

PRIDE IN MY WORKPLACE
BEST PRACTICES
GUIDE FOR NEW YORK STATE BUSINESSES
TO SUPPORT LESBIAN, GAY, BISEXUAL
AND TRANSGENDER EMPLOYEES

SECOND EDITION

PRIDE IN MY WORKPLACE

The mission of Pride in My Workplace is to encourage workplaces in all sectors of the workforce throughout the State of New York to be free of discrimination and to affirm the presence and contributions of their lesbian, gay, bisexual and transgender (LGBT) employees. The program seeks to develop relationships with employers and build strong alliances with business leaders to further the goal of achieving equality and justice for all LGBT New Yorkers.

SPECIFIC GOALS OF THE PROGRAM INCLUDE:

- Educate employers and employees about New York State's Sexual Orientation Non-Discrimination Act (SONDA) and the value of creating affirmative workplace policies for LGBT employees and their families.
- Publicize best practices and encourage all employers to adopt them.
- Organize to increase the number of LGBT Employee Networks in New York State.
- Encourage employers in the private sector to act as advocates for LGBT equality & justice.

Pride in My Workplace celebrates the achievements of employers and individual New Yorkers at its annual Equality@Work Awards Luncheon during Pride Month every June.

Pride in My Workplace is a program of the Empire State Pride Agenda Foundation, a non-partisan, 501(c)(3) research, education and advocacy organization. The Foundation is affiliated with the Empire State Pride Agenda, Inc.

The inspiration for the front and back covers of the Best Practices Guide is the often quoted statistic that 1 in 10 people is LGBT.

This guide is available in PDF format on the Empire State Pride Agenda website at www.prideagenda.org.

EMPIRE STATE  PRIDE AGENDA

Empire State Pride Agenda Foundation
16 West 22nd Street, 2nd Floor
New York, NY 10010

PH: 212-627-0305

FAX: 212-627-4136

www.prideagenda.org

PRIDE IN MY WORKPLACE BEST PRACTICES GUIDE

SECOND EDITION

Since its first printing and distribution in spring 2006, the *Best Practices Guide* has reached over 7,500 employers, business professionals and employees in New York State. From the board room to the lunch room, the guide has influenced conversations and broadened how employers and employees alike think about diversity and inclusion in the workplace.

In recognition of the evolving legal, legislative and political landscape and its impact on LGBT people, this updated guide includes new best practice recommendations for addressing marriage recognition and transgender non-discrimination for employees and customers.

The Pride in My Workplace program looks forward to continuing to work with business leaders and employers who are committed to providing a fair and equitable workplace for all LGBT people and their families.

INTRODUCTION

The Benefit to Employers of Supporting LGBT Employees

Providing a non-discriminatory workplace regardless of sexual orientation is the law in New York State, and providing a non-discriminatory workplace regardless of gender identity and expression is the law in New York City, as well as six other cities and three counties in New York State. It is also the right thing to do, and it is good for business.

Increasing numbers of employers recognize that it makes sound business sense to have a diverse employee base. Diversity is not about singling out one group for special treatment, but rather about embracing the value in difference and creating an inclusive workplace environment.

People with diverse backgrounds bring different approaches to leadership and problem solving, generating and sharing ideas, and building relationships, all of which have an impact on the bottom line.

New York employers are leading the way in this area. This means that many New Yorkers work for organizations that follow not just the letter of the law, but also its spirit. Unfortunately, not all LGBT employees in New York are working in such a supportive work environment. When employees are not comfortable in their work environment or feel that they are not being treated equally in terms of the administration of benefits or policies, retention and productivity are hindered.

We believe that workplaces that treat all employees equally and with respect are a win for the organization, a win for the individual and a win for New York. With that in mind, we offer this guide to give employers the information they need in order to provide a safe and supportive work environment for LGBT employees.

How to Use this Guide:

The purpose of this guide is to provide employers with an overview of how to make your workplace a safe and supportive environment for your LGBT employees.

This guide includes:

- Overview of certain legal requirements for New York State employers
- Beyond the law, the top six best practices for affirming your LGBT employees
- Resources for further information
- Glossary of commonly used terms

As discussed on the next page, this guide is not intended as legal advice and may not be relied upon as such.

continued on next page

SUCCESS STORIES

“The Best Practices Guide is a self-diagnostic tool that we use to measure the effectiveness of our own policies and procedures. It is not about ranks or scores; it is about meeting the needs of our global organization through common sense improvements and strong partnerships with organizations like the Empire State Pride Agenda.”

Paul Campbell

Vice President – Human Resources – Labor, Community Relations,
Diversity, Global Human Rights, Fair Employment Practice
Polo Ralph Lauren

The Benefit to Employers of Supporting LGBT Employees continued

DOES THIS GUIDE OFFER LEGAL ADVICE?

No. This guide does not offer legal advice and may not be relied upon as such. This guide was updated in the spring of 2009 and reflects certain relevant legal requirements at that time. Legislative and case law in the area of rights associated with sexual orientation and gender identity and expression are rapidly evolving. To ensure compliance with federal, state and local law related to sexual orientation and gender identity and expression, we strongly encourage you to consult your legal advisors.

DOES THIS GUIDE GIVE TIPS ON MARKETING TO LGBT CONSUMERS?

Not specifically. This guide is a tool for businesses in their role as employers. It does not include specific marketing tools for reaching LGBT customers. However, Pride in My Workplace does consider marketing to the LGBT community to be a best practice because it demonstrates to your employees that you care about and value the LGBT community, which in turn helps with recruitment and retention. Some information on marketing to the LGBT community is included in the "Supporting the LGBT Community" section of this guide.

Forty-one of the companies on The 2007 DiversityInc Top 50 Companies for Diversity® list are publicly traded. By expressing those companies' stocks as an index, we can compare the group... Assuming all these indexes started at the same point on April 30, 1997, by the end of 2006 the Top 50 Stock Index is 46.6% higher than the Dow Jones Industrial Average, 45.7% higher than the Nasdaq and 22.7% higher than the S&P 500.

— DiversityInc, June 2007

OVERVIEW OF ADVANTAGES FOR EMPLOYERS

At a minimum, New York businesses can reduce the risk of legal liability and litigation by making efforts to avoid discrimination based on sexual orientation and gender identity and expression. Going beyond that minimum to foster a diverse and inclusive workplace is usually based on a company's commitment to principles of fairness and inclusion. But these policies can also be good for business, as documented by DiversityInc (see box at left). Companies promoting diversity attract and retain existing business, as they attract and retain the best talent.

