



**CREATING AN ENVIRONMENT
CONDUCTIVE TO DIVERSITY**

A Guide for Legal Employers
on Eliminating
Sexual Orientation Discrimination

Bar Association of San Francisco

August, 1991



DEIRDRE CRAIG

Assistant Director of
Continuing Legal Education

BAR ASSOCIATION OF SAN FRANCISCO

685 Market Street
Suite 700
San Francisco, CA 94105

(415) 764-1600

On August 14, 1991, the Board of Directors of the Bar Association of San Francisco unanimously approved a Resolution adopting the following Guide drafted by the Bar Association's Committee on Gay and Lesbian Issues. The Resolution urges all San Francisco law firms and legal employers to implement programs to achieve equal employment opportunity for lesbians and gay men and to make the recommendations contained in the following Guide the basis for those equal opportunity programs.

The costs of reproducing and binding this Guide were donated by the firm of Howard, Rice, Nemerovski, Canady, Robertson & Falk, A Professional Corporation.

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| OVERVIEW | 2 |
| COMMON BARRIERS TO EQUAL RECRUITMENT, HIRING, RETENTION, ADVANCEMENT AND COMPENSATION OF LESBIANS AND GAY MEN IN THE LEGAL PROFESSION | 4 |
| Anti-Discrimination Policy | 5 |
| Recruitment and Hiring | 5 |
| Retention, Advancement and Compensation | 8 |
| RECOMMENDED STEPS FOR LEGAL EMPLOYERS TO ACHIEVE EQUAL EMPLOYMENT OPPORTUNITY FOR LESBIAN AND GAY ATTORNEYS AND LAW STUDENTS | 12 |
| General Employment Policies and Practices | 13 |
| Recruitment and Hiring | 14 |
| Retention, Advancement and Compensation | 16 |
| Employee Benefits | 20 |
| APPENDIX | 22 |
| Resources | 22 |
| Examples of Policies and Materials | 25 |

INTRODUCTION

In 1986 the Bar Association of San Francisco ("BASF") established the Committee on Equality, whose mandate was to study and make recommendations to the BASF Board of Directors with respect to the elimination of barriers to the advancement of minorities, women, lesbians and gay men, and attorneys with physical or mental impairments in the San Francisco legal community. The Committee's efforts initially were focused on issues relating to the advancement of ethnic minorities and women. However, in January 1990, a subcommittee on lesbian and gay issues was established, which has subsequently become a BASF committee.

Over the past 18 months, the Committee on Lesbian and Gay Issues ("the Committee") has conducted exhaustive research to identify obstacles to, and recommend ameliorative steps to effect, the equal recruitment, hiring, retention, advancement and compensation of gay and lesbian attorneys and law students in San Francisco.¹

The work of the Committee culminated in its recommendation that the Board of Directors endorse this Guide and urge its acceptance and implementation by San Francisco legal employers.² On August 14, 1991, the BASF Board unanimously adopted a resolution endorsing this Guide.

¹The Committee's work included: (1) study of responses of those willing to respond to a survey seeking the employment experiences of gay and lesbian attorneys, conducted in 1988 by the Bay Area Lawyers for Individual Freedom (BALIF); (2) analysis and extrapolation from information collected by the National Lesbian and Gay Bar Association; (3) solicitation of input from prominent members of the San Francisco legal community and evaluation of the legal, economic and management considerations for legal employers seeking to implement policies designed to achieve equal employment opportunities for gay and lesbian lawyers and law students; and, (4) drafting and final adoption by the Committee of this Guide.

It is important to note that collection of data documenting this form of discrimination is particularly problematic because many gay and lesbian law students and attorneys are reluctant to reveal their sexual orientation, and many legal organizations are reluctant to collect data on the numbers of openly gay and lesbian law students and employees.

²"Firm" is used interchangeably with "legal employer" in this document for ease of reference. However, this policy is intended for use by all legal employers, including law firms, corporate legal departments, government agencies, law schools and non-profit organizations.

This policy primarily addresses issues as they affect attorneys. The same considerations should often be taken into account as they apply to staff and other legal employees.

OVERVIEW

Elimination of discrimination based on sexual orientation has long been recognized by BASF to be a matter of great importance, and one on which the BASF Board of Directors has taken strongly supportive positions.³ Employer attitudes, policies and practices which impede the advancement of lesbians and gay men may often be subtle and even unconscious. Together with more blatant forms of discrimination which continue to persist, however, they deprive individuals of equal employment opportunity in the San Francisco legal community.⁴

Removal of barriers to the advancement of gay and lesbian employees is of particular importance in San Francisco. Bar associations and legal employers across the country look to the Bay Area for leadership on this issue, where arguably the largest applicant pool of talented gay and lesbian law students and attorneys in the nation exists.⁵

However, discrimination based on sexual orientation has only recently become the focus of study and action by the organized bar here and

³These have included the following: opposition to the Briggs Initiative which attempted to bar gay men and lesbians from teaching in public schools; support for an ABA resolution urging legislation to combat sexual orientation discrimination; opposition to the La Rouche AIDS Initiatives and Proposition 102, a proposed California initiative imposing mandatory HIV testing of hospital patients; endorsement of a local ordinance barring private club discrimination based, *inter alia*, on sexual orientation; support in principle of a State Bar disciplinary rule barring discriminatory conduct by attorneys based, *inter alia*, on sexual orientation; and sponsorship of a resolution proposed by the BASF delegation to the State Bar Conference of Delegates endorsing legislation to allow same-sex marriage in California (subsequently adopted without debate at the Conference).

⁴The Committee's research revealed that only 10 of the 957 partners in the local offices of the Bay Area's 15 largest firms are openly gay or lesbian. While the percentage within the associate ranks is likely to be higher, the Committee has concluded that gay and lesbian attorneys are seriously underrepresented at all levels and in all segments of the profession.

⁵While researchers place the percentage of gay men and lesbian women at ten percent of the national population, the percentage in San Francisco is believed to be approximately twenty percent. Although statistics are not available documenting the number of gay and lesbian law students and attorneys in San Francisco or nationally, there is no reason to believe that gay men and lesbians are underrepresented in the bar, and San Francisco is considered a very desirable location among many gay men and lesbians. There are thriving gay and lesbian student associations on most major law school campuses, including at Harvard, Yale, Boalt Hall, Hastings, The University of San Francisco, Golden Gate and Stanford.

elsewhere⁶. It has also only recently been the subject of explicit anti-discrimination legislation. In California, for example, express legal prohibitions against employment discrimination on the basis of sexual orientation are found only in local ordinances, including a San Francisco ordinance. San Francisco Municipal Code (Police) Article 33, Section 3303(a). California Assembly Bill 101, as proposed in the 1991-92 legislative session, would amend the California Fair Employment and Housing Act to add an express prohibition against discrimination on the basis of sexual orientation. However, former Governor George Deukmejian vetoed earlier legislation that would have prohibited sexual orientation discrimination. Lesbians and gay men, meanwhile, rely on California Labor Code Section 1101 and 1102, as construed by the California Supreme Court and the California Attorney General, for legal protection against employment discrimination.⁷

While the law, both in California and nationally, has begun to move toward greater protections against sexual orientation discrimination, there continue to be frequent setbacks, clear precedents remain few,⁸ and statutory proscriptions

⁶ The Association of the Bar of the City of New York and BASF are among the few which have established specialized committees on this issue, and both did so as late as 1990. Only after several years of defeat did the ABA adopt, in 1989, a resolution supporting legislation to combat discrimination against lesbians and gay men.

⁷ Labor Code Sections 1101 and 1102 prohibit California employers from attempting to influence their employees' political activities and affiliations by threat of discharge or loss of employment. In Gay Law Students Association v. Pacific Tel. & Tel. (1979) 24 Cal.3d 458, the Supreme Court ruled that discrimination against persons who identify themselves as gay or lesbian or as members or participants in lesbian or gay organizations violates Labor Code Sections 1101 and 1102. The Attorney General issued Opinion No. 85-404 in 1986 in which he concluded that Labor Code Sections 1101 and 1102 prohibit private employers from discriminating on the basis of sexual orientation or affiliation (or even perceived sexual orientation or affiliation) regardless of whether the protected employee proclaims his or her orientation or affiliation. 69 Ops. Atry. Gen. 80 (1986).

