

LGBT Discrimination in the Federal Workplace



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History of LGBT Discrimination in the Federal Workplace: The Lavender Scare

- Started by Senator Joseph McCarthy in 1950
- Gay federal employees were considered more dangerous than communists
- April 27, 1953 – Executive Order 10450 was signed
- More than 10,000 federal employees were fired for being gay in the 1950's alone



History of LGBT Discrimination in the Federal Workplace

- 1960's D.C. Circuit Cases
- The Civil Service Reform Act of 1978
- May 28, 1998 – Pres. Clinton signs Executive Order 13087
- April 2012 EEOC decision *Macy v. Dep't of Justice*
- *United States v. Windsor*, 133 S.Ct. 2675 (2013)



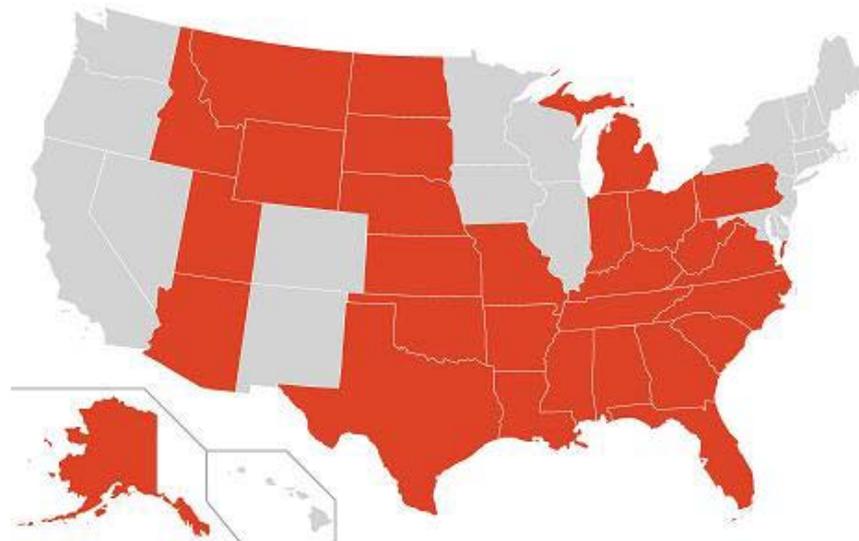
The SUBJECT was an Administrative Assistant, FSS-10, Paris. An investigation concerning homosexual tendencies was instituted and prior to an interview by a Security Officer, FERENCE submitted his resignation from the Foreign Service for reasons of poor health. FERENCE was interviewed on August 26 and August 30, 1954, in Paris and he admitted

After two days of interrogations by the State Dept in 1953, an administrative assistant at the American Embassy in Paris resigned for “health reasons” and later committed suicide.

LGBT Employees Do Not Have Sufficient Legal Protections in the Workplace

- You can still be fired in 29 states for being gay
- You can still be fired in 33 states for being transgender
- EEOC is bringing claims, but change takes time