RECRUITMENT AND RETENTION: MAINTAINING THE COMPETITIVE ADVANTAGE

An employer's most valuable asset is its human capital. How does a company attract and retain the best talent? By valuing all employees through policies that allow them to provide for themselves and their families, and through a workplace culture that encourages appreciation of and respect for differences. Inclusion breeds loyalty, and creating a loyal workforce reduces the time and expense associated with employee turnover.

EMPLOYEE PRODUCTIVITY

Employees who have to worry about their uninsured partner, who feel uncomfortable being out at work or who feel isolated because they feel they are the only ones struggling with these issues have been shown to be less productive. If your LGBT employees feel comfortable and supported in their work environment, they will be able to focus more effectively on the work of the company, thereby increasing productivity.

More than half of Fortune 500 companies offer domestic partner health benefits.

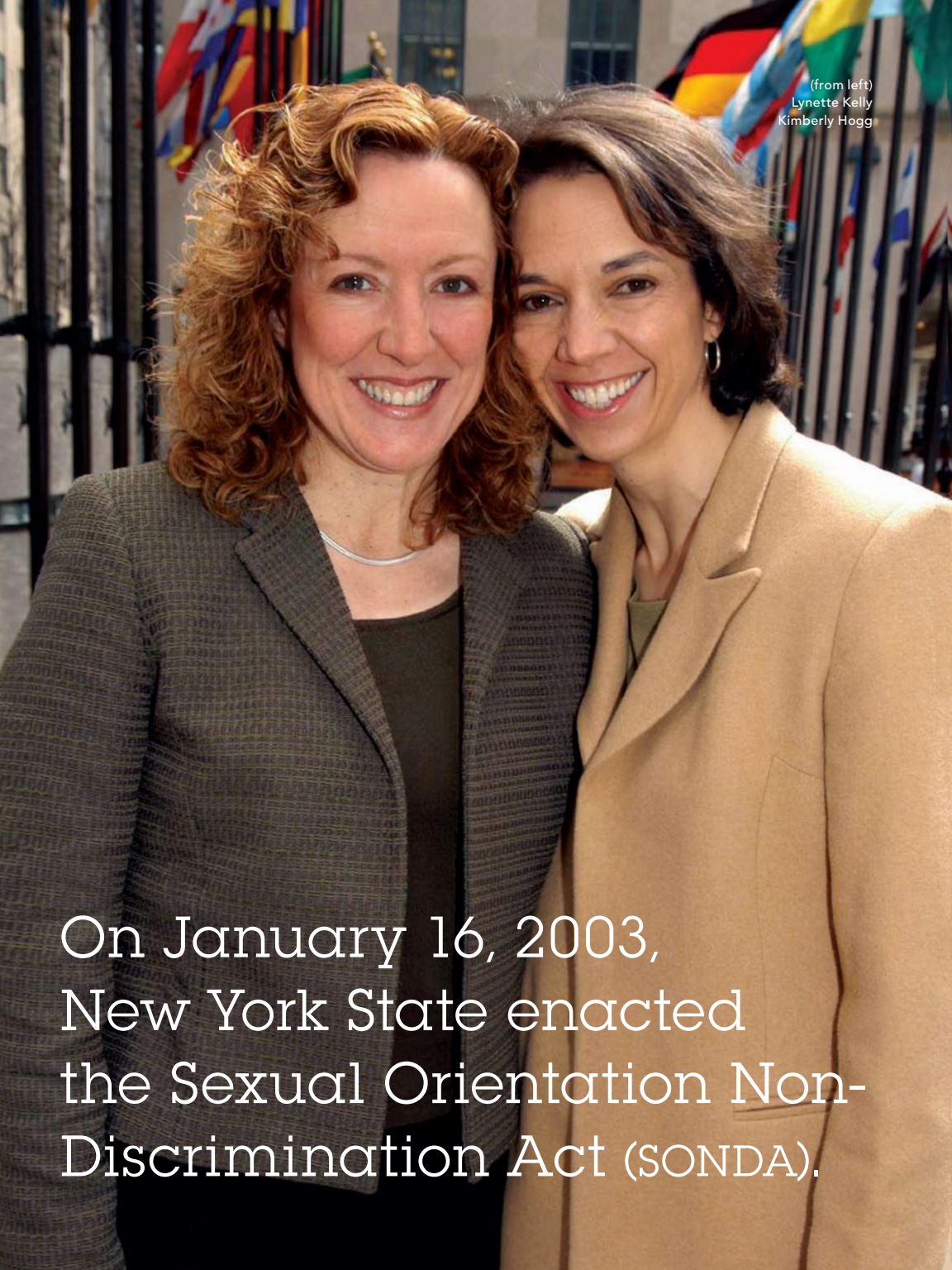
BRAND LOYALTY

National surveys have documented that the LGBT community demonstrates brand loyalty to companies that have policies of equal treatment. "Two-thirds (66%) of all GLBT adults reported that they would be very or somewhat likely to remain loyal to a brand they believed to be very friendly and supportive to the gay, lesbian and transgender community — even when less friendly companies may offer lower prices or be more convenient."¹

THE RIGHT THING TO DO, FOR SO MANY REASONS

A growing number of employers believe it makes sound business sense to have a diverse employee base. We hope the information that this guide offers about best practices will help ensure that your workplace is inclusive and diverse, and as a result, more successful.

¹ Harris Interactive, 9/24/07, www.harrisinteractive.com/news/



(from left)
Lynette Kelly
Kimberly Hogg

On January 16, 2003,
New York State enacted
the Sexual Orientation Non-
Discrimination Act (SONDA).

LEGAL OBLIGATIONS

On Sexual Orientation and Gender Identity/Expression in New York

LAWS RELATED TO SEXUAL ORIENTATION

On January 16, 2003, New York State enacted the Sexual Orientation Non-Discrimination Act (SONDA). This law amends the New York State Human Rights Law (Article 15 of the Executive Law) to prohibit discrimination on the basis of sexual orientation in employment, public accommodation, housing, education, credit and other areas of everyday life.

Every employer subject to the law must post an official New York State SONDA posting in a conspicuous and well-lit place at or near where work is performed.