⁸See, e.g., High Tech Gays v. Defense Indus. Security Clearance Office, reversing United States District Judge Thelton Henderson's holding that discrimination based on sexual orientation is subject to the "strict scrutiny" test applied to classifications based on race or national origin, and, therefore, is violative of Fourteenth Amendment Equal Protection guarantees unless proven to be justified by a compelling governmental interest. 895 F.2d 563 (9th Cir. 1990), reh'g denied, 909 F.2d 375 (9th Cir. 1990) (Canby, J., and Norris, J., dissenting), reversing 668 F. Supp. 1361 (N.D. Ca. 1987). The Seventh Circuit similarly reversed a District Court's application of the strict scrutiny test to discrimination based on sexual orientation. BenShalom v. Marsh, 881 F.2d 454 (7th Cir. 1980), cert. denied, 110 S. Ct. 1296 (1991), reversing 703 F. Supp. 1372 (E.D. Wis. 1989). A third district court recently held discrimination based on sexual orientation to be subject to strict scrutiny and violative of the Fourteenth Amendment. Jantz v. Muci, 759 F. Supp. 1543 (D. Kan. 1991).

(continued...)

which do exist continue to provide the clearest protections for gay and lesbian employees.⁹

BASF has determined that many legal employers in San Francisco have not yet initiated the process of sensitizing themselves and their employees about attitudes, policies and practices which illegally and adversely affect gay men and lesbians. BASF also notes that employers have not received information to assist them in their efforts to identify and address the problems in their own workplaces.

The following discussion and recommendations are designed to help legal employers identify and examine obstacles impeding the progress of gay men and lesbians in the legal workplace, and to suggest concrete steps to attack the problem. Endorsement of the Recommendations by the Board of Directors of BASF constitutes a critical step in achieving greater understanding of these issues by legal employers. It is the intent of BASF that broad-based implementation of the recommended policies will begin to move the legal profession closer to the goal of equal employment opportunity for gay men and lesbians in San Francisco and across the nation.

COMMON BARRIERS TO EQUAL RECRUITMENT, HIRING, RETENTION, ADVANCEMENT AND COMPENSATION OF LESBIANS AND GAY MEN IN THE LEGAL PROFESSION

The Committee's research and interviews, supplemented by the experiences of many of its own members, revealed a disturbing panoply of employer attitudes, policies and practices which separately and in combination

⁸(...continued)

The United States Supreme Court in 1986 upheld the criminalization of homosexual sodomy as not violative of the Fourteenth Amendment Due Process guarantees, but left open the question of whether discrimination against gay men and lesbians violates the Equal Protection guarantees of the Fifth and Fourteenth Amendments. Bowers v. Hardwick, 478 U.S. 186 (1986).

⁹See, e.g., San Francisco Municipal Code (Police), Article 33, Section 3303(a) (prohibiting employment discrimination by San Francisco employers and employment agencies against gay men and lesbians); id., Section 3304(a) and 3305(b) (prohibiting sexual orientation discrimination in real property transactions and public accommodations, respectively); id., Article 33B, Section 3303B.3 (prohibiting discrimination by certain clubs on the basis of, inter alia, sexual orientation); see also Cal. Civ. Code Section 51.7 (establishing the right to be free from violence or threats of violence committed because of an individual's sexual orientation). That code section defines sexual orientation as "heterosexuality, homosexuality, or bisexuality."

work to impede the progress of gay and lesbian attorneys and employees. As disturbing as any one experience may be in isolation, the cumulative effect over time of repeated instances of discrimination can seriously discourage lesbian and gay attorneys from remaining with a particular employer or in a mainstream legal environment at all.

Anti-Discrimination Policy

1. Many employers have failed to send a clear message to their employees that manifestations of hostility and prejudice toward gay men and lesbians will not be tolerated. The failure, for example, to include explicit prohibition of discrimination based on sexual orientation, marital status or HIV-status within an employer's formal non-discrimination policy may send a silent but powerful message to employees that such discrimination is condoned.¹⁰

Recruitment and Hiring

2. Recruitment coordinators or hiring committee members may screen out from the interviewing process law students whose resumes reflect membership or leadership in gay/lesbian student, legal or political organizations, while granting interviews to similarly situated and qualified applicants who do not list such affiliations.¹¹

The bases for this exclusion may vary, but they often include:

¹⁰Discrimination on the basis of HIV-status is prohibited by the Americans with Disabilities Act of 1990 (Pub.L. No. 101-336) ("ADA"), as well as the federal Rehabilitation Act of 1974 and a host of state and local laws prohibiting discrimination on account of handicap or disability. San Francisco Municipal Code (Police), Article 38 Section 3803(a) forbids discrimination in employment because "a person has AIDS or any of the associated conditions covered by this Article." Section 3852(a) bans discrimination in employment "as a result of the fact . . . that a person has any disease or affliction that cannot be transmitted by casual contact." Section 3802 specifically refers to "individuals infected with the virus" as being victimized "due to the nature of their infection." Model Employment Policies with respect to AIDS and other HIV-related illnesses can be ordered through the Management Information and Exchange. (See appended Resources list)

¹¹One recruiter from a major firm, for example, recently stated at a recruitment professionals' conference that gay and lesbian attorneys should "do their work" and "keep their mouths shut" about their sexual orientation. Several others were vocally hostile to the inclusion, on a National Association for Law Placement questionnaire, of any inquiry into law firm practices relating to openly gay and lesbian attorneys, despite strong student support for inclusion of these questions.

--conscious discrimination based solely on the student's sexual orientation;

--unconscious discomfort with the idea of employing openly gay or lesbian employees;

--the assumption that the firm's clients may prefer not to be represented by gay or lesbian attorneys and that such client preferences should be honored;

--the conscious or unconscious belief that the open listing of such activities demonstrates "bad judgment" or that the weight accorded leadership experience in gay/lesbian organizations is not equal to that given analogous experience in other activist organizations, such as Balsa, MALDEF, the women law students' association, or the Sierra Club Legal Defense Fund.

Whatever the rationale, the result is the same--the employer has arbitrarily denied to the applicant the opportunity to pursue a desirable position in his or her intended profession; other members of the law firm are deprived of the opportunity to explore the qualifications of an individual who might well be a promising candidate; the firm's local and national reputation as an employer may be damaged by these discriminatory employment practices, discouraging highly qualified applicants, both heterosexual individuals and lesbians and gay men, from applying for positions;¹² and, the firm will deprive itself of the wide spectrum of perspectives and experiences conferred by a culturally diverse workforce reflective of the client base and the community it serves.

3. Law firm interviewers often make statements or pursue lines of inquiry which have the intended or unintended effect of excluding or alienating gay and lesbian applicants. Examples include:

--Statements which are openly hostile or which otherwise clearly convey to the applicant a bigoted, fearful, or discriminatory attitude toward gay men and lesbians. Hatred or fear of lesbians and gay men is a tragic reality which continues to be tolerated or even

¹²One Hastings law student, who happens to be heterosexual, gained valuable litigation skills and substantive expertise in constitutional law over the course of his summer clerkship at National Gay Rights Advocates. When he listed this experience on his resume, he was not granted a single interview, but upon removing this legal experience from his resume, he received multiple interviews and subsequent offers of employment. Numerous lesbian and gay law students and attorneys have reported similar experiences.

encouraged. It should come as no surprise that there exist in the legal community those who share some of these prejudices, animosities and misunderstandings.¹³ In one reported interview with a promising Ivy League applicant, a partner in a major San Francisco firm listed among the City's few disadvantages its "gay community". The interviewee, in fact, was a lesbian whose interest in bringing her talents to a San Francisco law firm was largely motivated by the City's reputation for being open and hospitable to gay men and lesbians. It is hard to imagine this same interviewer feeling free to similarly disparage San Francisco's Asian or Black community.