 STATES WHERE YOU CAN BE FIRED FOR BEING GAY

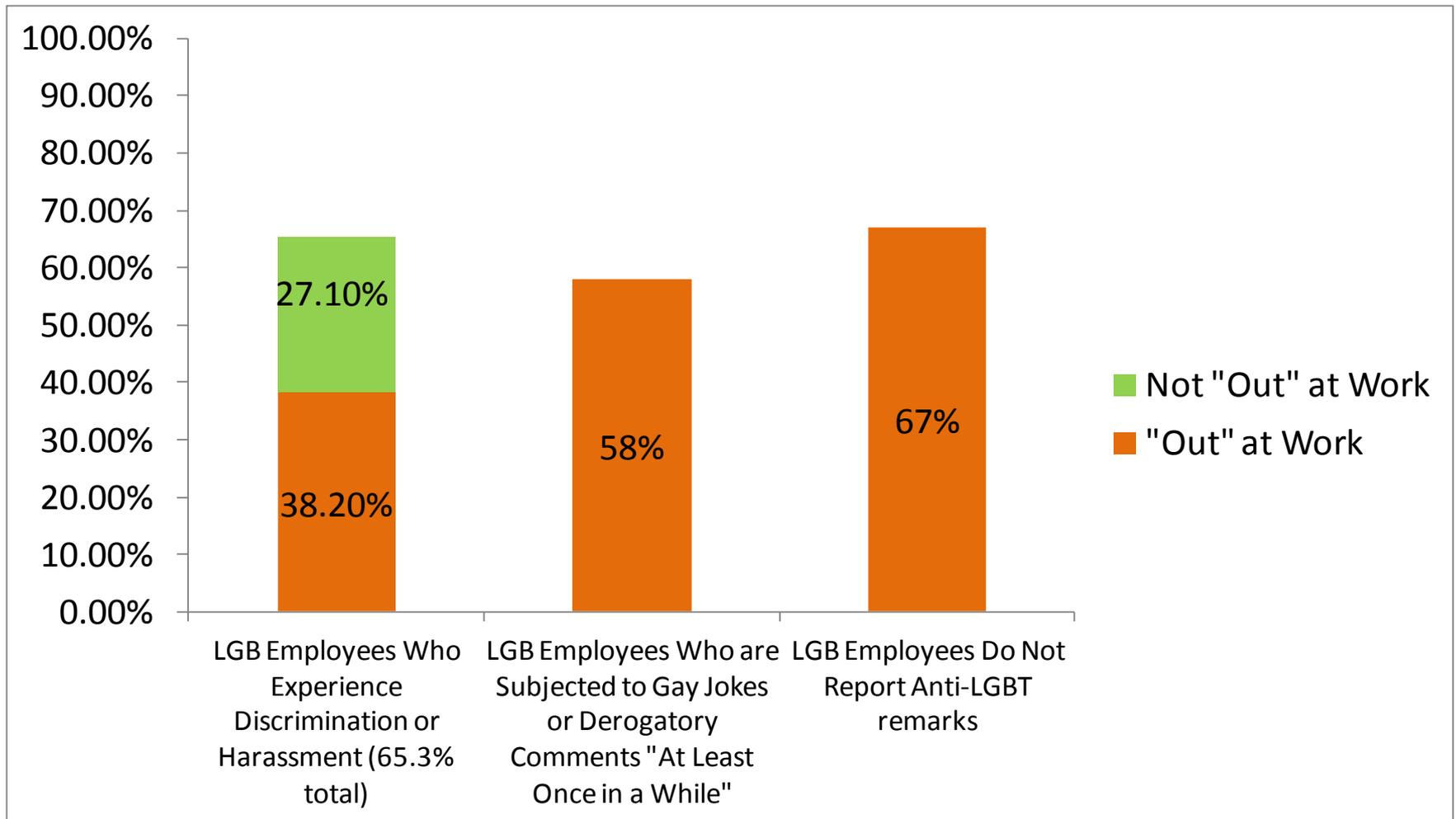


Sexual Orientation

- Sexual orientation is a person's sexual identity in relation to the gender they are attracted to
- This includes heterosexuality, homosexuality, bisexuality, and also may include asexuality
- Studies show that everyone's sexual orientation falls somewhere on the below continuum



LGB employees experience high percentages of discrimination and harassment in the workplace



Sexual Orientation: The Law

- Title VII does not *explicitly* include the term “sexual orientation” as a basis for protection under the law.
- Nevertheless, the law’s broad prohibition of discrimination “on the basis of . . . sex” will offer coverage to gay individuals in certain circumstances.

Sexual Orientation: The Law

- The Supreme Court has recognized that Title VII's prohibition of discrimination on the basis of sex includes discrimination on the basis of "gender."
- This includes discrimination because an individual fails to conform to gender-based expectations, stereotypical or otherwise.

