

Diversity: Celebrating Same-Sex Marriage at BigLaw?



By Katherine Frink-Hamlett

I am a member of the Professional Development department at a large law firm based in New York. We frequently are involved in firm-wide diversity initiatives and recently there has been some concern that we need to have stronger visibility with key affinity groups, most notably, LGBT attorneys. As a result, the firm has decided to review its strategies for the recruitment and retention of LGBT attorneys.

During our brainstorming and planning sessions, several of my colleagues discussed the idea of implementing a firm-wide celebration or event that would annually recognize New York's passage of the Marriage Equality Act. While I generally think that it's an attractive idea, I wonder if it might be offensive to those whose religious views don't embrace same-sex marriage. I fully support creating a culture of tolerance for LGBT attorneys but I am equally concerned that we don't make light of the religious views of others. How can we achieve this balance?

You can't. In fact, you shouldn't. Religious views cannot be used to abridge or otherwise dilute the rights of LGBT attorneys. Indeed, a major component of the Marriage Equality Act is to eliminate the very notion you wish to include in the "balance". While the expression of religious freedom is highly valued and is a cornerstone of American democratic ideals, it cannot serve as a basis for undermining the civil rights of members of the LGBT community nor should it be viewed as an out for tempering the firm's LGBT diversity initiatives. This is especially the case when the firm has acknowledged that there are deficiencies in its current approach and outreach.

Further, while it may not have been your intent to convey a half-hearted commitment to the firm's LGBT outreach initiatives, I am concerned about your desire to "create a culture of tolerance." "Tolerance" should be reserved for in-law visits – not diversity. Tolerance has absolutely no place in recruitment or retention efforts of any kind. Keep in mind, we tolerate that which we genuinely don't want or like but for whatever reason recognize that we need to accept (again – those in-law visits come to mind). Indeed, one definition of "tolerance" is described as "the practice of deliberately allowing or permitting a thing of which one disapproves." (<http://en.wikipedia.org/wiki/Toleration>). The firm's LGBT attorneys do not want to be tolerated. Rather, they wish to be genuinely welcomed, valued and provided an atmosphere where they are seamlessly included as fully participating professionals.

As a Professional Development representative and as among colleagues who are committed to improving diversity initiatives, your goal is to develop firm-wide best practices so that LGBT attorneys can be out and proud. Not only is this approach ethical and the right thing to do, it is a business imperative because not to do so means running the grave risk of losing significant, key talent. As NBA sports icon Charles Barkley, a vocal supporter of same-sex marriage, stated, "I'd rather have a gay guy who can play than a straight guy who can't play . . . I can't be in for any form of discrimination at all." (*See, New York Magazine*, September 19, 2011 at page 30). If your firm wants to play and is serious about talent acquisition, it better get real about recruiting and retaining LGBT attorneys because they are and will continue to be a tremendous source of legal talent: several make it rain and many are among the best in their practice areas.

Surprisingly, there appears to be a dearth of resources on best practices for the retention and recruitment of LGBT attorneys. However, I did locate two publications that are good starting points: *Perspectives from the Invisible Bar: Gays and Lesbians in the Profession* (<http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageID=612>) and *Corporate Equality Index: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality* (<http://www.hrc.org/documents/HRC-CEI-2011.pdf>). In addition to speaking with the LGBT attorneys at your firm to assess their experiences, you also may wish to consider the following approaches. Some of these suggestions may seem fairly obvious; others less so, but all are worth reviewing:

Recruit through gay and lesbian law student groups and be sure that the firm's recruitment materials include information about the firm's anti-discrimination policy, domestic partnership benefits and the numbers of openly gay or lesbian attorneys.

LGBT attorneys should be actively and consistently involved in on-campus recruiting and represented on the Hiring Committee.

Be sure to specifically include "sexual orientation" and "gender identity or expression" in the firm's EEOC statement.

Diversity training should include "sexual orientation" and the firm's employees should be made aware that any such discrimination or derogatory comments will not be tolerated.

The children of LGBT attorneys should be afforded the same health care coverage, parental leave benefits, etc. as those of married, heterosexual couples.

Partners and spouses of LGBT attorneys should be fully included in firm and client functions.

Provide medical coverage for transgender and transitioning attorneys (*e.g.*, hormone replacement services, reconstructive surgical procedures, etc.).

Support and encourage pro bono matters pertaining to LGBT issues

Provide philanthropic support to LGBT organizations and events.

So with particular reference to the last suggestion, I think the idea of an annual event celebrating New York State's passage of the Marriage Equality Act is a fantastic idea. And, while you're at it, do a happy dance for the repeal of "Don't Ask – Don't Tell" as well. It'll be a gay time for all (pun intended)!

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