--Questions inquiring into the personal life of the applicant which contain assumptions about sexual orientation. Female applicants, for example, are frequently asked about "boyfriends" and their views regarding "marriage and children"; male applicants are asked about their "girlfriends" or their marital status.¹⁴ Many employers do not realize that questions of this nature create a serious barrier to equal opportunity for lesbian and gay applicants. Faced with questions of this nature, these applicants are put on the spot, often feeling they must openly disclose or actively conceal their sexual orientation. They frequently emerge from the interview believing that only heterosexual relationships are acceptable to the firm and the firm's culture.

--Avoidance of questions exploring the applicant's relevant legal or community-based work with lesbian and gay-related organizations listed on the applicant's resume. This may arise from misplaced

¹³See, e.g., the recently reported statements of a United States District Judge, making reference in open court to a group of jail inmates as "a bunch of queers". The judge reportedly reaffirmed his earlier remarks in interviews with the press, adding that he had drawn reactions "from all over creation--favorable mainly," and that his comments reflected his dislike of homosexuals. San Francisco Chronicle, July 18, 1991, p. 14.

¹⁴These questions may evidence discrimination on the basis of sexual orientation. They may also evidence discrimination on other bases and should be avoided for those reasons as well. When they are asked of women and not men, they may be perceived as evidence of discrimination on the basis of gender. Even if there is no apparent gender bias in the pattern of asking the questions, they may be perceived as evidence of discrimination on the basis of marital status. Discrimination in employment on the basis of sex and marital status are prohibited by the Fair Employment and Housing Act, California Government Code Section 12940(a) and (c). See, "Right Questions, Wrong Questions," by Jane Cooperman, National Law Journal, pp. 20, 22, July 31, 1989.

concern for the privacy of the applicant, despite the fact that the applicant has volunteered this information, or may stem from the interviewer's personal discomfort with homosexuality. Such behavior, presumably premised on the often erroneous assumption that only lesbians or gay men participate in groups dedicated to advancing the right to be free from discrimination based on sexual orientation, serves as an impediment to the ability of both gay and heterosexual candidates' ability to elaborate easily on the skills and experiences gained through such activities.

4. Aside from blatant instances of discrimination in the hiring process, it is the finding of the Committee, based on the available anecdotal evidence and the underrepresentation of gay and lesbian attorneys in the partnership ranks, that law students and attorneys who are known or thought to be gay or lesbian are disproportionately refused employment by comparison to similarly situated heterosexual candidates.

Retention, Advancement and Compensation

5. Many firms have not taken the steps necessary to ensure a work environment that is hospitable to gay men and lesbians. In many legal workplaces, for example, attorneys and staff feel free to refer to others as "fags" or "queers" and to make homophobic¹⁵ comments and jokes. In other instances, staff or clients have refused to work with a gay man or a lesbian employee. This problem is compounded by persistent misconceptions held by many employees about HIV-infection and its transmission.

In addition to incurring possible legal liability for maintenance of a discriminatorily hostile work environment,¹⁶ employers who fail to make

¹⁵In the last two decades, the term homophobia has come to include any bigoted, fearful, discriminatory, or violent reaction to lesbians, gay men or bisexuals.

¹⁶It is now established law that racial and sexual harassment in the course of employment is actionable as employment discrimination on the basis of race and sex. Patterson v. McLean Credit Union, 491 U.S. 164 (1989); Meritor Saving Bank, FSB v. Vinson, 477 U.S. 57, 65-68 (1986); Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991); E.E.O.C. v. Hacienda Hotel, 881 F.2d 1504, 1515 (9th Cir. 1989). By the same token, to the extent that employment discrimination on the basis of sexual orientation is illegal (see pp. 3-4, supra), so is harassment in the workplace. See E.E.O.C. v. Hacienda Hotel, supra, 881 F.2d at 1515, n.8 (Liability attaches when the harassment is sufficiently severe and pervasive as to create a hostile work environment for its victim). It is easier to establish liability against the employer in the racial context under the California Fair Employment and Housing Act, which may be amended this year to add sexual orientation as a

(continued...)

affirmative efforts to eliminate continuing manifestations of prejudice against lesbians and gay men stand to lose talented employees who are fearful of or offended by such a charged and hostile environment. These employers additionally forego the substantial investment made in the recruitment, hiring and training of these employees and others who decline to remain with an employer that does not encourage and nourish diversity in the workplace.¹⁷

6. Legal employers often insist that lesbian and gay attorneys should separate their personal and professional lives in situations in which heterosexual attorneys are expected to do the opposite. This denies lesbian and gay attorneys opportunities to develop and further their professional goals.

An employer may view an employee's sexual orientation as a personal attribute that is best kept secret, one that need never, or should never, be made known to others in the firm. However, this stymies participation in the informal networks of communication within a firm which is critical to an attorney's ultimate advancement and success. These networks normally involve development of closer personal relationships and frequent exchange of views by attorneys via informal lunches, golf and other sporting events, dinners at other lawyers' homes, and other social activities. On these occasions, as well as at more formal, firm-sponsored events which attorneys are expected to attend, discussions about family, friends and community activities are a staple, and are part of the normal degree of collegiality encouraged and expected by most employers. Lawyers additionally are routinely urged or invited to bring their spouses or dates to many of these events.

Even a lawyer's office usually provides clear evidence of his or her sexual orientation. Lawyers routinely display photographs of their spouses or other loved ones on their desks and credenzas, together with photos of their children, who are frequently posed with the other parent; certificates awarded for charitable service to community and political organizations often adorn office walls. These common accoutrements of the professional workplace are taken for granted, but only insofar as they reflect a heterosexual personal life.

¹⁶(...continued)

prohibited basis for discrimination and harassment (see p. 3, supra). California Government Code, Section 1294, subsections (h) and (i).

¹⁷Both gay and heterosexual students from the country's most well-regarded law schools are beginning to look to a firm's handling of lesbian and gay employment issues as a key "quality of life" indicator. See, e.g., Boalt Hall Fall 1991 Interview Program, Quality of Life Questionnaire; National Association for Law Placement, 1990 Quality of Life Questionnaire, "Draft #3"; Student comments at NALP Western Regional meeting (Feb. 22, 1991).

Under these circumstances, in firms where an employer has not undertaken a process of firm-wide sensitization and education regarding equal opportunity issues facing gay and lesbian attorneys, these individuals often are effectively precluded from full participation in the "networking" and routine social interactions necessary to success in any firm. Lesbians and gay men may even feel precluded from displaying in their own offices pictures of same-sex partners or certificates of service to a lesbian or gay organization.

Apart from barriers to advancement, this pressure to hide some significant portion of oneself from one's colleagues and friends may cause anxiety and anger that will affect an attorney's performance, creating an unconscionable burden for lesbian and gay attorneys to carry.

Ultimately, where the leadership of the firm does not make it clear that same-sex relationships and same-sex partners are of equal value to the firm as their heterosexual counterparts, lesbian and gay attorneys are impeded in their ability to participate fully in the life of the firm, with the result that many become increasingly non-productive, isolated and alienated, causing them to leave, willingly or not.

7. Many employers have failed to establish, communicate, and implement the use of, specific and objective criteria for the evaluation of their attorneys' performance. Continuing reliance by some firms on criteria such as "judgment," "maturity" and other highly subjective measures, allows deeply-rooted biases and prejudices to persist, excluding from advancement qualified gay and lesbian employees.¹⁸ The employer might attempt to define the meaning of these and similar terms by reference to the abilities and skills which the employer requires for advancement, specifying that openness about one's sexual orientation (for example, referring to one's domestic partner in a context in which it would be appropriate to refer to one's spouse, or discussing lesbian and gay-oriented community service) is not to be deemed indicative of poor judgment or lack of professional maturity.

8. Many employers continue to accede to their clients' actual or assumed "customer preference" for a heterosexual lawyer. This deprives lesbian and gay attorneys of the kind of client contact that is so essential to advancement in the firm.

¹⁸One firm, for example, criticized a summer associate for introducing his same-sex partner to another associate at a firm event, indicating that in the firm's view his behavior reflected "a lack of judgment."