Ann Hopkins, the plaintiff in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)



Recent EEOC OFO decisions

- Veretto v. U.S. Postal Service, EEOC Appeal No. 0120110873
(July 1, 2011)
- Costello v. U.S. Postal Service, EEOC Request No. 0520110649
(Dec. 20, 2011)
- Culp v. Dep't of Homeland Security, EEOC Appeal No. 0720130012 (May 7, 2013)
- Brooker v. U.S. Postal Service, EEOC Request No. 0520110680
(May 20, 2013)
- Baker v. Social Security Admin., EEOC Appeal No. 0120110008
(Jan. 11, 2013)

The “F” word

- Couch v. Dep’t of Energy, EEOC Appeal No. 0120131136 (August 14, 2013).
- The Commission has found that the terms “fag” and “faggot” have been historically used in the United States as a highly offensive, insulting, and degrading sex-based epithet against gay men.
- Additionally, the words “fag” and “faggot” are offensive, insulting, and degrading sex-based epithets historically used when a person is displaying their belief that a male is not as masculine or as manly as they are.

Sexual Orientation Terms: What To Say

Non-Offensive Language:

Gay People

Gay Men

Gay Women

Lesbian or Lesbians

Bisexual

Asexual

Sexual Orientation

LGBT or GLBT

Sexual Orientation Terms: What Not To Say

Offensive:

Homosexual

Homo

Fag

Faggot

Sexual Preference

Gay Lifestyle

That's so gay

Queen

Potentially Offensive*:

Dyke

Queer

* These terms are sometimes used by LGBT community members, so in some contexts it may be socially acceptable for them to use. However, in the workplace employees should avoid these terms because most people do not consider them respectful.

The discriminatory comments towards gay individuals that we hear today are not new....

“Those _____ shouldn’t be allowed to marry! Marriage is a sacred institution!”

1865 reference to African Americans

“A _____ is for me an object of disgust. I feel like vomiting when I see one.”

1940 Nazi reference to Jews

“I absolutely will tell any _____ that they cannot sit in my restaurant and I will refuse to serve them. The thought of treating them like my other customers is repulsive.”

1948 business owner’s reference to racial segregation

“The brainwashing of our children is a fighting matter... children in public and private schools all over America are being indoctrinated and lied to”

1997 reference to racial equality taught in schools

Transgender

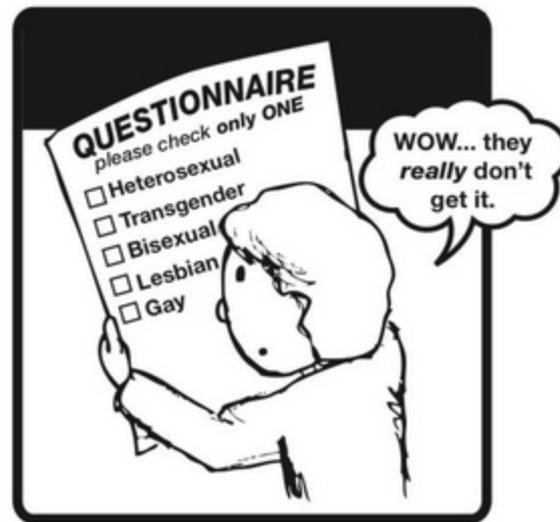
- A transgender individual is a person who internally identifies with a gender other than the biological gender they were born with



Above is a transgender symbol, a combination of the male and female sign with a third, combined arm representing transgender people.

Question: What is the difference between sexual orientation and gender identity?

Answer: **Everything**



A person's gender identity has nothing to do with their sexual orientation

Understanding Gender Identity

- Sex – the *biological/ physical* aspect of our body
- Gender Identity – the term for an individual's *internal psychological sense* of their gender
- Gender Expression – demonstrates a person's individual sense of their gender to others



Chaz Bono



Lana Wachowski – Director of the Matrix



Jenna Talackova – Ms. Canada

Transgender Employees Experience an Extremely High Percentage of Discrimination in the Workplace



Transgender Employment: The Law

- The Commission recently found that discrimination against someone because they are transgender is discrimination “based on sex” and is prohibited under Title VII.