Currently there are no federal laws prohibiting discrimination based on sexual orientation in employment. However, employers should be aware that legal protections from sexual harassment in the workplace can also impact the treatment of LGBT employees. The U.S. Supreme Court has found that sexual harassment between

people of the same sex, regardless of the sexual orientation of either the perpetrator or the target, is just as actionable as harassment between members of the opposite sex. Prohibited sexual harassment includes both requests for sexual favors ("quid pro quo" sexual harassment) and sexually offensive behavior that leads to an oppressive work environment. Therefore, it is important that employers investigate complaints that involve anti-gay epithets or other sexually explicit behavior that might be interpreted as sexual harassment.

EMPLOYEE RIGHTS UNDER SONDA

Consistent with other provisions of New York's Human Rights Law, under SONDA, an employee who believes s/he has been discriminated against based on his/her actual or perceived sexual orientation can file a complaint against the employer either with the New York Division of Human Rights or in state court.

RESOURCES FOR EMPLOYERS

For more information about complying with SONDA, contact the New York Division of Human Rights by visiting www.dhr.state.ny.us to find the nearest regional office.

LAWS RELATED TO GENDER IDENTITY AND EXPRESSION

As of the spring of 2009, neither federal nor New York state law explicitly prohibit discrimination based on gender identity and expression. However, some state and federal courts have interpreted laws that prohibit sex or disability discrimination as

Employer Obligations Under New York State Law

Under SONDA, employers with four or more employees may not make decisions based on a person's actual or perceived sexual orientation in any area of employment, including:

- Hiring
- Recruitment
- Promotion
- Job assignments
- Training
- Compensation
- Termination

Legal Obligations on Sexual Orientation and Gender Identity/Expression in New York continued

affording protection to individuals harassed or discriminated against because they are transgender or do not conform to societal gender norms. The law in this area remains unsettled.

As of the spring of 2009, there are at least six cities and three counties in New York State that have amended their non-discrimination laws to explicitly protect transgender people on the basis of gender identity and expression. The cities are Albany, Binghamton, Buffalo, Ithaca, New York City and Rochester. The three counties are Suffolk, Westchester and Tompkins counties.

EMPLOYER RESPONSIBILITIES

Employers doing business in the above-mentioned municipalities and counties that are covered by these laws may not discriminate based on gender identity and/or expression in hiring, promotion, job assignments, termination and compensation of employees or prospective employees.

EMPLOYEE RIGHTS UNDER THE LAW

If employees believe that they have experienced discrimination based on their gender identity or expression, they have the legal right to file a complaint at the municipal level. For example, in New York City, an employee can file a complaint with the City Human Rights Commission or sue in court. In Buffalo, an employee can file a complaint with the Buffalo Commission on Citizens' Rights and Community Relations.

In municipalities and counties where there are no explicit laws protecting individuals based on gender identity and/or expression, an aggrieved employee can file a claim based

on sex or disability discrimination which may be successful based on previous court rulings.

EMPLOYER RESOURCES ON LOCAL TRANSGENDER LAWS

For more information about complying with the New York City law, there are guidelines from the New York City Human Rights Commission at 212-306-5070 or www.nyc.gov/cchr.

The Buffalo Commission on Citizens' Rights and Community Relations is responsible for investigating and recommending action on violations of its human rights code. You can contact the Commission at 716-851-8000 or www.ci.buffalo.ny.us/home/city_departments.

For more information on other local laws, consult with your attorney or contact the city or county agency responsible for enforcing the law.

CURRENT LAW RELATED TO TREATMENT OF SAME-SEX SPOUSES

As of spring 2009, New York does not have a law allowing same-sex couples to marry. However, some jurisdictions such as Massachusetts, Connecticut, Iowa, Vermont and Canada legally marry same-sex couples and have no restriction on out-of-state couples getting married there. Therefore, an employee working in New York State may have a legal same-sex spouse that he or she married in a jurisdiction that permits such marriages.

Current case law in New York, including three binding Appellate court decisions, holds that valid marriages between same-sex couples performed outside the state are entitled to legal recognition here in New York. In accordance with these marriage recognition requirements, employee benefits regulated by

the State of New York must be extended to the same-sex spouses of employees. For example, the New York State Insurance Department has issued a directive to insurance companies doing business in New York to extend insurance issued under state policies to same-sex spouses to the same extent as opposite-sex spouses. Similarly, the New York State Banking Department issued an industry-wide letter requiring banks to interpret the terms "spouse," "husband" and "wife" in a manner that includes same-sex spouses for things like conflict of interest laws for board members, making of loans and eligibility for credit union membership.

EMPLOYER RESOURCES ON MARRIAGE AND SPOUSAL BENEFITS FOR SAME-SEX COUPLES

For information on the court decisions in this area and the latest legal developments, go to www.nyclu.org/marriagefaq or www.lambdalegal.org.

LEGISLATIVE WATCH

As of the publication date of this guide (spring 2009), the New York State Legislature is considering legislation that would impact employers in New York State. One of these bills would explicitly prohibit discrimination in employment against transgender individuals by adding the categories of "gender identity and expression" to the already existing New York State human rights laws. Another bill would allow same-sex couples to marry in New York State.

For updates and information concerning these bills, please visit the Empire State Pride Agenda's website at www.prideagenda.org.

The cities of Albany, Binghamton, Buffalo, Ithaca, New York City and Rochester as well as Suffolk, Westchester and Tompkins counties have amended their non-discrimination laws to explicitly protect transgender people on the basis of gender identity and expression.

SUCCESS STORIES

"I am an Executive Director at the JPMorgan Investment Bank. The fact that JPMorganChase's EEO policy is inclusive of sexual orientation and gender identity tells me that my employer not only values me as an employee, but values me as a person. Our EEO policy, and enforcement of our policy, creates a diverse and safe workplace for everyone."

Kurt Giehl
JPMorganChase & Co.



BEST PRACTICES

1 Equal Employment Opportunity Statement

INCLUDING "SEXUAL ORIENTATION" AND "GENDER IDENTITY AND EXPRESSION" IN YOUR EEO POLICY

Adding "sexual orientation" and "gender identity and expression" to your existing EEO policy reinforces the cultural values of your company and helps to create a more respectful and inclusive environment for all employees. Of course, employers in the State of New York are already obligated to comply with SONDA, regardless of the enumeration of "sexual orientation" in the company's EEO policy. Similarly, employers covered by gender identity and expression local ordinances are obligated to comply with those.