In addition to potentially expensive and damaging issues of legal liability which may arise,¹⁹ such conduct further disserves the firm and its clients by depriving clients of the full breadth of the firm's expertise. Moreover, the numbers of lesbian and gay in-house counsel have grown across the nation, at corporations ranging from Wells Fargo Bank, Bank of America, Citibank, and McKesson to Blue Cross, Pacific Bell, Apple and The Gap. As the sensitivity of these and other corporate clients has grown in this regard, firms which affirmatively demonstrate diversity among their attorneys by hiring and advancing gay and lesbian attorneys, as well as those who are minority or women or have a disability, stand to gain significant advantage in an increasingly competitive environment.

9. Many employers are unaware of the dates or meaning of important celebrations and occasions reflective of lesbian or gay culture, including the lesbian and gay civil rights movement. Office retreats, for example, should not be held on dates which conflict with the annual Lesbian/Gay Freedom Day Parade, held nationally to commemorate the birth of that movement.

10. Many employers have not reviewed their personnel and benefits policies to ensure that lesbian and gay employees are treated fairly and equitably. For example, although gay men and lesbian are not legally permitted to marry their same-sex partners,²⁰ most employers do not make affirmative provision for relocation costs, caretaker and bereavement leave, or parenting leave for non-marital partners on a basis equal to that provided for marital partners. Additionally, most legal employers provide health insurance coverage and survivor benefits for attorneys' spouses and stepchildren but have not provided these same benefits for the domestic partners²¹ of gay and lesbian lawyers.²²

¹⁹In the racial context, this practice is facially violative of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et. seq.* and analogous state and local legislation. In the sex discrimination area, gender-based customer preference has been held not to constitute a *bona fide* occupational qualification (BFOQ) under Title VII and analogous state and local legislation. *Cl., Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971), *cert. denied*, 404 U.S. 950 (1971). To the extent that discrimination in employment on the basis of sexual orientation is against the law (see pp. 3-4, *supra*), there is no BFOQ defense and discrimination based on customer preference is facially illegal, as it is in the racial context.

²⁰California law does not allow for same-sex marriage. California Civil Code Section 4100. Hence, distinctions in employee benefits based on marital status necessarily and adversely affect gay men and lesbians in a way and to a degree beyond and worse than the way they affect non-married heterosexuals, who have the right to choose to marry.

²¹In this context, the term "domestic partnerships" refers to intimate committed relationships between adults of any sexual orientation. However, this term is also now a legal concept derived from newly enacted local ordinances that may extend to unmarried partners employment benefits
(continued...)

The differential provision of employee benefits operates to deprive lesbian and gay employees of compensation equal to that of their similarly situated heterosexual colleagues.

**RECOMMENDED STEPS FOR LEGAL EMPLOYERS
TO ACHIEVE EQUAL EMPLOYMENT OPPORTUNITY
FOR LESBIAN AND GAY ATTORNEYS AND LAW STUDENTS**

Being supportive of lesbians and gay men means creating the opportunity for those who choose to be open with their sexual orientation to do so without fear. It also requires respecting the privacy of those who choose not to be open with their sexual orientation.

It is important to stress preliminarily that the choice to make one's sexual orientation known is an intensely personal one for each individual. It is not the purpose of these Recommendations to encourage any employer to "bring out" an employee or applicant against his or her will, and none of the recommendations that follow will encourage, permit or cause this to happen.²³

There are many reasons why lesbians and gay men may not be open about their sexual orientation. Some lesbian and gay people legitimately fear losing their families should their sexual orientation become known. Some people have experienced serious traumas that have left them fiercely protective of their privacy, including involuntary discharge from the military and loss of a child in a custody battle. The employer's duty is simply to make the working environment one in which it is safe and comfortable to be openly gay or lesbian should any employee so choose.

²¹(...continued)
previously reserved to married people. See San Francisco Municipal Code (Administrative) Sections 62.1 to 62.8.

²²See Recommendation 18 & n.27 below for a brief discussion of applicable tax and ERISA considerations.

²³The term "closeted" derives from a Victorian concept of the closet, in which one put away the morally devalued characteristics of one's life, including one's homosexuality. During the last half of this century, the gay and lesbian rights movement has demanded the right to bring homosexuality and bisexuality out of this closet, a process called "coming out." When a third party discloses a lesbian's or gay man's sexual orientation to someone who was not previously aware of it, that third party "brings out" or "outs" the lesbian or gay man.

The Committee recognizes that legal employers vary considerably in their structure, management, philosophy and culture, and that the approaches and solutions adopted by a given employer may need to be tailored to its unique characteristics. With this in mind, every organization should scrutinize its own internal environment and must devise an approach or solution that enables employees who are openly lesbian or gay to participate fully in firm functions and advancement of their professional careers on an equal footing with heterosexual employees. However, the following recommendations are believed to be realistic and achievable tools that legal management should strongly consider implementing--with skill and sensitivity--in a greater effort to achieve the goals of equality and workplace diversification.

General Employment Policies and Practices

RECOMMENDATION 1 Management Commitment to Equality and Diversity: Legal employers must make a commitment to the fair and equal recruitment, hiring, retention, advancement and compensation of gay and lesbian employees and applicants. In order to effectively move the entire institution toward adoption of these goals as important business and management objectives, the managing partner/chief counsel, or a formally and publicly designated high-profile attorney with authority and clout, should assume an active leadership role in the organization's efforts.

Employers with this policy: McCutchen, Doyle, Brown & Enersen. McCutchen's managing partner and Executive Committee are vocal in support of diversity.²⁴

RECOMMENDATION 2 Anti-discrimination and Equal Employment Opportunity Policies: Employers should articulate, in all appropriate publications, policies, and procedures, the organization's commitment to and policy of equal opportunity in employment, which should specifically prohibit discrimination, including harassment, on the basis of sexual orientation and marital status. The policy should include a statement that AIDS and HIV-related conditions will be treated in the same manner as any other disability protected by law.

²⁴The list of employers which follows each recommended policy is not intended to be, and is not, an exhaustive list of all firms with such policies, but rather those whose policies were known to the Committee.

Employers with this policy: Heller, Ehrman, White & McAuliffe²⁵; Lilienthal & Fowler; Morrison & Foerster; Orrick, Herrington & Sutcliffe; Thelen, Marrin, Johnson & Bridges.

RECOMMENDATION 3 Training: Employers should conduct educational and training programs and provide employees with written guidelines intended to educate all employees, including non-lawyer staff, about sexual orientation issues, including HIV-related issues. Human relations workshops, either led by experienced outside consultants or by gay and lesbian attorneys or others within the firm, and focused on issues affecting lesbians and gay men as well as minorities, women and individuals with disabilities, can serve as an ideal first step in such efforts. These workshops can result in a frank exchange of views among employees, bringing to the attention of heterosexual employees the everyday realities of law firm life as experienced by gay and lesbian employees.

Employers with this policy: Heller, Ehrman, White & McAuliffe has sponsored a number of education/training sessions on AIDS-related issues during normal work hours; Lilienthal & Fowler; Morrison & Foerster. Morrison pays overtime for the time spent by employees in attending HIV-sensitivity training.

Recruitment and Hiring

RECOMMENDATION 4 Representation on Hiring Committees: Employers should ensure that at least one lesbian or gay attorney sits on the hiring committee.²⁶ This attorney can review resumes that are submitted to ensure that openly lesbian and gay candidates (and those whose resumes indicate that this may be the case) are matched with lesbian and gay-sensitive attorneys in the course of their call-back interviews, and are steered away from those who have consistently manifested bias based on the sexual orientation of applicants.

Active participation of openly lesbian or gay members in the recruitment and hiring process can often change the dynamics of the committee,

²⁵Heller, Ehrman has also adopted express goals and timetables for the hiring and promotion of gay and lesbian attorneys.

²⁶If an employer wishes to place an openly lesbian or gay attorney on its hiring committee, it can send a memo to all attorneys indicating its desire to place such a person on the committee and asking that anyone interested in this role contact the person in charge of hiring. The employer can then make its selection from among the volunteers.

educating and sensitizing the other members, confronting and challenging overt or subtle bias on the part of committee colleagues when necessary, and causing the committee as a whole to be more objective and fair in its deliberations and decisions.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler.

