

# LGBTQ+ Lawyers Experience Breakthroughs and Setbacks: Comment on Blanck, Hyseni, and Altunkol Wise's National Study of the Legal Profession

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## I. INTRODUCTION

The past decade has seen numerous positive developments in both legal and policy protections for those who identify as lesbian, gay, bisexual, trans, or queer (“LGBTQ+”). Progress in this area has been decidedly uneven, however, and significant barriers still exist which thwart the full legal and societal acceptance of LGBTQ+ individuals. Unfortunately, as the groundbreaking study by Peter Blanck, Fitore Hyseni, and Fatma Altunkol Wise shows, LGBTQ+ identifying lawyers, especially those with intersectional identities, continue to experience discrimination and bias in their workplaces.<sup>1</sup>

While other studies have focused on LGBTQ+ bias and discrimination in the American workforce, few have looked at these issues in the specific context of the legal profession, a profession with an often rigid hierarchy and a woeful lack of diversity across multiple spectrums.<sup>2</sup> This consequential research, which includes a much anticipated longitudinal research component, sheds important light on the types of bias and discrimination experienced by LGBTQ+ attorneys and other legal professionals, individual and

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<sup>1</sup>Peter Blanck, Fitore Hyseni & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9, 44 (2021).

<sup>2</sup>See, e.g., M. V. Lee Badgett et. al., *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559, 594 (2009).

organizational mitigators, and the types of organizations in which this bias and discrimination is more likely to occur. As such, it is an immensely beneficial building block for law firms, corporate legal departments, and local and national bar organizations, such as the National LGBTQ+ Bar Association, that seek to foster a more supportive and inclusive environment for LGBTQ+ employees. Accordingly, this research advances efforts to ensure that diversity, inclusion, and equity are not only ongoing business objectives, but are also unwavering organizational obligations.

## II. BREAKTHROUGHS AND SETBACKS

It is indisputable that more legal and policy protections exist today in the United States for LGBTQ+ individuals than existed ten years ago. Same-sex marriage is now legal in every state, given the Supreme Court's 2015 ruling in *Obergefell v. Hodges*.<sup>3</sup> Last year, the Supreme Court found that Title VII's protections against workplace discrimination extend to discrimination on the basis of sexual orientation and gender identity.<sup>4</sup> The federal government is once again advancing pro-equality initiatives,<sup>5</sup> and various states have also enacted comprehensive anti-discrimination legislation, including the Commonwealth of Virginia, the first southern state to pass such legislation.<sup>6</sup>

Further, major corporations and large law firms have helped lead the way in convincing Americans that LGBTQ+ individuals should be treated equally. According to the 2021 Human Rights Campaign's Corporate Equality Index, ninety-six percent of the Fortune 500 have a non-discrimination policy that includes sexual orientation, and ninety-four percent have a policy that includes gender identity.<sup>7</sup> Over two-thirds of the Fortune 500 provide comprehensive transgender-inclusive health care benefits.<sup>8</sup> A growing number of corporations and law firms are also speaking out in favor of LGBTQ+ equality issues and standing up when the rights of LGBTQ+ people come under attack. For example, in 2021, almost 400 leading businesses, representing more than \$6.5 trillion in revenue and more than 13.5 million U.S. employees, joined the Human Rights Campaign's Business Coalition for the Equality Act, urging Congress to enact federal anti-discrimination legislation for LGBTQ+ individuals.<sup>9</sup>

As society has changed, the legal profession has concomitantly changed. Of the Am Law 200,<sup>10</sup> 130 law firms received a perfect score and the distinction of "Best Places

<sup>3</sup>*Obergefell v. Hodges*, 135 S.Ct. 2584, 2585 (2015).

<sup>4</sup>*Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1731 (2020).

<sup>5</sup>See, e.g., Exec. Order No. 14,004, 86 Fed. Reg. 7471 (Jan. 25, 2021); Lucas Acosta, *President Biden Issues Most Substantive, Wide-Ranging LGBTQ Executive Order in U.S. History*, HUM. RTS. CAMPAIGN (Jan. 20, 2021), <https://www.hrc.org/press-releases/president-biden-issues-most-substantive-wide-ranging-lgbtq-executive-order-in-u-s-history> [https://perma.cc/SP9G-94JX]; Geoff Bennett & Adam Edelman, *Biden Reverses Trump's Transgender Military Ban*, NBC NEWS (Jan. 25, 2021), <https://www.nbcnews.com/politics/white-house/biden-reverse-trump-s-transgender-military-ban-n1255522> [https://perma.cc/W33J-2Q4M].

