

2021

OUT & EQUAL WORKPLACE ADVOCATES

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LEVERAGING YOUR VOICE

A Guide for Employee Resource Groups and Public Policy Engagement

INTRODUCTION

Over the last twenty-five years, there have been tectonic shifts in the standing of LGBTQ people with respect to their civil rights, social, and business inclusion. These shifts have been brought about largely by the courage of individual LGBTQ people to live their truth, more and more people knowing someone who is LGBTQ, and a forward-looking business community adapting to change well ahead of lawmakers.

The business community has risen to be one of the most vocal and powerful advocates for equality. Why do corporate leaders speak out? Because they are determined to make the business case for equality. Everything in their fiber and bottom line gives evidence that diverse workplaces which encourage everyone to contribute their full potential, unencumbered by fears of discrimination, are proven leaders in innovation, retention, and performance. Businesses are more successful and more competitive when everyone comes to work with equal respect, support, and opportunity for advancement, no matter whom they love or how they identify.

That is why over the past two decades more and more Fortune 500 companies implemented sexual orientation and gender identity-based nondiscrimination protections on the job, while offering equitable benefits for LGBTQ workers and their families, and a host of supportive practices aimed at fostering more inclusive workplaces.

Most often, these transformative changes have started with bold LGBTQ employees and their allies leveraging their collective voices through their Employee Resource Groups (ERGs). This guide is intended to help frame internal conversations and decisions about how, when, and why your business may want to weigh in on public policy related to the LGBTQ community.

THE BUSINESS CASE

Corporations have a responsibility to a range of stakeholders — their employees, suppliers, shareholders, customers, and clients — to constantly innovate and grow their value. This fundamental responsibility cannot realistically be limited to a business's own operations. Just as businesses impact political, economic, social, and environmental trends, so too do these forces directly impact business. It is at this intersection that businesses have cultivated their public policy voices on everything from the environment to LGBTQ rights.

When laws lag behind business innovation and inclusion, the corporate community has both self-interest and a responsibility to speak up. In the last fifteen to twenty years, major businesses have often been the loudest voices urging lawmakers to abandon their anti-LGBTQ efforts and extend equality under the law to LGBTQ people.

Major businesses have long sought to provide their LGBTQ employees and customers equitable policies, benefits, and practices where the law lags. Until the June 2020 *Bostock v. Clayton County*, Georgia decision, LGBTQ individuals

in a majority of states could be denied a job or promotion or fired for their sexual orientation or gender identity. The court ruled that discrimination on the basis of sexual orientation or gender identity does violate Title VII of the Civil Rights Act of 1964. This was a hard-fought, watershed court case, but one that lagged far behind the business community. A majority of Fortune 500 companies adopted sexual orientation and gender identity protections nearly a decade earlier. In fact, it was the business community that submitted what was arguably the most powerful friend of the court brief to affirm that equal protections from discrimination are not only just, but they also strengthen businesses.

Similarly, domestic partner benefits had long become the norm amongst top tier businesses well-ahead of the 2013 *Windsor v. United States* and 2015 *Obergefell v. Hodges* decision that finally afforded equal marriage to LGBTQ Americans. And again, in those cases, the business community submitted powerful friend of the court briefs to affirm their support for equal marriage.



Currently, as the Equality Act is introduced in both houses of Congress, for the first time in history, an omnibus civil rights bill enjoys the public support of over 300 major businesses from American Airlines to Zillow.



Corporate advocacy is often noticed through a CEO's activism. Research shows that most consumers expect CEOs to have public opinions and stances on social issues. Studies also show that potential employees are more likely to work for a company where the CEO has taken a public stance on social issues. This leads to the recruitment and retention of dedicated, diverse employees.



Forty-seven percent of millennials believe that CEOs have a responsibility to speak up about issues that are important to society, compared to only 28% of Generation X and boomers. More than half of millennials also agree that CEOs have a greater responsibility to practice corporate advocacy than they used to.



Additionally, the LGBTQ community has an estimated \$3.7 trillion dollar spending power. LGBTQ people want to spend their money and buy products from companies with inclusive values and public stances.

TAKING ALL OF THIS INTO ACCOUNT,

the following checklist will help further develop your company's own business case for LGBTQ advocacy.