RECOMMENDATION 5 Recruitment Letters: Employers should ensure that recruitment letters are sent to law school lesbian and gay student organizations. These letters should convey the employer's commitment to workforce diversity, including assurances that an applicant's sexual orientation, or openness about his or her sexual orientation, will not adversely affect the employment prospects of that individual.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Orrick, Herrington & Sutcliffe.

RECOMMENDATION 6 Gay-sensitive Contacts: Employers should identify and publicize the names of lesbian and gay-sensitive contacts (ideally, at least one male and one female) within the organization whom applicants can contact with questions that they might not feel comfortable raising during an interview. These individuals can be identified in recruitment literature sent to lesbian and gay law student organizations, or in more generic materials sent to placement offices. If there are currently no openly gay or lesbian attorneys in the organization, a heterosexual attorney who is sensitive to lesbian and gay issues should serve as the contact. This person must be fully briefed on the employer's policies concerning gay and lesbian issues, understanding that applicants must be given the option of having these discussions kept confidential.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; Morrison & Foerster; McCutchen, Doyle, Brown & Enersen; Orrick, Herrington & Sutcliffe.

RECOMMENDATION 7 Firm Resumes: Firm resumes and brochures that include reference to pro bono activities should include lesbian or gay-related pro bono services performed by members of the firm, such as service on the AIDS Legal Referral Panel. Similarly, service on the boards of lesbian, gay or HIV-

related community organizations should be highlighted along with the firm's other community service activities.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; Lienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

RECOMMENDATION 8 Specialized Training for All Interviewers: Training for interviewers should include identification both of inappropriate areas of inquiry, such as the candidate's sexual orientation (unless volunteered), marital or relationship status or family plans. It should also emphasize exploring appropriate areas of inquiry, such as lesbian and gay-oriented activities or employment listed on the resume. It is important to note that this is a sensitive area. Therefore, questions should be restricted to activities and employment experiences that are disclosed, unless an applicant volunteers information about his or her private life.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

RECOMMENDATION 9 Welcome Packets: If a "Welcome Packet" is given to new employees or summer associates, the packet should include the firm's policy of non-discrimination on the basis, inter alia, of sexual orientation, marital status or HIV-status. It may also identify gay and lesbian contacts within the firm. Community resources should include those oriented toward the gay and lesbian communities. If a summer associate or new employee has clearly identified herself or himself as lesbian or gay, a publication such as the B.A.R., the Sentinel, and/or the Bay Times can be included in the packet. If professional associations are listed, lesbian and gay organizations such as BALIF and the Bar Association's Committee on Lesbian and Gay Issues should be included. Calendars of local events should contain the Lesbian/Gay Freedom Day Parade, the San Francisco International Lesbian & Gay Film Festival, and the AIDS Walk.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

Retention, Advancement and Compensation

RECOMMENDATION 10 Mentoring Program: Employers should provide their attorneys with formal support structures, such as a mentoring program. The importance of the assignment of an advisor or a mentor cannot be over-emphasized. This is especially the case for gay men and lesbians, women,

minorities, and individuals with disabilities, who have traditionally been excluded from the informal networking process existing in the workplace. The mentor can serve as a resource in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and career-enhancing work assignments; as a source of feedback and publicity for the newer lawyer's accomplishments; as a bridge/link for connecting to the organization; as a troubleshooter; as a career counselor; as a source of collegiality and friendship; and, as an advocate for the newer lawyer's advancement and promotion.

The mentor should be a partner or comparable-level supervising attorney, who may or may not be in a direct line supervisory relationship with the new lawyer. It is important that the mentor have the necessary position and authority, and the commitment, ability and sensitivity, to fulfill the role effectively.

RECOMMENDATION 11 Non-discrimination in Performance Evaluations, Work Assignment and Grievance Procedures: An employer's anti-discrimination policy with regard to sexual orientation is given life through its application to existing personnel. Employers should promote fairness and objectivity in performance reviews by making special efforts to identify and overcome subtle bias in the evaluation of gay and lesbian employees. Similarly, presumed or actual client preference should play no role in the assignment of work to gay and lesbian lawyers, just as racist or sexist client biases are not honored. If an employer exhibits confidence in an employee, the client is likely to do the same. Finally, to ensure that homophobic hostility can be remedied when it arises, an employer should provide employees with a neutral mechanism, independent of an immediate supervisor, for discussion of perceived bias. This could take the form of a general announcement of the ability to raise diversity-related concerns to line management, mentors, or a designated representative or committee, or by the employer's use of independent evaluators—separate from those actually providing the substantive evaluation—who invite response from the employee and are in a position to probe and challenge evaluators as to their conclusions.

The difficult question may arise as to whether a partner/supervising attorney/mentor should initiate a discussion with an openly gay or lesbian lawyer concerning issues relating to sexual orientation if the employee has not first raised them. Although some lawyers may regard this as intrusive, there are many others who would prefer greater management recognition of and sensitivity to their concerns, but who do not wish to be perceived as malcontents with an "attitude problem."

If a manager does decide to inquire about the comfort level of an openly gay or lesbian employees in the work environment, it should be done privately on an individual basis. One opening might be, "We realize that there are only a few openly gay or lesbian lawyers here and we recognize the issues that may be posed by this. If there are any concerns you have in that regard that you would like to discuss, please feel free to discuss them with me or [other designee]."

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen.

RECOMMENDATION 12 Social Function Policy: Employers should establish a policy, communicated in personnel manuals and orientation meetings, stating that invitations to office functions or other employer-sponsored events should use neutral designations such as "guest" rather than "spouse."

Employers with this policy: Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

RECOMMENDATION 13 "Spouse" Lists: Employers should list the domestic partners of lesbian and gay employees who so desire in the same manner that the spouses of heterosexual employees are listed, for example in "spouse" lists or "face books" distributed either in-house or to applicants and clients.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Thelen, Marrin, Johnson & Bridges.

RECOMMENDATION 14 Professional Associations: Employers should pay employees' membership dues to lesbian and gay professional associations, such as BALIF, on the same basis as the employer pays for memberships in other professional associations. Employees' activities in lesbian and gay professional associations should be supported on the same basis as activities in other professional associations, such as table sponsorship at annual dinners and fundraising events.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen,

Doyle, Brown & Enersen; Morrison & Foerster; Thelen, Marrin, Johnson & Bridges.

RECOMMENDATION 15 Internal Newsletters: If the employer has an internal newsletter, it should periodically include items of particular interest to lesbian and gay employees. Internal newsletters may also be used to help educate heterosexual employees about issues affecting lesbians and gay men. Additionally, newsletters should report the achievements of those who work within the lesbian and gay community.

Employers with this policy: Heller, Ehrman, White & McAuliffe; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

RECOMMENDATION 16 Informal Exchanges: Employers should foster opportunities for gay and lesbian attorneys to support each other in the work environment. For instance, an employer may sponsor a periodic luncheon, dinner or other appropriate social event for lesbian and gay employees. Events should also be sponsored for lesbian and gay employees that include heterosexual employees, to build mutual understanding and respect.

Employers with this policy: McCutchen, Doyle, Brown & Enersen; Morrison & Foerster.

RECOMMENDATION 17 Lunch Programs: Employers who sponsor regular firm lunches focusing on legal issues of interest to their attorneys should include programs on lesbian and gay legal issues, pro bono opportunities with local lesbian and gay rights groups, or the work of local lesbian and gay professional associations. The employer may contact such organizations as BALIF, the National Center for Lesbian Rights, the AIDS Legal Referral Panel, Lambda Legal Defense and Education Fund, the Committee on Lesbian and Gay Issues of the Bar Association of San Francisco, or the Gay Rights Chapter of the ACLU of Northern California to provide guest speakers for such programs.

Employers with this policy: McCutchen, Doyle, Brown & Enersen.

Employee Benefits

RECOMMENDATION 18 Health Benefits: Employers should offer health benefits to the domestic partners of lesbian and gay employees, to the extent possible under the federal tax law rules, on the same terms that they are available to the spouses of heterosexual employees.²⁷ Children of lesbian and gay couples should also be eligible for coverage on the same basis as the biological children, adopted children and stepchildren of married employees. See the appended Resources list for further information on domestic partner health benefits.