<sup>6</sup>2020 Va. Acts 1140.

<sup>7</sup>HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2021: RATING WORKPLACES ON LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER EQUALITY 6 (2021), [https://reports.hrc.org/corporate-equality-index-2021?\\_ga=2.203809042.386268155.1617162870-1436600013.1611731475](https://reports.hrc.org/corporate-equality-index-2021?_ga=2.203809042.386268155.1617162870-1436600013.1611731475) [https://perma.cc/JCN5-8MCP].

<sup>8</sup>*Id.*

<sup>9</sup>The Business Coalition for the Equality Act. HUM RTS. CAMPAIGN (March 17, 2021), [https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Keep\\_Updated\\_-\\_Company\\_List\\_For\\_Website\\_-\\_Business\\_Coalition\\_for\\_Equality.pdf](https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Keep_Updated_-_Company_List_For_Website_-_Business_Coalition_for_Equality.pdf).

<sup>10</sup>The Am Law 200 is the American Lawyer magazine's top 200 revenue grossing law firms. The Am. Lawyer, *The 2020 Am Law 100*, LAW.COM (Apr. 21, 2020), <https://www.law.com/americanlawyer/rankings/the-2020-am-law-100/> [https://perma.cc/94TA-HJSU]; The Am. Lawyer, *The 2020 Am Law 200*, LAW.COM

to Work for LGBTQ Equality” in the Human Rights Campaign’s 2021 Corporate Equality Index.<sup>11</sup> For the past several years, all of the Am Law 100 have participated in the National LGBTQ+ Bar Association’s Lavender Law Conference and Career Fair, seeking LGBTQ+ law students to join their firms.<sup>12</sup>

Law schools have also become more welcoming and inclusive in the past decade for LGBTQ+ students. The National LGBTQ+ Bar Association has compiled non-discrimination policies for each U.S. law school accredited by the American Bar Association (“ABA”), noting which schools bar discrimination on the basis of sexual orientation and gender identity.<sup>13</sup> Based on this research, all but two of the 204 ABA accredited law schools prohibit discrimination on the basis of sexual orientation, and fifteen of the 204 accredited law schools do not include gender identity in the school’s anti-discrimination policy.<sup>14</sup> Moreover, the National LGBTQ+ Bar Association’s Law School Climate survey shows that many law schools are proactively working towards diversity and inclusion for their LGBTQ+ student populations and are committed to policies and programs that protect and foster the growth of LGBTQ+ law students and faculty.<sup>15</sup>

While there is much to celebrate, much work remains to ensure that our society, our law schools, and our workplaces are fully welcoming to all diverse individuals, including those who are LGBTQ+. Hate crimes against LGBTQ+ individuals remain at alarmingly high levels, after significant increases in the past few years in hate crime incidents targeting gays, lesbians, and bisexuals and a forty-one percent increase in the number of anti-transgender hate crimes.<sup>16</sup> Further, in the past several years, anti-LGBTQ+ laws and policies have been increasingly proposed and enacted at the federal, state, and local levels.<sup>17</sup> In fact, there appears to be a concerted backlash against the successful efforts to promote diversity and equality that is targeted at LGBTQ+ individuals, especially transgender individuals.<sup>18</sup>

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(May 18, 2020), <https://www.law.com/americanlawyer/rankings/the-2020-am-law-200/> [<https://perma.cc/5K4R-E3T8>].

<sup>11</sup>HUMAN RIGHTS CAMPAIGN, *supra* note 7, at app. A.

<sup>12</sup>For more information on the National LGBTQ+ Bar Association’s Lavender Law Conference and Career Fair, see *The 2021 Annual Lavender Law Conference and Career Fair*, NAT’L LGBT BAR ASS’N, <https://lgbtbar.org/annual/> [<https://perma.cc/GPK8-A3TE>].

<sup>13</sup>*Law School Nondiscrimination Statements*, NAT’L LGBT BAR ASS’N, <https://lgbtbar.org/climate-survey/law-school-nondiscrimination-statements> [<https://perma.cc/L57Q-GAP9>].