GETTING TOP MANAGEMENT APPROVAL

Creating or revising an EEO policy requires that you have the support of your organization's senior leaders. A culture of respect and inclusion starts at the top. It is easier to obtain the support of senior management when those individuals

understand how an EEO policy is consistent with the mission and values of your organization.

A MODEL EEO POLICY

Because EEO policies can set the tone for fostering a workplace respectful of employee diversity, we recommend the creation of a written EEO policy. Here is a model that is based on actual corporate policies:

NewYorkCorp is committed to maintaining a work environment free of harassment, discrimination, intimidation or retaliation.

NewYorkCorp does not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, veteran status, disability, age, citizenship, marital or domestic/civil partnership status, sexual orientation, gender identity or expression, or because of any other criteria prohibited under applicable law. NewYorkCorp administers all terms, conditions and privileges of employment on a non-discriminatory basis, including, but not limited to, recruiting and hiring (including recruitment advertising), promotions and transfers, performance appraisals, training, job assignments, compensation, termination of employment and benefits.

If a NewYorkCorp employee believes that a violation of this policy has occurred, s/he should take immediate action by contacting his/her supervisor or Human Resources representative. If a job applicant believes that a violation of this policy has occurred, s/he should contact his/her staffing representative, or a company Human Resources representative. Retaliation, intimidation or discrimination against employees or applicants who report violations is strictly prohibited, and will be considered to be a violation of this policy.

NewYorkCorp will investigate reports of policy violations expeditiously and as discreetly as possible. Employees who violate this policy will be subject to disciplinary action, up to and including the termination of employment.

Publicizing and Enforcing Non-Discrimination Policies

- Employees need to know about your non-discrimination policy.
- Your non-discrimination policy should also prohibit harassment of any kind.
- Outline a clear grievance procedure.
- Communicate a no retaliation policy.
- Build a reputation that you take complaints seriously.

BEST PRACTICES

2 Employee, Domestic Partner and Spousal Benefits

A NOTE ON “EMPLOYEE BENEFITS”

“Employee benefits” refer to any benefits given to employees as part of an overall compensation package, including but not limited to health insurance, pensions and bereavement, family care and maternity/paternity leave. The best practice in this area suggests that employers equalize benefits offered to all employees regardless of their sexual orientation or gender identity and expression. Thus, offering health insurance benefits to the domestic partners of your employees if you cover spouses as well as covering the specific healthcare needs of transgender employees will send a clear message that your organization values all employees and their families equally.

MARRIAGE AND SPOUSAL BENEFITS

As discussed in the “Legal Obligations” section of this guide, case and statutory law in this area are rapidly evolving, so employers are encouraged to consult with legal advisors

about specific requirements governing eligibility for employee benefits.

As of the publication date of this guide, jurisdictions including Massachusetts, Connecticut, Iowa, Vermont and Canada allow same-sex couples to marry. Therefore, even absent a law in New York State that permits same-sex couples to marry here, an employee working in New York might be legally married to a same-sex spouse.

New York State has specific legal requirements about respecting the marriages of same-sex couples who were legally married in other jurisdictions. For example, in accordance with these marriage-recognition requirements, the New York State Insurance Department has issued a letter to insurance companies authorized to do business in New York to extend insurance to same-sex spouses under the same terms as offered to opposite-sex spouses. As such, an employer offering group insurance benefits to the spouses of employees under policies governed by New York state law should ensure that same-sex spouses are covered to the same extent as opposite-sex spouses. While an employer’s self-insured ERISA plan might not be covered by New York’s marriage recognition law, as a best practice, private employers should accord equal spousal benefits to the same-sex spouses of employees who were legally married in a jurisdiction outside of New York.

OTHER LEGAL FAMILY RECOGNITION

Some states have created legal structures similar to civil marriage to protect same-sex couples and their families. New Jersey, for example, allows same-sex couples to

continued on next page

SUCCESS STORIES

“I worked as a Group VP of Product Design and Development for Kenneth Cole in New York City. When I was sent to work in Italy for one and half years, my employer paid for my partner to relocate with me. Furthermore, they paid for his Italian language lessons, helped him find a job and treated us the same way they do any family that moves to a new place at the company’s request.

They went the extra mile for my family, and that made me happy to go the extra 7,000 miles for Kenneth Cole.”

Robert Mingione
Formerly with Kenneth Cole Productions, Inc.

(from left)
Robert Mingione
John Donahue

Other Spousal Equivalency Benefits

- Adoption assistance
- Bereavement leave
- COBRA benefits continuation
- Employee discounts
- Employer-provided life insurance
- Family leave, including parental leave
- Relocation assistance
- Retiree medical coverage
- Supplemental life insurance
- Survivor pension benefits

Employee and Domestic Partner Benefits continued

enter into civil unions, while same-sex couples in California can enter into domestic partnerships that offer the same legal rights and responsibilities that California extends to married couples. New York State does not offer civil unions or domestic partnership status on a statewide level, so the legal requirements for how these family-protection structures should be recognized in New York is unclear. Some private employers have decided to respect these relationships by offering spousal benefits to the partners of employees who have entered into these legal relationships elsewhere.

While federal law currently does not recognize marriages or any other state-based legal mechanism protecting same-sex couples, there is no federal restriction on any private actor or state respecting marriages, civil unions or domestic partnerships for the purpose of granting spousal benefits. Employers are advised to consult a benefits or tax specialist and legal counsel to find out about the interplay between state and federal law in this area, and to determine how spousal benefits extended to LGBT employees should be treated for tax and imputed income purposes.

Many lesbians and gay men use “domestic partner” colloquially to refer to their life partner. However, as mentioned above, “domestic partnership” can have a specific legal definition under local or state law as well as a specific definition under an employer’s policies. Some New York municipalities and counties have created a domestic partner legal status for couples. Some local domestic partnerships create select rights and responsibilities for the couple. Other domestic partnership structures give no substantive rights at all other than having the partnership documented. Currently, New York State does not have a statewide registry; however, cities like Albany, Ithaca, New York City and Rochester; towns like East

Hampton, Ithaca and Southampton; and counties like Rockland, Suffolk and Westchester have created domestic partner registries. For more information on the specific requirements in each city or county, please consult with your attorney or contact your local agencies.