Employers with this policy: ACLU of Northern California; City of Berkeley; City and County of San Francisco; Lilienthal & Fowler.

RECOMMENDATION 19 Parenting Leave: Employers should ensure that all parenting leave policies and part-time policies accommodating parenting are gender-neutral and are not dependent on the biological relationship between the parent and the child.²⁸ This will ensure that the families of lesbian and gay employees, which may include children legally adopted only by the employee's partner, including those where a primary caregiver is not the biological parent, are treated in the same manner as are the families of heterosexual employees.

Employers with this policy: Heller, Ehrman, White & McAuliffe; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; Orrick, Herrington & Sutcliffe; Rogers, Joseph, O'Donnell & Quinn.

²⁷Employers should seek the admission of domestic partners to a covered group, with the cost of coverage to be paid on an after-tax basis. If an employer is unable to obtain such coverage, it can pay the premium for outside individual insurance for domestic partners, though this usually costs more, covers less, and excludes more pre-existing conditions. Since the value of this benefit is not a non-taxable employee benefit under ERISA, and, therefore, taxable income to the employee, the employer should additionally pay the employee a dollar amount equal, after taxes, to the income tax liability for the benefit. Employers are advised to seek the advice of tax counsel in promulgating their policies in this area.

²⁸The children of lesbians and gay men may be adopted, foster children, the product of donor insemination, or the children of an earlier marriage of one of the parents. It may be that neither parent has a biological relationship to the child, or that a parent without a biological tie is taking primary caretaking responsibility for the child.

RECOMMENDATION 20 Child Care: Where child care is provided to employees, it should be made available to employees' non-biological children.

Employers with this policy: Orrick, Herrington & Sutcliffe (Orrick has on-site emergency child care available to children of employees).

RECOMMENDATION 21 Care-Taking Policies and Bereavement Leave: Caretaking leave policies should allow leave time to be taken for the care of domestic partners and non-biological children. Employers should also provide leave time for the death of a domestic partner or immediate relative of such a partner on the same terms that they provide leave time for the death of a spouse or immediate relative of a spouse.

Employers with this policy: Landels, Ripley & Diamond; Lilienthal & Fowler; McCutchen, Doyle, Brown & Enersen; Morrison & Foerster; City and County of San Francisco.

RECOMMENDATION 22 Relocation Benefits: Employers should reimburse new employees for the cost of relocating the employee's domestic partner to the Bay Area from other parts of the country on the same terms as are expenses of an employee's spouse. One nondiscriminatory approach used by a growing number of legal employers, is to distribute to all employees who relocate a lump sum for relocation, with no restriction as to whom the allowance may be applied.

Employers with this policy: Howard, Rice, Nemerovski, Canady, Robertson & Falk; McCutchen, Doyle, Brown & Enersen; Orrick, Herrington & Sutcliffe.

RECOMMENDATION 23 Employee Assistance Programs: If the employer has an Employee Assistance Program through which various benefits are made available to employees and their families, including drug and alcohol counseling or crisis counseling such as that provided by many employers in the wake of the 1989 earthquake, the definition of "family" for such benefits should include domestic partners and non-biological children.

Employers with this policy: Morrison & Foerster.

APPENDIX

Resources

Material on Avoiding Discrimination and on Achieving Diversity in the Workplace

Ending Invisibility of Lesbians, Gay Men and Bisexuals in Legal Services, Tanya Neiman, editor. Management Information Exchange, P.O. Box 53212, Atlanta, GA 30355, (404)264-0610.

Pride at Work, Organizing for Lesbian and Gay Rights in Unions, by Miriam Frank and Desma Holcomb. Published by the Lesbian and Gay Labor Network, P.O. Box 1159, Peter Stuyvesant Station, New York, New York 10009.

Sexual Orientation and The Law, National Lawyers Guild, Roberta Achtenberg, editor, 1990; Chapter 5, "Employment," by Mary Dunlap. Clark Boardman Co. Ltd, 375 Hudson St., New York, N.Y. 10014.

"Learning To Manage A Multicultural Work Force," by Lennie Copeland. Training Magazine, May 1989.

"Partners in Chaos," Mountain Top Ventures. Order from Mountain Top Ventures, P.O. Box 911, Essex, MA 01929, (508)768-7100.

Model Policy Statements Relating to Sexual Orientation Non-Discrimination

Management Information Exchange has a packet of model language taken from various programs and law firms. To order, contact Guy Lescault, Staff Coordinator, Management Information Exchange, P.O. Box 53212, Atlanta, GA 30355, (404)264-0610.

**Information on Organizing and
Samples of Model Domestic Partner Benefits Packages**

Recognizing Lesbian and Gay Families: Strategies for Extending Employment Benefit Coverage, National Center for Lesbian Rights, 1985. Available from the National Center for Lesbian Rights, 1663 Mission Street, 5th Floor, San Francisco, CA 94103, (415)621-0674.

Pride at Work, See above.

Approaching 2000: Meeting the Challenges to San Francisco's Families. The Final Report of the Mayor's Task Force on Family Policy. Available from the San Francisco Human Rights Commission, 1170 Market St., #500, San Francisco, CA 94102-4908, (415)252-2500.

"Providing Benefits for Unmarried Domestic Partners," by Charles Wheeler. **Personnel Law Update**, 321 Lennon Land, Walnut Creek, CA 94598.

Assessment of the Lesbian and Gay Labor Movement, by Patti Roberts. Available from the National Center for Lesbian Rights, 1663 Mission St., 5th Floor, San Francisco, CA 94103, (415)621-0674.

Domestic Partnership Information Packet. Available from the ACLU Foundation of Northern California, 1663 Mission St., 4th Floor, San Francisco, CA 94103.

**General Resources For Staff Sensitivity Training
on Incorporating Lesbians and Gay Men in the Workplace**

Understanding Homosexuality. The Pride and The Prejudice, by Roger Biery. Edward-William Publishing Co., Austin, Texas, 1990.

Gays/Justice: A Study of Ethics, Society and Law, by Richard Mohr. Columbia University Press, New York, 1988.

Building Bridges: Exploring the Needs of the Lesbian and Gay Community, an in-service Training Guide for United Way Bay Area Member & Grant Agencies. The United Way, 410 Bush St., San Francisco, CA 94108, (415)772-4300.

**Leaders who Conduct Human Relations Programs which Address
Relations between Heterosexual and Homosexual Employees**

Equity Institute, 6400 Hollis Street, Suite 15, Emeryville, CA 94608,
(415)658-4577.

Isoke Femi, 6D Park Crest Ct., Novato, CA, (415)892-8798.

The Motivational Institute, 8306 Wilshire Blvd., Suite 5000, Beverly
Hills, CA 90211, (213)856-2303.

Mountain Top Ventures, P.O. Box 911, Essex, MA 01929. Contact:
Bryant Rollins, (508)768-7101.

New Bridges, Center for Human Development, 440 Grand Avenue,
Suite 210, Oakland, CA 94610, (415)268-3696.

Betty Powell and Associates, 20 Patricia Lane, Woodstock, New
York 12498, (914)679-5346.

Local AIDS organizations may have additional referrals. Contact
the San Francisco AIDS Foundation at 864-5855. The National AIDS Hotline, 1-
800-342-AIDS, can provide phone numbers and addresses of AIDS organizations
in other localities.

Topical Law Reviews and Law Review Articles

Law & Sexuality: A Review of Lesbian and Gay Issues, Tulane Law
School, 6801 Freret Street, New Orleans, LA 70118, (504)865-5835. Contact:
Elizabeth Rigdon, Editor in Chief, or Kathryn Hancock, Faculty Advisor.

Stanford Journal of Law, Gender & Sexual Orientation, Stanford
Law School, Crown Quadrangle, Stanford, CA 94305-8610. Contact: Nancy Ota
or Leslie Cancel, (415)725-2569.

