

Gay and Transgender Issues in the Workplace

Before Litigation is Necessary

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A reporter from the *Wall Street Journal* contacted me a few days ago regarding a lawsuit based on sexual orientation discrimination. This was within a few days of me hearing from a gay man who felt harassed at work by unwelcome gay-oriented "humor". Both e-mails suggest a couple of things to me. The Employment Non-Discrimination Act (ENDA), which is allegedly going to be passed into law soon, is much needed. Secondly, gay, lesbian, bisexual, and transgender employees have become impatient with the time it's taking companies to create a safe and productive workplace for them.

The e-mails I received and the responses I offered may be of some use to those people who are experiencing similar challenges at work, either as managers or as employees.

My friend at the *Wall Street Journal* wrote:

"Hi Brian, I hope you remember me from 2007 when I did the story about the program you led at Chubb. I'm writing today because I'm writing about a lawsuit in which a worker is suing a former employer for discrimination based on sexual orientation. This person was a senior client partner at a large global executive search firm. I'm looking for an expert on cases of this kind to get some context into how common they are, the challenges workers face most in pursuing them, common outcomes, etc. I am in touch with the HRC but also thought perhaps you could offer some commentary as well, ideally sometime today or early next week. Thanks."

I replied:

"Of course I remember you. I enjoyed working with you.

I'd love to help with the legal aspects of this but I fear I would be talking through my hat, not being an attorney. I do have the perfect person for you, though. Susan Bluer (sgbluer@bluerlaw.com) is an attorney in California who specializes in sexual orientation discrimination. She's bright, wise, and great fun to talk with. You can reach her at the e-mail address above... You might also contact Lambda Legal Defense in New York City at 212-809-8585 or GLAD (Gay and Lesbian Advocates and Defenders) in Boston at 617-426-1350.

As you may recall, I have a Web guide for managers on gay and transgender workplace issues at diversityguides.com. Dan Brown at Diversity Guides can provide you a free look at it. Companies are licensing access to it to avoid the problem of being sued for harassment. I help them address the most serious issues which arise regarding gay, lesbian, bisexual, and transgender issues. Merck and Chubb, among others, have signed on so that their managers feel confident and competent in responding to gay concerns."

A few days before, a gay man from San Francisco wrote:

"Can you help me?

A number of people in my life think that blatantly homophobic anti-gay humor is acceptable (including my boss). I have been told a number of times that 'people shouldn't be so sensitive', 'don't be so PC', blah, blah, blah. It's getting to be kind of a problem. These are generally good people who are, like most folks, relatively apolitical and just naive when it comes to these kinds of issues.

My question: can you recommend a good in-depth article that specifically discusses homophobic humor and how damaging it can be? I'd like to give them a well-written explanation by someone who makes the case well.

I have to admit, I have spent about a hundred hours tonight online and I am flabbergasted that I can't find such an article.

Thanks!"

I immediately replied:

"I'm glad that you wrote. I don't know of any articles on abusive humor in the workplace, but I will address it in an upcoming weekly blog. Until then, I have some thoughts for your reflection.

I feel that it is not your responsibility to educate your colleagues about why their humor is offensive and how it impacts your productivity. It is a violation of your firm's anti-harassment policy and of the anti-discrimination laws of San Francisco. Every firm with which I have worked over 35 years has clearly stated that unwelcome jokes constitute a hostile work environment.

For your boss and colleagues to expect you to remain quiet while they laugh at your expense is as ridiculous as it would be for you to expect them to laugh at your jokes about their faith, race, gender, or age. In that circumstance, it would not be their responsibility to convince you why the jokes were inappropriate.

I suggest that you ask to meet with your boss and explain to him or to her that the jokes are creating an uncomfortable environment for you. If he or she does anything but promise to ensure the jokes stop immediately, I would tell him or her that you would like an opinion from the director of Human Resources on the issue. I would then meet with an H.R. rep and tell them you don't want to file a complaint but do want the jokes to stop. If he or she is not helpful, I would then contact the San Francisco Human Rights Commission. A simple call should do it. They, in turn, will get in touch with the firm.

Even if there was a well-written piece on offensive office humor, you're counting on your colleagues reading it and caring how you feel. If they cared how you felt, they wouldn't have continued with the jokes once they heard they upset you.

If you'd like, you can share this response with your boss and colleagues. Let me know what you think. Again, I'm glad that you wrote."

A few days later, he made contact again.

"Hello, Brian,

Thanks very much for such a full reply. I really appreciate it. You have really given me a lot of good suggestions.

I think I will contact the SF Human Rights Commission to get more information on the laws to which you refer here. Also, to see if they have any written materials specifically dealing with the topic.

I really think the time is ripe for a well-written op-ed piece about this topic by a well-known writer in a major news daily like the NY Times, including comparisons to racist humor in the fifties, anti-Semitic humor in the thirties, the use of 'that's so gay' by otherwise hip folk like Jon Stewart, and the lie of 'political correctness'.

Racist jokes used to be much more prevalent in our society. Anti-Semitic jokes used to be much more common. Obviously, they disappeared simultaneous with society's attitudes towards those two groups changing.

I think U.S. culture is at a 'tipping point' regarding LGBT civil rights and such an article could have a powerful effect.

Thanks again for your insightful suggestions, Brian."

Corporate Directors of Diversity and Inclusion, as well as those for Human Resources, and the leadership of the company's gay, lesbian, bisexual, and transgender Employee Resource Group (ERG) need to continue to explore creatively what's not being done to ensure that everyone is aware of what constitutes harassment or contributes to a hostile work environment. There is no reason that the manager of the gay man in San Francisco, of all places, should be unaware that unwelcome office humor constitutes discrimination. Gay, lesbian, bisexual, and transgender employees should not be expected to refrain from "being so sensitive". On the contrary, the burden is on the managers to be more sensitive. It is too bad that it will likely take the threat of a lawsuit to make the point.