Nationally, approximately 57% of the Fortune 500 companies and over 9,000 other employers offer domestic partner health benefits. These employers recognize that employees are more productive if they are not spending time and energy worrying about providing for their families. They also know that employee benefits are a very important tool in employee recruitment and retention. If your health plan covers the spouses of employees, your organization can seek to provide equal benefits to unmarried LGBT employees by offering health insurance to their domestic partners. Your organization may decide to provide domestic partner health benefits only to same-sex couples, because marriage is an option for heterosexual couples. Alternatively, it can define domestic partner more broadly and without regard to the sex of the employee’s partner. Either way, your insurance carrier may require that you obtain proof of an employee’s domestic partner status before providing coverage to the partner.

Registration of domestic partnership with a governmental body pursuant to local law authorizing such registration is one form of proof of status and is often sufficient for benefit enrollment. Another is typically in the form of an employer-created certification of domestic partnership status, especially because not all localities in the state have partner registries. Such certification typically requires that an employee state that s/he is not currently married or in a domestic partnership with anyone else and is in a close, committed relationship with that individual. Just as an

employer would not require an employee who was legally married to attest that s/he has been living continuously with his/her spouse, or that their finances are commingled, it is inequitable to make that requirement of employees in a domestic partnership.

Another option for offering inclusive benefits is to offer coverage to a “qualified adult.” With this approach, all employees are eligible to cover their spouse or one qualified adult. A “qualified adult” can be a domestic partner or an extended family member that meets certain criteria as defined by the plan. This option allows individuals to define families for themselves in an even broader sense than just including domestic partners, and may be appropriate for some employers.

Your insurance carrier may be able to assist you in extending group insurance benefits to domestic partners.

COST OF PROVIDING DOMESTIC PARTNER BENEFITS

Many employers believe that the cost of providing domestic partner benefits is too prohibitive to justify the good will created by this inclusive action. In practice, however, the cost for most employers is relatively minimal, typically a 1% to 2% increase over current benefit costs, according to a 2006 study by the Williams Institute at UCLA Law School.²

As alluded to earlier in this section, unlike health benefits provided to heterosexual married spouses, federal law currently requires that the amount spent by an employer to provide health insurance coverage to a domestic partner must count as imputed income to the employee. Hence, an employee receiving domestic partner coverage bears the burden of this tax disadvantage. A few companies alleviate the tax disadvantage

faced exclusively by LGBT employees (because federal law does not recognize them as “married” even if they have been married in a jurisdiction where it is legal) by compensating employees (i.e. “grossing up” the income) for the amount of taxes paid.

For more information regarding the tax implications of providing domestic partnership benefits, we encourage you to consult a benefits or tax specialist.

HEALTH INSURANCE COVERING THE NEEDS OF TRANSGENDER EMPLOYEES

Some transgender individuals will choose to take hormones and/or have surgical procedures to align their physical anatomy or appearance with their gender identity. A fully inclusive health insurance plan will include coverage for hormone therapy and all medical and mental health care related to transitioning, including coverage for necessary surgical procedures and eligibility for short term disability benefits following surgery. Additionally, companies may have to work with their insurance carriers to make sure employees are receiving coverage for the medical needs appropriate to their bodies, regardless of the sex indicated in insurance paperwork or other legal documents. For example, a transgender male employee may still require a pap smear or screening for breast cancer, and a transgender female employee may still require a prostate exam. Best practice would be for the employee’s health plan to cover these medically necessary procedures.

² *Separate and Unequal: The Effect of Unequal Access and Employment-Based Health Insurance on Same-Sex and Unmarried Different Sex-Couples*, Contemporary Economic Policy, Vol. 24 No. 4, October, 2006.

BEST PRACTICES

3 Inclusive Work Environment

FOSTERING AN INCLUSIVE ENVIRONMENT

One way to create an inclusive work environment in your organization is to offer diversity trainings that provide comprehensive education to employees about many aspects of diversity, including sexual orientation and gender identity and expression. Effective and engaging diversity training will enable employees to gain a better understanding of your organization's culture of inclusion and respect, and to conform your workplace behavior in a manner ensuring that everyone feels comfortable in his/her work environment.

Diversity training should, at a minimum, address inclusiveness through the lens of your organization's EEO policy and state and local law. Because sexual orientation and gender identity and expression are distinct characteristics, inclusive diversity training should address all of these characteristics.

In conducting diversity training, start with the senior members of your organization. They need to fully understand the importance of respecting staff in all its diversity. Once they are on board, train your front line managers. These individuals usually set the tone for their specific work area. Finally, diversity training should be required of every single employee in the organization.

If your budget allows, it is best to engage a professional with skills and experience in conducting diversity trainings that are culturally-competent in addressing LGBT issues. These diversity professionals can help you assess the training needs of your workplace and provide effective trainings tailored to your workforce.

Best Practices Employers Can Adopt:

- Use inclusive language in policies impacting an employee's family. Refer to "spouse or domestic partner" rather than or in addition to "husband" or "wife." Include "partner's parents" as well as "mother-in-law and father-in-law."
- Make sure that family events are inclusive. For example, if your organization is hosting an event for employees' children, make it clear that the dependent children of an employee's domestic partner are welcome.
- Use appropriate pronouns for transgender employees. Ask employees if they would prefer to be addressed with male or female pronouns.
- Provide mentoring to LGBT employees. If current employees self-identify as LGBT, make sure they are included in mentoring programs and are given the same professional development opportunities afforded to all other employees.
- Involve the leaders of your LGBT Network to help gauge whether LGBT employees feel comfortable in their work environment.

SUCCESS STORIES

"In 2006, we revised our Firm Diversity Statement and EEO policy, which had already covered sexual orientation, to include gender identity. Gender expression was later added as protected class under our policies.

Enhancement of the Firm's policies required education on the distinctions between gender expression and identity. We then implemented the policy change and educated Firm attorneys and staff about gender expression and identity in our workplace diversity trainings.

McDermott is a large international law firm. Our commitment to diversity enhances our ability to attract and retain exceptional talent and helps bring the best, broadest and most innovative approaches to client service."

Lisa A. Linsky

New York City-based Trial Partner,
Partner-in-Charge of Firm-Wide Diversity and Founder
and Chair of the Firm's LGBT Diversity Committee
McDermott Will & Emery LLP



“I was a staff editor at *The New York Times*. I was in the closet as a transgender person for my first 21 years at work, and I always worried about what might happen if someone found out.