"Homosexuality and the Social Meaning of Gender," by Sylvia Law.
1988 Wisconsin Law Review 187 (1988).

Other Contact Numbers And Directories

National Attorneys' Directory for Lesbian and Gay Rights, Gay & Lesbian Advocates and Defenders. This publication includes listings of lesbian and gay bar association, law student organization and attorneys throughout the United States. Order from GLAD, P. O. Box 218, Boston, MA 02112.

American Bar Association, AIDS Coordination Project, 1800 M. St., N.W., Washington, D.C. 20036, (202)331-2248, FAX: (202)331-2220.

National AIDS Hotline. The Hotline is a 24-hour toll-free service that provides confidential information, referrals, and educational materials to the public. To reach the Hotline, call 1-800-342-AIDS (1-800-342-2437).

Examples of Policies and Materials

The following materials are presented for informational purposes only. These materials show how individual firms have addressed issues related to sexual orientation discrimination. The Bar Association of San Francisco and the BASF Committee on Gay and Lesbian Issues make no endorsement of the specific language in any of these materials.

Additional materials are available from Guy Lescault, Staff Coordinator, Management Information Exchange, P.O. Box 53212, Atlanta, GA 30355, (404)264-0610.

HELLER, EHRMAN, WHITE & MCAULIFFE

ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-996 · FACSIMILE (415) 772-6288
TELEPHONE (415) 772-8000

825 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 328-7800

888 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2308
FACSIMILE (213) 614-1888
TELEPHONE (213) 689-0300

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7008
FACSIMILE (206) 447-0848
TELEPHONE (206) 447-0800

1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-8888
FACSIMILE (503) 241-8980
TELEPHONE (503) 227-7400

880 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-3871
FACSIMILE (907) 277-1880
TELEPHONE (907) 277-1800

June 1990

THE FIRM

Heller, Ehrman, White & McAuliffe, founded in the 1890's, currently has more than 320 attorneys practicing in six locations: San Francisco, Los Angeles, Palo Alto, Seattle, Portland and Anchorage. Members of the firm are alumni of 55 law schools, come from diverse backgrounds, and represent a wide range of interests. To this group, we seek to add new lawyers with varied experiences and outlooks and superior academic records.

Heller, Ehrman is an equal opportunity employer and partnership. It does not discriminate on the basis of race, religion, color, national origin, sex, age, sexual orientation, handicap, medical condition or veteran's status. We seek to hire, develop and advance, on the basis of professional ability, attorneys of varying backgrounds in substantial numbers to ensure that the composition of the firm at all levels — partners and associates alike — reflects the ethnic, political, gender and cultural diversity of our society.

THE PRACTICE

Locally, nationally and internationally, the firm represents a broad range of clients from publicly listed corporations and private associations to small entrepreneurs and individuals. The full range of our specialties can be seen in the brief practice descriptions that follow.

Our Litigation practice includes antitrust, securities, banking, intellectual property, corporate governance, accountants' liability, insurance coverage, environmental, product liability, labor and all forms of complex commercial matters. We represent clients in the computer and genetic engineering fields and continue to expand our practice in high-technology areas.

Our Corporate and Property/Finance practices include securities, banking, corporate finance, venture-capital financing, mergers, acquisitions, equipment leasing and real estate. Our engagements involve an increasing number of foreign and domestic

**ORRICK, HERRINGTON
& SUTCLIFFE**

May 8, 1991

Drrrrr Drrr
415/773-5488

Lesbian/Gay Law Students Association
Office of Career Planning and Placement
Yale Law School
401A Yale Station
New Haven, Connecticut 06520

Dear Members:

Orrick, Herrington & Sutcliffe is a firm committed to hiring and retaining lesbian and gay attorneys. We currently have four self-identified gay attorneys, one partner and three associates. Two of the four attorneys are members of Bay Area Lawyers for Individual Freedom ("BALIF") and one serves on the Bar Association of San Francisco, Committee on Equality, Subcommittee on Lesbian and Gay Issues. Additionally, there are eleven self-identified lesbian and gay staff members.

We would appreciate it if you would post this letter in your offices and make the enclosed resumes available to all your members. We have sent these materials with the goal of reaching lesbian and gay students who are interested, and qualified to succeed, in our type of practice.

In the hiring process, we attempt to select all applicants who appear to possess the qualifications and interest to be successful in a large, prominent law firm. Although we do place a lot of emphasis on law school grades, we consider all factors bearing on an applicant's qualifications, including journal experience, extracurricular activities, prior work experience, verbal expression, poise and personality. Weakness in one area may be balanced by strengths in other areas.

We encourage any of you who feel that a summer clerkship with Orrick would be beneficial to you and the firm to sign up to see us when we are on campus. If you have any questions about Orrick, or about gay and lesbian quality of life at a large law firm, please feel free to call me at the number provided above.

Very truly yours,

David B. D. Schwartz
Diversity Committee

Enclosures

Old Federal Reserve Bank Building • 400 Sansome Street • San Francisco, California 94111
Telephone 415 392 1122 • Facsimile 415 773 5759
Los Angeles 213 680 7000 • New York 212 326 8800 • Sacramento 916 447 9200

8268S

E. Other Absences

1. Bereavement/Funeral Leave

Time off with pay is granted in the event of the death: of an employee's spouse, children, mother, father, sister, brother, grandparents, grandchildren, sister-in-law, brother-in-law, mother-in-law, father-in-law, daughter-in-law, and son-in-law, or in the event of the death of the domestic partner equivalent of any of the above.

Domestic partner is defined as an individual residing with an individual in a sustained domestic relationship in which both individuals share the domestic and household expenses and responsibilities but are unmarried.

Up to three days leave (five days in the event travel is required) will be allowed for each such death. If you wish to take leave for a death that does not fall within the above, please see the Director of Administration to discuss the uses of vacation time, unpaid time or some other alternative.

2. Jury or Witness Duty

Time off with pay is granted for absences from work for jury or witness duty. Copies of the "Prospective Juror's Notice" or summons must be sent to the Personnel Manager so that arrangements can be made to cover the absence. Employees on jury or witness duty for more than one week must reimburse the firm for any fees received, less parking and travel expenses, incurred in connection with jury duty.

3. Personal Business

Moving, auto repair, shopping and other non-medical errands requiring at least one-half day away from the job, must be taken as vacation time or time without pay. Absences caused by personal emergencies of less than one-half day should be made up on an hour-per-hour basis. Please make arrangements with the Personnel Manager.

**Policy on
AIDS and AIDS-Related Conditions
in the Workplace**

Heller, Ehrman recognizes that Acquired Immune Deficiency Syndrome (AIDS), associated AIDS-Related Conditions (ARC), and positive results from antibody/antigen tests for the Human Immunodeficiency Virus (HIV) or other tests that suggest the presence of HIV infection, can all present significant and delicate issues for employees. We believe it is important to establish a policy that deals effectively with all aspects of these situations based on presently available medical evidence. Accordingly, the firm has established the following guidelines for handling the employment and workplace issues that may arise when an employee is affected by this disease.

(1) The firm is committed to maintaining a safe and healthy work environment for all employees.

(2) Consistent with this commitment, the firm will treat AIDS and ARC the same as any other illness in terms of all our employee policies and benefits, including sick leaves and disability leaves, group health and life insurance, other disability benefits, and equal employment opportunity policies.

(3) The firm will treat as confidential all medical information obtained from (or with the consent of) employees who have AIDS, ARC, or positive results on HIV antibody/antigen tests or tests that otherwise indicate HIV exposure.

(4) The overwhelming preponderance of available medical and scientific evidence, including statements from the United States Public Health Service and the Centers for Disease Control, indicates that the HIV virus cannot be casually transmitted in ordinary occupational or social settings. Therefore, it is the policy of the firm that an employee with AIDS, ARC, or HIV seropositivity may continue to work, and the firm will provide reasonable accommodation, as long as he/she is medically able to perform assigned duties. All employees who are affected by these conditions will be treated with compassion and understanding in dealing with this personal crisis. Individuals within the firm will be expected to continue to work together, and not to harass or otherwise discriminate against fellow workers who are affected by HIV exposure or perceived to be at risk for such exposure.