- Define your company's reason for advocating for LGBTQ policy. How does the policy matter in question directly affect our company's operations, employees, customers, or prospects for growth?
- Name the public policy impact in business terms. How does this support or hinder our talent mobility? What difficulties do we experience in our provisioning of competitive benefits and compensation if this policy is not resolved? How does this affect our ability to seamlessly offer our good and services? How is our recruitment potential affected by this public policy proposal?
- Assess your company's standing on the public policy issue. How have we established our own track record of values and policies we are seeking to promote externally?

THE BUSINESS OF PUBLIC POLICY

On LGBTQ equality in the public square, the business community is frequently able to lead by example: when lawmakers see that a business has implemented the very protections for which they are advocating, it carries more weight than many other stakeholders. Progress for the LGBTQ community's rights has been nonlinear and attempts to undermine LGBTQ equality have changed in nature, leaving businesses to navigate a very complex web of decisions on when and how to engage in public policy advocacy. In practical terms, that means that businesses have needed to be nimble and build their own internal decision-making mechanisms just as the onslaught of opportunities is at its highest level in recent history. From rapidly changing state house agendas to Supreme Court cases, businesses have grown the muscle of engagement by recognizing their own spheres of influence and locating the precise ways that a particular civil rights matter intersects with their vested business interests.

ERGs play a vital role in translating fast-paced headlines for key internal stakeholders, giving them broader context for these civil rights fights, linking them back to employee needs and providing coaching for how a business will position itself externally. The following section gives concrete examples of the nature of recent public policy initiatives and articulates the primary ways businesses have engaged. These can be productive starting points for socializing LGBTQ advocacy within your organization.

JUDICIAL



The business community can play an important role in judicial cases through public support or by signing a “friend of the court” brief (also known as an “amicus brief”) in support of their issue. Amicus briefs allow interest groups and other organizations to convey their opinions to the court and hopefully help persuade the vote in their favor.

Two hundred six major companies signed an amicus brief filed with the Supreme Court in 2019 for a trio of cases to determine if LGBTQ people are protected from discrimination under existing federal civil rights laws. In the brief, the companies argued that LGBTQ non-discrimination protections is good for business and the economy and that these protections for LGBTQ employees help improve operations for businesses. Additionally, companies pointed out that there would be significant costs for employers and employees if sexual orientation and gender identity discrimination were not forbidden by law.

Fifty nine major U.S. companies signed an amicus brief in 2017 supporting transgender student *Gavin Grimm in G.G. v. Gloucester County School*

Board in the Fourth Circuit Court of Appeals. Grimm filed a suit against the school board alleging it violated Title IX of the Education Amendments of 1972 by denying him use of the boys’ restroom as a transgender boy. In this brief, companies argued that when they are inclusive of LGBTQ people and employees with LGBTQ family members, they are able to recruit and retain the best talent. They also stated that inclusive companies are able to actively participate in the LGBTQ consumer marketplace and have highly engaged employees.

In 2015, 379 of America’s top employers signed an amicus brief supporting marriage equality. The companies argued that state bans on marriage equality hampered efforts to recruit and retain the most talented workforce possible in those states. Earlier in 2013, around 200 companies signed on to an amicus brief urging the Supreme Court to overturn the federal Defense of Marriage Act, which prohibited the recognition of same-sex marriages.



FEDERAL



Corporate America's reputation as a champion of workplace equality and inclusion is in part due to decades of public support for federal pro-LGBTQ legislation and fierce opposition to anti-LGBTQ legislation. Companies advocate for federal LGBTQ rights and non-discrimination protections in many ways, including public statements of support, joining business coalitions, lobbying members of Congress, testifying in public hearings, and more.

The Employment Non-Discrimination Act (ENDA) was introduced in 1994 to provide protections to LGBTQ workers and by 2000, 23 companies expressed their public support of ENDA. The number of companies publicly supporting ENDA continued to grow and in 2007 General Mills and other corporations submitted testimony in favor of ENDA. At the time of ENDA's passage in 2013, over 100 major companies publicly supported the legislation and many companies testified in favor.

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Could you be engaged, productive, effective if you lived in fear: fear of losing your job, being denied a promotion, being harassed or bullied on the job? For many qualified, hard-working Americans this is their experience because they lack the basic protection of a consistent Federal law. Their lack of engagement is a tax on American productivity that can be eliminated with the passage of ENDA.”