<sup>14</sup>A total of 205 institutions are accredited by the ABA. 204 confer a Juris Doctorate degree; the other ABA approved school is the U.S. Army Judge Advocate General’s School, which offers an officer’s resident graduate course. *Id.*

<sup>15</sup>THE NAT’L LGBT BAR ASS’N, *LAW SCHOOL CAMPUS CLIMATE SURVEY: AN EXECUTIVE SUMMARY 1* (May 15, 2020), <https://lgbtbar.org/wp-content/uploads/sites/6/sites/8/2020/05/Law-School-Campus-Climate-Survey-Executive-Summary-2019-2020-5.pdf> [<https://perma.cc/33BW-JNB3>]. As the National LGBTQ+ Bar Association has noted the Campus Climate Survey “serves as a yardstick by which to measure LGBTQ+ inclusion in legal education, while our Companion Toolkit provides guidelines to help schools meet their own goals for support and inclusion. *Id.* at 6.

<sup>16</sup>Criminal Justice Info. Servs. Div., *2019 Hate Crimes Statistics Table 1: Incidents, Offenses, Victims, and Known and Offenders*, FED. BUREAU OF INVESTIGATION: UNIFORM CRIME REPORTING (2019), <https://ucr.fbi.gov/hate-crime/2019/topic-pages/tables/table-1.xls> [<https://perma.cc/JB74-MSFN>]; see Lou Chibbaro Jr., *FBI Report Shows Increase in Anti-LGBT Hate Crimes*, WASH. BLADE (Nov. 20, 2019, 1:47 PM), <https://www.washingtonblade.com/2019/11/20/fbi-report-shows-increase-in-anti-lgbt-hate-crimes> [<https://perma.cc/8SMW-AJDJ>].

<sup>17</sup>For example, GLAAD catalogued 181 anti-LGBTQ+ statements and actions by the Trump Administration since January 2017. *GLAAD Accountability Project: Donald Trump, 45th President of the United States*, GLAAD, <https://www.glaad.org/tap/donald-trump> [<https://perma.cc/89WK-RKYK>].

<sup>18</sup>As noted by the American Civil Liberties Union, a record number of anti-transgender bills were introduced in state legislatures in 2020. *Trans Rights Under Attack in 2020*, AM. CIV. LIBERTIES UNION, <https://>

Thus, while American law and culture has made great progress in terms of LGBTQ+ acceptance, much work needs to be done. Blanck et al.'s study clearly illustrates that lawyers who identify as LGBTQ+ are "often targets of negative attitudes and stereotypes" and "still encounter organizational barriers" professionally.<sup>19</sup> A legal career is notoriously difficult to navigate, and LGBTQ+ identifying lawyers (especially those who are transgender or who have intersectional identities) often must also grapple with overt discrimination and covert bias in their workplaces. This study, which builds on what we know about the underrepresentation of LGBTQ+ individuals in the legal profession and the general challenges that diverse attorneys face, adds a key element by overlaying potential bias and discrimination with organizational characteristics, which helps identify potential structural impediments to change.

### III. UNDERREPRESENTATION & DISCRIMINATION

As many surveys have shown, LGBTQ+ individuals (along with other diverse individuals) are woefully underrepresented in the senior management of corporations and in the partnership ranks of law firms. The U.S. Commission on Civil Rights estimates that between 5.4 million and 8.2 million employees self-identify as LGBTQ+, with the vast majority (85.33%) working in the private sector.<sup>20</sup> In corporate America, however, the number of LGBTQ+ CEOs and general counsels in the Fortune 500 can be counted on a single hand, and less than one half of one percent (0.02%) of directors of Fortune 500 companies are openly LGBTQ+.<sup>21</sup> For law firms, only 2.07% of law firm partners identified as LGBTQ+ in 2019, a slight decrease from 2.11% in 2018.<sup>22</sup> Further, as lawyers advance in seniority at law firms, there is a significant drop in LGBTQ+ representation.<sup>23</sup>

Unfortunately, but unsurprisingly, many LGBTQ+ individuals also continue to face discrimination in the workplace, at rates much higher than the non-LGBTQ+ population. Despite the popularity of diversity and inclusion programs in organizations, few are delivering on their promises to be genuinely inclusive. According to a report published by Out & Equal in 2017,<sup>24</sup> nearly one in ten LGBTQ+ employees left a job because the environment was unwelcoming and twenty-seven percent of transgender people who held or applied for a job in the last year reported being fired, not hired, or denied a promotion due to their gender identity. In 2020, one in three LGBTQ+ individuals reported

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[www.aclu.org/issues/lgbt-rights/transgender-rights/trans-rights-under-attack-2020](http://www.aclu.org/issues/lgbt-rights/transgender-rights/trans-rights-under-attack-2020) [<https://perma.cc/47TR-L5V8>].