(5) The firm recognizes the need for all employees to have access to accurate information about AIDS. We intend to make available information regarding the facts about the disease, how it is and is not transmitted, and how best to contain its spread. Employees who would like to receive this

information should contact the firm's Human Resources Director or Assistant Managing Director.

(6) Employees who are affected by AIDS or ARC, or who are concerned about these issues, are encouraged to contact their supervisors or the firm's Human Resources Director or Assistant Managing Director to discuss their concerns and to obtain additional information. The San Francisco AIDS Foundation (telephone 863-2437) can also provide free, anonymous information relating to these issues.

If you have any questions about this policy or its interpretation or the information upon which it is based, please contact your supervisor or the firm's Human Resources Director or Assistant Managing Director.

CITY OF BERKELEY
AFFIDAVIT OF DOMESTIC PARTNERSHIP

I, _____, certify that:
Name of Employee (Print)

1. I, _____, and _____
Name of Employee (Print) Domestic Partner (Print)

reside together and intend to do so indefinitely at: (Address)

_____ and share the common
necessities of life;

2. We affirm that the effective date of this domestic partnership is

_____ and that this domestic partnership has
Date
been in existence for a period of six (6) consecutive months, at least,
prior to the date identified on this affidavit. We understand that
documentation will be required.

3. We are not married to anyone.

4. We are at least eighteen (18) years of age or older.

5. We are not related by blood closer than would bar marriage in the State
of California and are mentally competent to consent to contract.

6. We are each other's sole domestic partner and intend to remain so
indefinitely and are responsible for our common welfare.

7. We understand that domestic partners are subject to the same 30-day
"window" periods governing all other employees who are covered by
or applying for health plan coverage. New children, new employees,
adoptions, new marriages and domestic partnerships are all subject
to a 30-day limit on the enrollment period beginning on the date of
the event.

8. We agree to notify the City if there is any change of circumstances
attested to in this Affidavit within thirty (30) days of change by
filing a State of Termination of Domestic Partnership. Such termination
statement shall be on a form provided by the City and shall affirm
under a penalty of perjury that the partnership is terminated and that
a copy of the termination statement has been mailed to the other partner.

9. After such termination I, _____
 (Employee)
 understand that another Affidavit of Domestic Partnership cannot be filed until six (6) months after a statement of termination of the previous partnership has been filed with the Risk Management Office.
10. We understand that any persons/employer/company who suffer any loss because of false statement contained in an Affidavit of Domestic Partnership may bring a civil action against us to recover their losses including reasonable attorney's fees.
11. We provide the information in this Affidavit to be used by the City for the sole purpose of determining our eligibility for domestic partnership benefits. We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization or pursuant to a court order.
12. We affirm, under penalty of perjury, that the assertions in this Affidavit are true to the best of our knowledge.

 Date

 Signature of Employee

 Date of Birth

 Date

 Signature of Domestic Partner

 Date of Birth

INSURANCE COMPANIES AND DOMESTIC PARTNERSHIP BENEFITS

Currently there are few insurance companies which will underwrite domestic partner benefits, even though the experience of municipalities such as Berkeley and West Hollywood, California demonstrates the feasibility of implementing workable, equitable non-costly plans covering domestic partners. Because of the lack of available underwriters, some municipalities and organizations (e.g., West Hollywood and The Village Voice) have instituted self-insured plans covering everything from health and dental benefits to sick and bereavement leave.

The Liberty Mutual Insurance Company is one company that offers coverage for domestic partners. Through Liberty Mutual, the American Psychological Association (APA), which is based in Washington, DC, offers major medical, hospital indemnity, accident and life insurance coverage to its members and their domestic partners. Of the over 70,000 APA members, only eight have enrolled their domestic partners. Liberty Mutual provides this coverage to the APA at exactly the same cost as coverage for married spouses. Liberty Mutual requires, however, that an APA member who requests such coverage submit a statement of domestic partnership and then wait one year before the partner will be covered by the policy. Consequently, if one relationship ends and the member enters a new one, the member must again wait one year before his or her partner can be insured. The APA is currently the only group which has domestic partner coverage through Liberty Mutual. Liberty Mutual, however, calls domestic partner coverage a "successful experiment" and has indicated its willingness to write similar policies in the future.

Consumer's United is another insurance company which writes domestic partner coverage on a regular basis. The company is not licensed in every state, so please call to see if your area is covered (see address below).

Even though the pool of companies that provides domestic partner benefits is small, the number is growing and will continue to grow as more plans are enacted and "actuarial data" becomes available. As innovative municipalities and organizations have shown, there are several ways to structure insurance coverage of domestic partners, and providing this coverage has generally been an inexpensive and important benefit for unmarried employees.

Moreover, the cost of implementing an insurance plan (which would often times bring the municipality or organization into compliance with existing anti-discrimination laws) would be minimal, especially in view of the limited number of unmarried employees who 1) have domestic partners and 2) would come forward to claim such benefits. In every case where extending benefits to domestic partners of employees has been instituted, an extremely small percentage of employees (typically between 2% and 7%) sign up for these benefits. Of this small percentage to claim benefits, the overwhelming majority of couples are heterosexual. Thus, extending benefits to domestic partners does not "open the floodgates" for misuse and abuse of the insurance system, but instead equalizes the compensation provided to married and unmarried employees by adopting a more equitable definition for the second insured.

Below are the names and addresses of insurance companies that underwrite plans for domestic partners:

Liberty Mutual Insurance
Attn: Special Risks Group Insurance Department
175 Berkeley
Boston, MA 02117
617/357-9500

APA Insurance Trust
888 17th Street, N.W.
Washington, DC 20006
202/955-7780

Consumer's United
Marketing Department
2100 M. Street, N.W.
Washington, DC 20037
202/873-5213

John Hancock Mutal Life
1 Hancock Place
Boston, MA 02217
1/800/922-5050

Independent Blue Cross
1333 Chestnut Street
Philadelphia, PA 19107
215/564-2100

FOR FURTHER INFORMATION

Below is a list of resources from which you can obtain more information about insurance coverage and about the plans currently in operation.

1. **Lambda Legal Defense and Education Fund**
666 Broadway, 12th Floor
New York, NY 10012
212/995-8585
2. **National Center for Lesbian Rights**
1370 Mission Street, 4th Floor
San Francisco, CA 94103
415/621-0674
3. **Berkeley City Manager's Office**
Steve Replogle
2180 Mivia Street, 5th Floor
Berkeley, CA 94704
415/644-6580
4. **Madison Institute for Social Legislation**
953 Jenifer Street
Madison, WI 53703
608/244-3345
5. **National Organization for Women**
1401 New York Avenue, N.W., Suite 800
Washington, DC 20005
202/347-2279
6. **Office of Intergovernmental Relations**
1350 Pennsylvania Avenue, N.W.
Washington, DC 20014
202/727-5829
7. **City of West Hollywood**
Personnel Department
7377 Santa Monica Boulevard
West Hollywood, CA 90046
213/854-7494
8. **Village Voice**
842 Broadway
New York, NY 10003
212/475-3300

A. Bar Exam

The firm pays or reimburses expenses for the California bar exam and bar review course for new attorneys who have joined the firm or accepted an offer to join the firm before incurring those expenses. Reimbursement will be provided only for those who come to the firm from law school or from a judicial clerkship without taking other intervening employment, or who came directly to the firm from practice in another state, and not for individuals who incur bar exam and review course expenses before joining the firm.

 B. Moving Expenses For New Attorneys

The firm pays or reimburses travel and moving expenses to the Bay Area up to a maximum of \$4,000 for new attorneys who have joined the firm or accepted an offer to join the firm before incurring those expenses.

C. Automobile and Meal Expenses

Automobile travel expense is reimbursed at 22.5 cents per mile, and is normally charged to the client. If you work through the normal dinner hour and eat downtown, you are entitled to reimbursement. Meals are charged to a client if the later hours are due to the particular client's work, and charged to the firm if the overtime is due to the general press of work. Forms to claim reimbursement can be found in the supply room. The completed form should be routed to the accounting department together with receipts