 WL 364206 (Tax Court 2010), *available at* www.ustaxcourt.gov/InOpHistoric/ODonnabhain.TC.WPD.pdf (holding that medical expenses related to a gender affirmation were medically necessary and therefore deductible as a medical expense on Form 1040); Chapter 37 (Employee Benefit Issues), Section III.H.

¹³“Genderqueer” is a term used by those who identify outside of the male-female gender binary. Those who are genderqueer challenge the notion that having only two genders is appropriate for all.

¹⁴Some jurisdictions have started to mandate this. For example, in the District of Columbia, single occupancy restroom facilities may not be designated for a specific gender and must bear gender-neutral signage (e.g., “Restroom”). D.C. MUN. REGS. 4-802.2.

¹⁵JOHN H. PRYOR ET AL., *THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2011* 6 (2011), *available at* <http://heri.ucla.edu/PDFs/pubs/TFS/Norms/Monographs/TheAmericanFreshman2011.pdf>.

undergoing a similar, more rapid change. Programs and resources from nonprofits such as Out and Equal Workplace Advocates¹⁶ and the HRC¹⁷ offer ample guidance on transforming workplaces to ensure equity in areas of workplace conditions and providing health care and other benefits that are inclusive of LGBT employees and their families.

IV. CONCLUSION

To summarize, the “picture” of LGBT Millennials is that, although many may still endure mistreatment and judgment in their home communities, houses of worship,¹⁸ and schools, most have developed effective coping skills and strategies for thriving. They have come of age with ample images of queer youth and adults, including highly successful LGBT role models, both in the mainstream media and online, and have used this exposure to inform and shape their own identities. The strength of these identities, formed at younger ages, is accompanied by greater knowledge about what they should legally and ethically expect in their employers’ toolkit and their willingness to be champions for change. Similarly, straight Millennials are far more accepting of their LGBT peers than are people of prior generations. In addition, they are more willing to speak up for and support their LGBT friends. As a group, in 2014, 68 percent of all Millennials support same-sex marriage, compared to 48 percent of their Baby Boomer parents, who the Millennials now outnumber.¹⁹ The take-home for employers is that it is imprudent to “wait” for active, vocal LGBT and straight young employees

¹⁶Out and Equal Workplace Advocates holds an annual educational workplace summit for employers. The training materials from recent summits are available on its website, at <http://outandequal.org/annual-summit>.

¹⁷The HRC provides a variety of resources for employers, including information on how to ensure equal benefits for LGBT employees and provide accepting workplaces for LGBT employees. See, e.g., *Employer Resources*, HUMAN RIGHTS CAMPAIGN (undated), www.hrc.org/issues/pages/employer-resources; and *Resources: Workplace*, HUMAN RIGHTS CAMPAIGN (undated), www.hrc.org/resources/category/workplace.

¹⁸See Chapter 45 (Faith Communities and LGBT Justice).

¹⁹*Changing Attitudes on Gay Marriage* (slide 2), PEWRESEARCH RELIGION & PUBLIC LIFE PROJECT (Mar. 2014), <http://features.pewforum.org/same-sex-marriage-attitudes/slide2.php> (68% of Millennials (1981–later), 55% of Generation X (Gen-X; 1965–1980), 48% of Baby Boomers (1946–1964), and 38% of the Silent Generation (1928–1945) support same-sex marriage); Floyd Norris, *Younger Turn for a Graying Nation*, N.Y. TIMES, May 23, 2014, available at www.nytimes.com/2014/05/24/business/younger-turn-for-a-graying-nation.html?_r=0 (according to a *New York Times*’ analysis of U.S. Census Bureau data, as of 2013, “[t]here are now more young adults that there are baby boomers. . . . [T]he Census Bureau now estimates that the biggest such group last year was 22-year-olds. The largest of the baby boom contingents, people who were 53 last year, had fallen to fourth place. The second- and third-ranked age levels were 23- and 21-year-olds.”). See also Micah Cohen, *Gay Vote Proved a Boon for Obama*, N.Y. TIMES, Nov. 15, 2012, available at www.nytimes.com/2012/11/16/us/politics/gay-vote-seen-as-crucial-in-obamas-victory.html (“Mr. Obama’s more than three-to-one edge in exit polls among the 5 percent of voters who identified themselves as gay, lesbian or bisexual was more than enough to give him the ultimate advantage, according to the study, by Gary J. Gates of the Williams Institute at the UCLA School of Law, in conjunction with Gallup. . . . Other Republican strategists, however, say that their party’s stances on social issues like marriage are alienating straight voters, too.”).

to arrive before considering the ways that benefits, climate, and workplace community might need to be assessed and adapted.

Besides realizing that you can never have enough cookies, the being-out-in-the-workforce panel discussions I have facilitated have taught me many important things about the motivations and concerns of queer Millennials. An open forum provides an opportunity for those entering the workforce to ask questions about acceptable degrees of “outness” in various industries, to find ways to proactively approach conversations about benefits and medical care, and to learn strategies for effectively advocating to alleviate differential tax treatment of same-sex couples. But they also provide insights for me and other Gen-X and older employers about what bright, committed young LGBT folks need and expect from their workplace. They want to be out, they want to be respected, and they want to be able to pursue the kind of work their hearts have led them to—while also being affirmed in who they are. In short, they want to be treated like everyone else. These realities mean that employers that understand the value of a diverse workforce, and that consider and plan ahead, will be richly rewarded with the voices, vision, and energy of today’s queer Millennial youth—and generally with the support of their peers in the workforce as well.