When I came out in 1998, with the support of my union and the company, that worry disappeared, and I felt considerably more at ease for the next eight years of my employment.”

Donna Cartwright
Formerly with
The New York Times



BEST PRACTICES

4 Supporting Transgender Employees

Twenty-five New York-based Fortune 500 Companies Include Gender Identity and Expression in their EEO Policies

(175 of all Fortune 500 companies have done the same)

- Alcoa Inc.
- American Express
- Avon Products Inc.
- Barnes & Noble Inc.
- Bristol-Myers Squibb Co.
- CBS Corp.
- Citigroup Inc.
- Colgate-Palmolive Co.
- Corning Inc.
- Consolidated Edison Co.
- Eastman Kodak Co.
- Estee Lauder Companies
- The Goldman Sachs Group Inc.
- IBM Corp.
- JPMorganChase & Co.
- Liz Claiborne Inc.
- Marsh & McLennan Companies Inc.
- MetLife, Inc.
- New York Life Insurance Co.
- The Pepsi Bottling Group, Inc.
- PepsiCo Inc.
- Pfizer Inc.
- Starwood Hotels & Resorts Worldwide
- Time Warner Inc.
- Viacom Inc.

WAYS TO SUPPORT TRANSGENDER EMPLOYEES

In addition to including gender identity and expression in your company's EEO policy and providing a comprehensive benefits plan that includes reimbursement for all health care — physical and mental — related to the transitioning process, employers can adopt other policies and practices to support their transgender employees. While this guide will offer a brief description of best practices in this area, for further information we encourage you to review the Human Rights Campaign's *Transgender Inclusion in the Workplace, Second Edition*, a detail-rich resource available on the HRC's website, www.hrc.org.

Educate your employees about gender identity and expression. Diversity trainings should be inclusive of all aspects of diversity, including issues of gender identity and expression. Training around gender identity and expression can educate employees about the use of appropriate terminology and pronouns and restroom access issues, and should ultimately focus on treating transgender colleagues and customers/clients with respect.

Have clear guidelines in place for the transitioning process. Employees who want to transition, as well as their managers, need to understand the policies and procedures required in the workplace. Some of the needs of a transitioning employee, like leave of absence, may fall under the company's medical leave policy or short term disability plan, which applies to every employee. Other policies or guidelines regarding transition may be more unique, such as how a manager will assist a transitioning employee in explaining a transition to colleagues. Companies that have adopted specific gender transition guidelines have found them to be an important tool that provides structure and predictability for both employees and managers.

Supporting Transgender Employees continued

Help facilitate name changes and other administrative tasks. Assist an employee who wishes to change their name by making sure that all the necessary departments are informed so the paperwork process can go smoothly. In the event that a transgender employee's name and/or gender identity does not match legal documents, the employer should recognize the individual's preferred name and gender as much as possible.

Be sensitive about bathrooms and locker rooms. This can be a challenging topic for transgender and non-transgender employees alike. Most transgender people prefer to use the bathrooms and locker rooms associated with the gender with which they identify, regardless of whether they have had gender reassignment surgery. Other employees may feel uncomfortable with this approach. Having single-occupancy, gender-neutral restroom facilities available can be one way in which this issue can be resolved.

WAYS TO SUPPORT TRANSGENDER CUSTOMERS/CLIENTS

If employees interact with customers/clients, training should include how to demonstrate sensitivity to transgender customers/clients. In order to provide your transgender customers/clients with an inclusive atmosphere, a company can also offer gender-neutral fitting rooms, restrooms and other facilities. At a minimum, if your company provides gender-segregated fitting rooms and/or restroom facilities to customers/clients, transgender customers/clients should be permitted to access the facility corresponding to the gender with which they identify.

Please see page 28 for definitions of commonly-used terms for discussing gender identity and expression in the workplace.

Many New York employers choose to adopt policies protecting gender identity and expression even if they do business in localities where there is no local law which requires them to do so.

“Some of our major employers and some of our small employers across the state have voluntarily adopted gender identity and expression policies. I haven't heard any regret or problem with voluntarily adopting those. It's simple human rights and simple justice.”

— Assemblymember Richard N. Gottfried advocating for the Gender Expression Non-Discrimination Act during the debate in the New York State Assembly on June 3, 2008.

BEST PRACTICES

5 LGBT Networks

ENCOURAGE AND SUPPORT LGBT NETWORKS

Employee Networks are any organizationally-sanctioned group within a place of work whose purpose is to bring together employees with similar interests or characteristics who support the same goals. These groups are often referred to as Employee Networks, Employee Resource Groups or Affinity Groups.

At a minimum, Employee Networks provide an outlet for employees to engage in social and professional networking opportunities among colleagues who might not otherwise have routine contact. Typically, Networks represent groups who have historically had minority representation in the workplace, such as African American, Latino, Asian American and women employees. As such, Networks can offer an opportunity for employees to achieve a better sense of community in the workplace and can be an important resource for management. To be truly inclusive, Networks should encourage all employees in the company—and not just those who are members of the Network's targeted population—to be involved.

We recognize that not every workplace has Employee Networks. Some businesses are simply too small to accommodate Networks, some may not have considered them and still others may have made a conscious decision not to have them. The best practice advocated here is that any company with pre-existing Employee Networks should also have a Network supporting their LGBT employees and straight allies. If your business establishes Employee Networks in the future, a network for LGBT employees should be included.

“I am the Chief Human Resources Officer and a Senior Vice President at Eastman Kodak Company. We are an industry leader in imaging because we provide our customers the best value and highest quality products and because we create an environment in which our employees can perform to their fullest potential. As early as 1992, the company officially recognized the Lambda Network to support gay and lesbian employees. This network has impacted several hundred senior Kodak managers through its Annual Management Educational Event and provided education and support to thousands of employees. We believe diverse opinions and fresh ideas create the most competitive solutions, and the Lambda Network helps us recruit, retain and inspire a diverse and inclusive workforce.”

Robert Berman
Eastman Kodak Company

GETTING THE MOST OUT OF AN LGBT NETWORK

An Employee Network that provides wide-ranging opportunities will result in employees remaining engaged and excited. Companies can succeed by creating a combination of social, educational, philanthropic and advocacy opportunities for the Network that benefit the membership of the Network, the company and the community.