- Kenneth Charles, 'Then' Vice President of Diversity and Inclusion at General Mills (2012)

The Equality Act was reintroduced in the House of Representatives in 2015, over forty years after the first introduction in 1974. The Business Coalition for the Equality Act is a group of leading U.S. employers that support the passage of the Equality Act. Since its launch in 2016, the group of companies has grown to 332 members that represent operations across 50 states, a combined \$5.8 trillion in revenue, and employ over 12.8 million people in the United States. Business leaders understand that companies are unable to reach their full potential if their employees face discrimination the moment they leave the workplace.

STATES



In 29 states, there are no laws protecting people from discrimination on the basis of sexual orientation or gender identity in many key areas of life, including, housing, public accommodations, government services, health care, education, and more. As we've seen more progress for LGBTQ people at the federal level, state legislatures have retaliated by ramping up their efforts to push through anti-LGBTQ legislation. Since the marriage equality ruling, states have intensely focused their legislative sessions on attacking the LGBTQ community. Over the last six years, anti-LGBTQ state legislatures have introduced an onslaught of bills targeting LGBTQ people with vicious attacks on some of the most vulnerable in our community, especially transgender youth.

Businesses have an important role to play in protecting and advocating for their LGBTQ employees or employees' LGBTQ family members in states that lack protections or states that are explicitly targeting the community. Businesses continue to step up in major ways as state-level attacks on the

LGBTQ community grow, however, anti-LGBTQ legislation is being introduced and pushed through at an alarming pace. Companies engaged in state-level politics are being inundated daily with legislation that needs their immediate attention. Because of this rapid pace, corporate advocates have found it essential to partner with outside groups to support their public policy engagement at this level.

Advocates are currently tracking over 200 state bills targeting LGBTQ Americans, ranging from limitations on same-sex couples being able to adopt, bans on transgender youth participating in sports, making it illegal for doctors to provide gender affirmation treatment, and many more.



Idaho enacted two anti-transgender laws in 2020 prohibiting transgender people from changing the sex on their birth certificates and barring transgender girls and women from playing sports on the women's team. Businesses with major operations in Idaho - HP, Chobani, Micron, any others - immediately spoke out against the anti-transgender bills. In a joint letter to Idaho state legislators, the companies argued that these discriminatory bills hurt the company's ability to attract and retain the best talent.



North Carolina generated controversy in 2016 in passing HB2, also widely known as the "bathroom bill." HB2 rolled back many protections for the LGBTQ community, most prominently protections that allowed transgender people to use the restroom that aligned with their gender identity. Many businesses stood united in their opposition of this bill, which negatively impacted North Carolina's economy with losses up to \$4 billion. PayPal canceled plans to build a facility in NC that would've added an estimated \$2.66 billion to the state's economy. Other businesses also canceled plans for building in North Carolina, Deutsche Bank for example, or moved major projects out of state.



Lawmakers in Texas have focused their recent state legislative sessions on anti-LGBTQ legislation. In 2019, the Texas Senate passed Bill 17, a religious exemption bill that allows businesses and licensed professionals to turn away business for "religious reasons," specifically targeting the LGBTQ community. Major companies - Apple, Dell, Amazon, Facebook, and many more - with large operations in Texas organized letters to lawmakers opposing the bill and any future legislation that discriminates against LGBTQ people. The letter warned that anti-LGBTQ legislation in Texas would have long lasting negative implications for business and the state's economy.

