

# PUBLICATION

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## We're All in This Together: Now Is the Time to Develop or Revamp LGBTQ-Inclusive Programs and Practices

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Now more than ever, we are hearing the phrase "we're all in this together." When I first heard these words, my mind went straight to the ending scene of the 2006 Disney movie "High School Musical." In the final scene, all the Wildcats come together to celebrate their differences and acknowledge that everyone is special in their own way. Given the current global pandemic the world is facing and the uncertainty it has wreaked across our nation, now is the time for companies to communicate and demonstrate to their employees, clients, and customers that we are truly all in this together. One way to do this is to develop and promote a diverse and inclusive workplace for all employees, particularly LGBTQ individuals.

A recent Human Rights Campaign (HRC) [study](#) reports there are nearly 14 million LGBTQ adults and two million LGBTQ youth in the United States. The report highlights the challenges facing LGBTQ individuals during the COVID-19 crisis, including those faced in the workplace. It noted that more than five million LGBTQ individuals work in jobs that are more likely to be impacted by COVID-19, including restaurants and food services, hospitals, K-12 and higher education, and retail industries. We have seen how many companies have been forced to make very difficult employment decisions, including furloughs, layoffs, and terminations. It is still critical, however, that companies ensure that such employment decisions are made in a nondiscriminatory manner.

As detailed in this [Baker Donelson Alert](#), on June 15, 2020, the United States Supreme Court ruled in a historic 6-3 [decision](#) that sexual orientation and gender identity are protected under Title VII of the Civil Rights Act. In October 2019, the Court heard oral arguments in the following cases:

1. *Zarda v. Altitude Express* – the Second Circuit Court of Appeals (New York, Connecticut, and Vermont) ruled in favor of a skydiving instructor who claimed he was terminated because he was gay;
2. *Bostock v. Clayton County* – the Eleventh Circuit Court of Appeals (Georgia, Florida, and Alabama) reaffirmed its precedent that sexual orientation is not a protected class under Title VII; and
3. *R.G. & G.R. Funeral Homes v. EEOC* – the Sixth Circuit Court of Appeals (Kentucky, Michigan, Ohio, and Tennessee) held that Title VII prohibits gender identity discrimination.

Title VII prohibits discrimination based on race, color, national origin, religion, sex, age (over 40), and disability. Although sexual orientation and gender identity are not explicitly mentioned in Title VII, proponents argue that such classes should be included because Title VII prohibits discrimination "because of sex." The Court agreed. Specifically, the Court held that "an employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." As such, the Court held that an employer who discriminates against an individual merely for being gay or transgender violates Title VII.

[Research](#) from the U.S. Chamber of Commerce Foundation has shown that adopting LGBTQ inclusive programs and practices has a positive impact on a company's bottom line and its ability to attract and retain

talent. The report explained that companies that adopt such practices tend to improve their financial standing. In addition, employees, regardless of their sexual orientation or gender identity, express greater job satisfaction at companies where these practices are in place. With the Court's rulings in mind, companies should do their part now to create environments that are inclusive of LGBTQ employees, clients, and customers. Here are some steps companies can take to strengthen or develop LGBTQ – inclusive programs and practices:

- **Create or update company policies.** Your EEO policy should prohibit discrimination based upon the protected classes listed in Title VII as well as sexual orientation and gender identity. Additionally, require your clients, suppliers, and contractors to comply with LGBTQ nondiscrimination practices.
- **Implement guidelines for transitioning employees.** The guidelines should provide managers and the transitioning employee with insight on the workplace transition process and how to better understand and relate to transitioning employees. These guidelines can also assist human resources staff in better supporting employees as they transition.
- **Broaden your paid family leave policy to include LGBTQ individuals.** Understanding that the time required to tend to a family's growth or changes means different things to different individuals allows companies to be inclusive of the entire workforce, including LGBTQ employees.
- **Create an employee resource group for LGBTQ employees and their allies.** For example, Baker Donelson has a group called [BakerPride](#) for its LGBTQ employees and straight allies. The group is designed to promote LGBTQ equality in the workplace and in the community. Creating a group like this may relieve some of the fears and concerns LGBTQ employees reported having in the recent HRC study.
- **Advocate for the LGBTQ community in your geographic area.** While the debate over LGBTQ rights in the workplace is now resolved, LGBTQ individuals continue to face issues in the community concerning bathroom bills, foster and adoption rights, and denial of public accommodation services, among others. Companies can voice their support for the LGBTQ community on these important issues to foster an inclusive environment for employees, clients, and customers.
- **Collaborate with LGBTQ nonprofit organizations.** Encourage participation with non-profit organizations like the [HRC](#), the [National Gay and Lesbian Chamber of Commerce \(NGLCC\)](#), and the [Gay & Lesbian Advocates & Defenders \(GLAD\)](#), to name a few.
- **Become recognized as a LGBTQ-inclusive company.** HRC recognizes corporate policies and practices pertaining to LGBTQ employees through its [Corporate Equality Index \(CEI\)](#). Not only does the CEI consider a company's inclusive policies but it also examines a company's partnership with suppliers who promote diversity and inclusion.

Ultimately, creating inclusive policies is a great first step, but follow-through and communication are vital to strengthen workplace culture. "We're all in this together" should not be just a song in a Disney movie or a phrase used in a time of crisis. It is something we each should embody daily. Through clear and ongoing communication and by implementing LGBTQ-inclusive programs and practices, a company can truly demonstrate to all of its employees, clients, and customers that we are all in this together.