LGBT Networks continued

FULLY LEVERAGE YOUR NETWORK

Companies can fully leverage their LGBT Networks by taking steps to:

Collaborate with other Networks in your company.

Co-sponsor internal events, partner on external volunteer activities and work together on joint initiatives to encourage diversity and inclusion within your organization.

Develop relationships with other LGBT Networks in your industry to discuss best practices and proven strategies.

Provide opportunities for new Network leadership. Succession planning allows for greater investment and a fresh perspective.

Actively seek out and engage members of your LGBT employee population at all levels of the company, from senior executives to administrative staff.

Diversity and inclusion initiatives are most successful when they include everyone and encourage diversity of thought and experience.

ENGAGE STRAIGHT ALLIES IN YOUR LGBT NETWORK

All employees play a role in creating a culture of inclusion and respect in their workplace. For LGBT employees, the open support of heterosexual and non-transgender allies is an essential component of workplace inclusiveness. Non-LGBT employees can “come out” as an ally in the workplace.

Here are some suggestions you can make to non-LGBT employees who are interested in ways to show their support:

Attend a meeting of your company’s LGBT Network and/or an LGBT diversity event sponsored by it.

Let LGBT colleagues know you are interested in learning more about their families, personal experiences and issues that matter to them.

Speak up when you hear an anti-LGBT remark or “joke” in your work environment.

Politely correct colleagues if they use the wrong gender pronoun for a co-worker, customer or client.

Employee Networks Can Fulfill a Wide Range of Objectives, Including:

- Educate other employees about historical achievements and contributions as well as current challenges faced by the LGBT community.
- Support career development through leadership, mentoring and coaching.
- Provide a forum for business development by bringing employees together across departmental or divisional lines.
- Provide a safe space for employees to “come out.”
- Serve as a link to information and community resources.
- Help with employee recruitment at MBA, law school and other professional LGBT job fairs.
- Work with HR to enhance policies and benefits and support the other best practices discussed in this guide.

SUCCESS STORIES

“Mercer’s Lesbian, Gay, Bisexual and Transgender Network has opened eyes, minds and dialogue. Our employees see LGBT role models among our senior leaders and feel encouraged about being themselves in the workplace and inviting other potential employees to join Mercer. Our LGBT Network has sparked good dialogue within the firm about inclusion and about how important it is for Mercer to continue to be a place where there is room for many views to coexist and be respected. We want to keep that dialogue going, especially with our leaders and managers. All of this combines to create positive energy within Mercer that also touches our clients.”

Mary Ellen Connerty

Worldwide Partner,
Global Leader of Diversity & Inclusion
Mercer



(from left) **Darrick Sampson**, Co-Chair, Mercer’s LGBT Employee Network; **James Campbell**, Co-Chair; **Mary Ellen Connerty**; **Andrew Beagley**, Chief Compliance Officer and Co-Executive Sponsor

BEST PRACTICES

6 Supporting the LGBT Community

WHY SUPPORT AND ADVOCACY MATTER

There are many ways an employer can support and advocate for the LGBT community. For the purposes of this guide, support and advocacy refer to anything an employer might do that has a positive impact on the LGBT community as a whole — both inside and outside your organization. If your business demonstrates support for other groups based on their demographics, whether by marketing to niche communities, making philanthropic donations, organizing community volunteerism or advocating on public policy, your company should demonstrate the same level of support to the LGBT community. Supporting the community beyond the walls of the workplace itself can speak volumes about how a company values its LGBT employees. And when employees feel supported and valued, they will respond with increased productivity and loyalty.

Fourteen major corporations headquartered in NY have endorsed the Federal Employment Non-Discrimination Act (ENDA) that includes protections based on sexual orientation and gender identity.

Accenture Ltd.	Ernst & Young LLP
Bausch & Lomb Inc.	Goldman Sachs
Bristol-Myers	Group Inc.
Squibb Co.	JPMorganChase & Co.
Citigroup	KPMG LLP
Corning Inc.	Morgan Stanley
Deutsche Bank	Pfizer Inc.
Eastman Kodak Co.	Time Warner Inc.

HOW TO SHOW SUPPORT

Here are some ways that employers can support and advocate for the broader LGBT community:

Provide philanthropic support to the LGBT community. If your company provides financial or volunteer support to community-based organizations, include organizations in the LGBT community in your annual giving programs. Your LGBT employees can provide information about organizations that might be appropriate at the local, state or national level.

Educate elected officials and government agencies about your best practices. Influential business leaders can provide an important voice in favor of public policy that provides equal treatment for LGBT individuals and their families. Your company can educate policymakers on the many ways that equal benefits and non-discriminatory policies benefit business.

Include LGBT-owned businesses in your supplier and vendor diversity program.

Market to the LGBT community. Members of the LGBT community are well-informed about corporate policy, and they reward companies that maintain supportive policies with their business. Supportive companies are rated and publicized in the Human Rights Campaign's "Buying for Equality" guide. This tool is listed within the Resources section of this guide.

Actively recruit LGBT employees. Reach out to LGBT professional organizations and LGBT associations at undergraduate and graduate institutions. What better way to demonstrate your commitment to diversity and inclusion than by actively seeking to recruit LGBT employees?

Get involved in the Pride in My Workplace program. If you have been successful in helping your organization establish policies and practices supporting LGBT employees, take the next step by helping another organization do the same. To learn more about participating in one of our Industry Roundtables, hosting a training on this Best Practices Guide and other ways to get involved, please contact the Pride in My Workplace Coordinator at 212-627-0305 or go to www.prideagenda.org.

SUCCESS STORIES

"Corcoran Cares is the name of the nonprofit, in-house charitable organization created to support dozens of charitable and philanthropic organizations within the communities Corcoran serves. Our business successes are based on our ability to understand and fulfill our customer's needs. Our personal successes are based on our ability to understand and share the responsibility of maintaining the communities in which we all live and work so that the needs of the entire community can be met.

As part of Corcoran Cares, we are proud to support organizations serving the LGBT community."