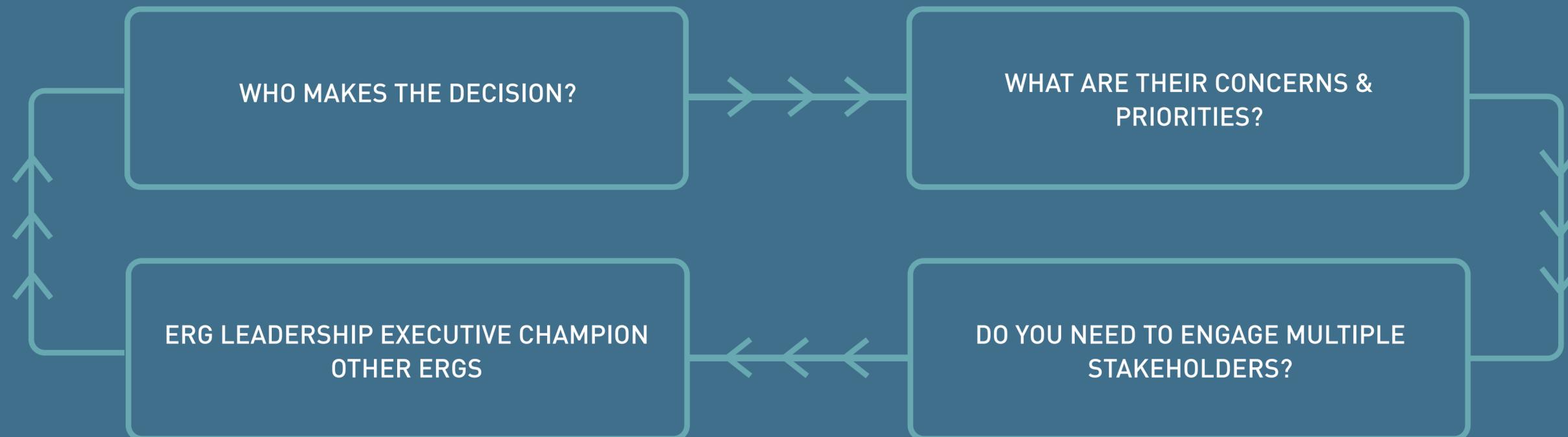


In response to anti-LGBTQ legislation in the Tennessee state legislature, Tennessee Thrives was formed by gathering a coalition of over 300 businesses dedicated to ensuring that Tennessee was "open for business to everyone." The mission of Tennessee Thrives is to ensure that anti-LGBTQ legislation stays out of Tennessee in order for businesses to compete for and retain top talent in the state.



INFLUENCE MAPPING

Everyone has spheres of influence. Whether you are a C-suite leader or individual ERG member, you can build and leverage your own influence to support your organization’s decisions to weigh in on LGBTQ equality writ large. The keys to getting to “yes” are identifying internal and external stakeholders, their needs and priorities. Who in the company do you need to get buy-in from? Who makes the ultimate decision to weigh in on public policy? Which key external groups — local and national LGBTQ organizations — are we working with to promote public policy?



YOUR TOOLS

- 1** External support through peer ERGs and LGBTQ organizations – You are not alone in your policy advocacy journey. Draw knowledge and support from peer ERGs in the company and partner with outside LGBTQ organizations who can best support your work.
- 2** Using your narrative as strategic input – Your own personal story is a tool for your company’s advocacy. Inspire decision makers at your company to take action on a specific issue with your personal story.
- 3** Data – Prepare yourself with data, economic costs, and benefits of speaking out. This is crucial in persuading leadership to get involved.
- 4** Encouraging continued support of the system – Once an institutionalized system for LGBTQ policy advocacy is in place, continue encouraging support of the system. If your company engaged in federal LGBTQ policy advocacy on ENDA, continue encouragement for advocacy for the Equality Act or at the state and local levels.
- 5** Be prepared for common misconceptions - When building the business case for increasing LGBTQ policy advocacy, it’s necessary to clear up misconceptions people in the company might have. Misconceptions include not understanding why it’s the responsibility of companies to speak out, what the company is risking by showing support, and the overall business implications.



“Corporate advocacy for LGBTQ issues is not good for business.”

As Fortune 500 and other major employers have made clear, corporate advocacy is good for business. From the recruitment and retention of top talent, to tapping into the buying power of the LGBTQ community, and to creating inclusive workplaces where employees can bring their fully authentic selves, supporting LGBTQ public policy is the right business decision. Companies cannot be truly competitive for the best talent or consumers if they do not value LGBTQ workplace inclusion.

“Our company doesn’t get involved in politics.”

Corporate advocacy is about policy, not politics. Focus and redirect conversations on what the specific policy will mean for the company and the implication for LGBTQ employees or employees’ with LGBTQ family members. A company’s advocacy for LGBTQ public policy does not mean that a company is becoming “political,” however, it does show a company’s commitment to protecting employees and creating inclusive workplaces.



“We can’t advocate for pro-LGBTQ public policy because it’s partisan.”

Support for LGBTQ public policy is not a Democrat vs. Republican issue - support for LGBTQ public policy is largely bipartisan. Many federal bills have track records of bipartisan sponsorship and public support across political parties. Recent polls show that over 70% of Americans support federal non-discrimination laws for LGBTQ people.

NEXT STEPS

Now that you have a foundational understanding of how businesses can have a profound impact on broader LGBTQ equality, you can begin or refine conversations internally and influence your employer to become more active, especially in this vital year. Our future is shared and so is the responsibility to shape it to be more just and equitable for all. Moving forward, we welcome your questions and impact statements sent to – hello@outandequal.org

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