



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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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.¹

A significant number of those workers are gay² 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.³

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.⁴
- **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.⁵



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.

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