Frank Percesepe

Regional Senior Vice President,
The Corcoran Group

RESOURCES

Sources for More Information and Commonly Used Terms

EMPIRE STATE PRIDE AGENDA

Pride in My Workplace Program

*Transgender Issues in the Workplace:
Lessons from Across New York State*

www.prideagenda.org

AMERICAN CIVIL LIBERTIES UNION (ACLU) LESBIAN, GAY, BISEXUAL, TRANSGENDER PROJECT

www.aclu.org/lgbt

DIVERSITYINC

Annual report on employers with
best practices in diversity

www.diversityinc.com

GENDER PUBLIC ADVOCACY COALITION (GENDERPAC)

Workplace Fairness resources on
transgender employees

www.gpac.org

HUMAN RIGHTS CAMPAIGN (HRC)

Corporate Equality Index

State of the Workforce

Buying for Equality

*Transgender Inclusion in the Workplace,
2nd Edition*

www.hrc.org

LAMBDA LEGAL DEFENSE & EDUCATION FUND

Out at Work: Tool Kit for Workplace Equality

www.lambdalegal.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY

www.nctequality.org

NATIONAL GAY AND LESBIAN TASK FORCE

*Domestic Partnership Organizing
Manual for Employee Benefits*

www.thetaskforce.org

NEW YORK CITY HUMAN RIGHTS COMMISSION

Guidelines Regarding Gender Discrimination

www.nyc.gov/cchr

NEW YORK DIVISION OF HUMAN RIGHTS

www.dhr.state.ny.us

OUT & EQUAL

Workplace Resources

www.outandequal.org/workplace-resources

New York Metro Affiliate

www.outandequal.org/metro-new-york

Training Programs

www.outandequal.org/training-programs

PRIDE AT WORK, AFL-CIO

www.prideatwork.org

THE WILLIAMS INSTITUTE AT THE UCLA SCHOOL OF LAW

www.law.ucla.edu/williamsinstitute

SUCCESS STORIES

“People with diverse
backgrounds bring different
approaches to leadership
and problem solving.”

Mark Henderson

Executive Director, Corporate Human Resources
Time Warner

Resources continued

COMMONLY USED TERMS

The following definitions will help explain some commonly-used terms for discussing sexual orientation and gender identity and expression in the workplace.

Sex

This most commonly refers to the biological “make-up” of individuals as either male or female. This binary distinction is based on a combination of biological characteristics including reproductive organs, hormones and chromosomes.

Gender

Refers to the cultural, social and behavioral traits associated with an individual’s sex.

Gender Identity

A person’s innate, deeply felt psychological identification as male, female or not specifically male or female, which may or may not correspond to the person’s body or assigned sex at birth.

Gender Expression

All of the external characteristics, behaviors and mannerisms that are socially defined as either masculine or feminine, such as dress, hairstyle, speech patterns and name. This term refers to the way people present their masculinity and/or femininity to the world.

Transgender

This is an umbrella term used to designate a community of people whose gender identity and/or gender expression is different from the sex assigned to them at birth. The term includes people who have undergone medical procedures to change their sex and those who have not. Most, though not all, transgender people live a significant part of their lives in the gender with which they identify.

Transsexual

A term rooted in medical history used to describe an individual who has changed, or is in the process of changing his or her physical sex through the use of hormones and/or surgery to conform to his or her internal sense of gender identity.

Gender Transition

The process through which a person modifies his/her physical characteristics and/or manner of expression to live in a gender other than the one he/she was assigned at birth. Some people transition simply by living as a member of the other gender through their dress, hairstyle, pronoun use, etc., while others undergo medical treatment to alter their physical characteristics.

Intersex

An individual who was born with reproductive organs, genitalia and/or sex chromosomes that are not considered exclusively biologically male or female.

Sexual Orientation

This most commonly refers to one’s romantic and sexual attraction. Being transgender is not in itself any indicator of sexual orientation. Just like everyone else, transgender people may be heterosexual, homosexual, bisexual or asexual. For the purpose of identifying illegal discrimination, the Sexual Orientation Non-Discrimination Act defines sexual orientation as “heterosexuality, homosexuality, bisexuality or asexuality whether actual or perceived.”

ACKNOWLEDGEMENTS

Pride in My Workplace Committee

Co-Chairs
Hugh Dorsey
Marla Hassner

Ed Baskiewicz
Bill Begert
Carmine Boccuzzi
Marsha Bonner
Paul Campbell
Kathleen Carlin
Antonio Centeno
Robert Christmas
Nicole Cokley

Mary Ellen Connerty
Nicole Consenz
Jennifer Costley
Desiree Dancy
Jim Farah

Patricia Guttman
Dennis Hranitzky
Emily Jones
Vin Knight
Tom Kulaga
Ross Leimberg
Lisa Linsky

Carmelyn P. Malalis
Margaret Maloney
Gene Martinez

Adrienne Mundy-Shephard
Richard Ocegeura
Alfredo Paredes
Frank Percesepe
Richard Pittelli
Darrick Sampson
Leotis Sanders
Craig Senecal
Danielle St. Laurent
Stephen Velleca
Laurie Winthrop
Wil Yates

Editorial Staff

Alan Van Capelle
Executive Director

Joe Tarver
Managing Director of Operations

Desma Holcomb
Program Director

Josh Meltzer
Director of Communications

Jacob Lieberman
*Downstate Director of
Pride in Action*

Ross D. Levi, Esq.
*Director of Public Policy
& Education*

Stephanie Berger
Communications Coordinator

Brian Coffin
Director of Governmental Affairs

Lynn Faria
Director of Development

Wazina Zondon
Pride in My Workplace Coordinator

Additional Thanks

Honorable Christine Quinn
Speaker, NYC Council

The New York City Council

Special thanks to Marla Hassner,
Pride In My Workplace Co-Chair,
for co-authoring the first edition
and significant editorial contributions
to the second edition

The Staff of the Empire State
Pride Agenda Foundation

EMPIRE STATE PRIDE AGENDA FOUNDATION

The Empire State Pride Agenda Foundation is the non-partisan 501(c)(3) research, education and advocacy organization affiliated with the Empire State Pride Agenda, Inc. The Foundation advances the Pride Agenda’s public policy goals by: educating public officials and policymakers; building coalitions and mobilizing allies; and organizing, empowering and educating the LGBT community in urban, suburban and rural communities across New York State.

EMPIRE STATE PRIDE AGENDA

Empire State Pride Agenda Foundation
16 West 22nd Street, 2nd Floor
New York, NY 10010

PH: 212-627-0305
FAX: 212-627-4136

www.prideagenda.org

Paid for in part by a grant from the Department of
Youth and Community Development, City of New York.

Design: Jeremy Mickel
Photography: Janet Mayer, Doug Mezslar,
and Eric Workum