Mia Macy, the Complainant in Macy v. Dep't of Justice, EEOC Appeal No. 0120120821 (Apr. 20, 2012)

Understanding the Transition Process

- Some transgender individuals will find it necessary to transition from living and working as one gender to another.
- These individuals often seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and reassignment surgery.
- Some individuals, however, will not pursue some (or any) forms of medical treatment.
- The transition process is different for every individual

Understanding the Transition Process (Continued)

- The World Professional Association of Transgender Health (WPATH) recommends the following steps for transitioning:
 - First, the individual may meet with a mental health provider
 - Second, the individual may begin a course of hormone therapy
 - Third, an individual may be ready to commence the “real life experience,” which is when an individual transitions to living full-time in the gender role that is consistent with his or her gender identity.

After the Transition: Transgender Individuals & Bathrooms

- Once a transgender individual has begun living and working full-time in the gender that reflects his or her gender identity, Agencies should allow access to restrooms consistent with his or her gender identity.
- Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure in order to have access to facilities designated for use by a particular gender.



After the Transition

- **Confidentiality:** An employee's transition should be treated confidentially, and medical information received about an individual employee is protected under the Privacy Act and the Rehab Act.
- **Dress and Appearance:** Agency dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender.

After the Transition: Names and Pronouns

He

Mam

- Managers, supervisors, and coworkers should use the name and pronouns appropriate to the employee's new gender.

She

They

- Managers, supervisors, and coworkers should take care to use the correct name and pronouns in employee records and in communications with others regarding the employee.

His

Her

- Jameson v. U.S. Postal Service, EEOC Appeal No. 0120130992 (May 20, 2013)

Ze

Sir

Transgender: Record Keeping

- In accordance with OPM guidelines, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to show the employee's new name and gender, once the employee has begun working full-time in the gender role consistent with the employee's gender identity.
- Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120133123 (April 16, 2014)

Transgender Terms: Know What To Say

Non-Offensive Language

Transgender Woman

Transgender Man

Gender Transition

Gender Identity

Transgender People

LGBT

Transgender Terms: Know What Not To Say

Offensive:

Sex Change

Transvestite

She-Male or He-She

Shim

Tranny

It

A Transgender

Gender bender

Potentially Offensive*:

Transgenders

Transsexual

Pre-Operative/Post Operative

Cross Dresser

*These terms are sometimes used by LGBT community members, so in some contexts it may be socially acceptable for them to use. However, in the workplace employees should avoid these terms because most people do not consider them respectful.

Now that you know that discrimination in the workplace is a significant issue for LGBT employees, what can you do about it?



What You Can Do: Come Out as an Ally

- Come out as an ally
- Make it clear that your office is a “safe space”
- Join an LGBT resource group & go to LGBT events



What You Can Do: Do Not Make Assumptions

- Do not make assumptions that all employees and coworkers are heterosexual or identify with the gender they were born with
- Always assume that an LGBT employee is listening to your conversation or reading your emails – be inclusive in everything you say



Dwight scans Oscar with a "gaydar" device on NBC's The Office.

What You Can Do: Do Not Tolerate Discriminatory Comments or Jokes

- Communicate a zero-tolerance policy for discrimination
- Speak up if you hear a discriminatory comment, name, or joke about LGBTs
- Don't engage gossip or allow others to gossip about an employee's sexual orientation or gender identity
- Know that LGBT employees CAN file EEO complaints of discrimination



What You Can Do: Encourage your Agency to Be Proactive

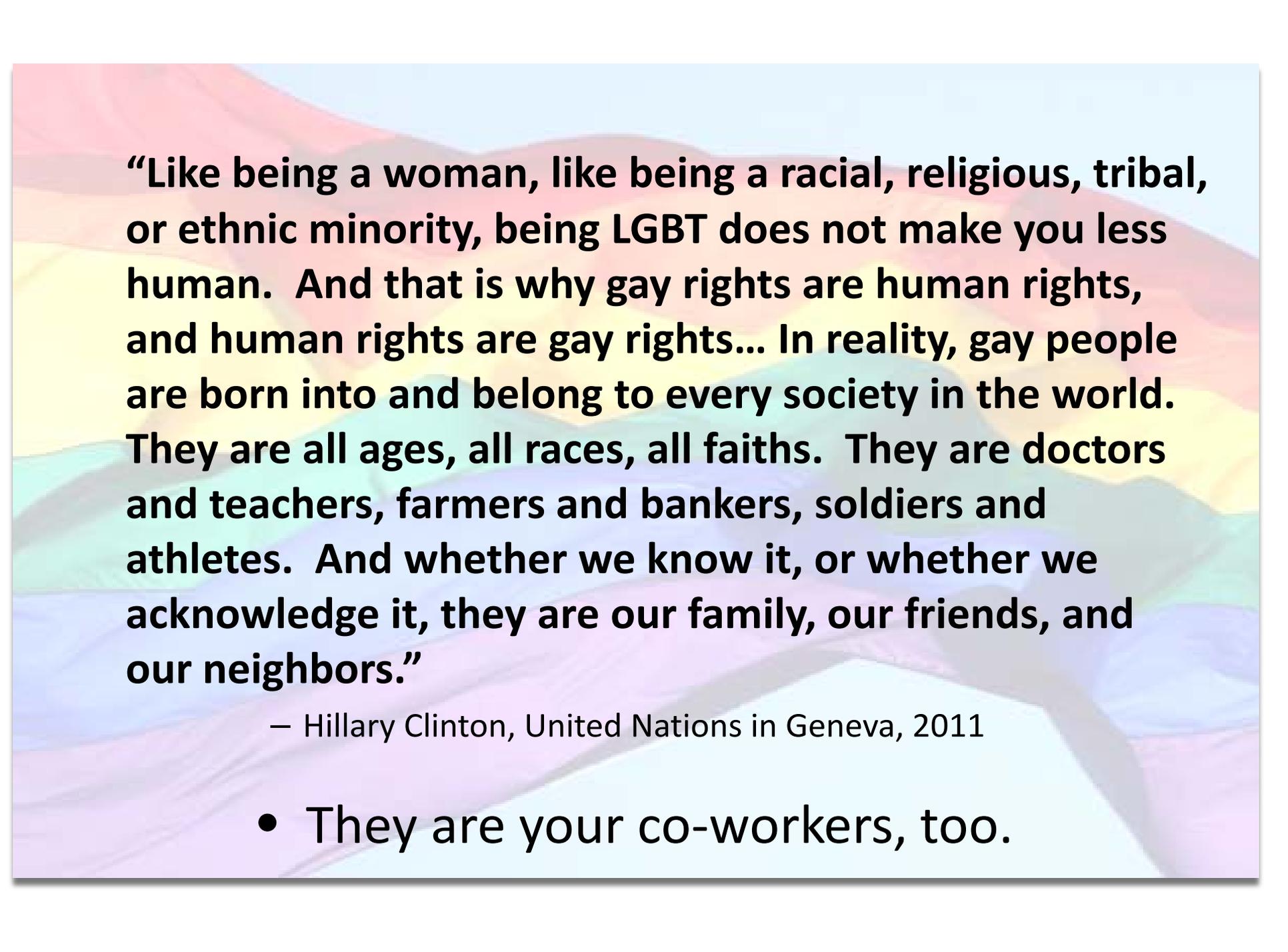
- Encourage your Agency to conduct cultural competency training
- Encourage your agency to create a transgender transition policy



What Happens in a LGBT Inclusive Work Environment?

- Increases effectiveness of resources
- Larger pool of employees
- Reduces urge for LGBTs to look for another job
- LGBTs are more engaged in work and with coworkers
- Improves LGBTs' performance
- Improves public image





“Like being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights... In reality, gay people are born into and belong to every society in the world. They are all ages, all races, all faiths. They are doctors and teachers, farmers and bankers, soldiers and athletes. And whether we know it, or whether we acknowledge it, they are our family, our friends, and our neighbors.”

– Hillary Clinton, United Nations in Geneva, 2011

- They are your co-workers, too.