<sup>19</sup>Peter Blanck Ynesse Abdul-Malak, Meera Adya, Fitore Hyseni, Mary Killeen & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession, First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers who Identify as LGBTQ+*, 23 U.D.C. L. REV. 23, 32 (2020).

<sup>20</sup>U.S. COMM'N ON CIVIL RIGHTS, WORKING FOR INCLUSION: TIME FOR CONGRESS TO ENACT FEDERAL LEGISLATION TO ADDRESS WORKPLACE DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER WORKERS 10 (2017), [https://www.usccr.gov/pubs/docs/LGBT\\_Employment\\_Discrimination2017.pdf](https://www.usccr.gov/pubs/docs/LGBT_Employment_Discrimination2017.pdf) [<https://perma.cc/B75N-W5HU>].

<sup>21</sup>Out Leadership Launches First-of-its-Kind Summit on Board Diversity, Releases New Research on Board Diversity Impact, Out Leadership (Feb. 2, 2021) <https://www.prnewswire.com/news-releases/out-leadership-launches-first-of-its-kind-summit-on-board-diversity-releases-new-research-on-board-diversity-impact-301219765.html>

<sup>22</sup>*LGBT Representation Among Lawyers in 2019*, NAT'L ASS'N FOR L. PLACEMENT (Jan. 2020), <https://www.nalp.org/0120research> [<https://perma.cc/8V3Y-WZ6G>].

<sup>23</sup>*Id.*

<sup>24</sup>2017 *Workplace Equality Fact Sheet: Lesbian, Gay, Bisexual, and Transgender (LGBT) Workplace Discrimination at a Glance*, OUT & EQUAL (Nov. 15, 2017), <http://outandequal.org/2017-workplace-equality-fact-sheet/> [<https://perma.cc/AES5-YS8D>].

experiencing discrimination.<sup>25</sup> The intersectionality of race, gender, and ethnicity makes these statistics even more troubling. LGBTQ+ employees of color face significantly higher rates of discrimination than their White counterparts.<sup>26</sup>

Clearly, LGBTQ+ individuals continue to confront challenges both in our society at large and in the workplace.<sup>27</sup> The Out Now Global LGBT2020 Study, which surveyed more than 100,000 LGBTQ+ individuals, found that twenty-four percent of lesbians, thirty percent of gay men, forty percent of bisexuals, and fifty-five percent of transgender employees in the United States believed that coming out could negatively impact future promotions.<sup>28</sup> Thus, it is not surprising that a 2016 report from Credit Suisse reports that forty-one percent of LGBTQ+ workers in the United States and seventy-two percent of senior LGBTQ+ executives say they have not come out openly at work.<sup>29</sup> As shown by Blanck et al.'s study, many LGBTQ+ attorneys have reason to share similar concerns.<sup>30</sup>

#### IV. CHALLENGING PROFESSIONAL ENVIRONMENTS

The challenges of a legal career are well-documented. Billing pressures,<sup>31</sup> client demands, long hours,<sup>32</sup> and business development requirements combine to make the practice of law an incredibly taxing career and have fueled high levels of career dissatisfaction among lawyers for many years. According to a 2018 Law360 survey, sixty-eight percent of large law firm attorneys and fifty-nine percent of midsize law firm attorneys reported being stressed either all or most of the time.<sup>33</sup> In many instances, layered upon this already stressful situation is a work environment that requires an LGBTQ+ attorney to

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<sup>25</sup>Sharita Gruberg, Lindsay Mahowald & John Halpin, *The State of the LGBTQ Community in 2020: A National Public Opinion Study*, CTR. FOR AM. PROGRESS (Oct. 2020), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/> [<https://perma.cc/X2J5-RCCY>].

<sup>26</sup>*Id.* at 4.

<sup>27</sup>Alex Vandermass-Peeler et al., *Diversity, Division, Discrimination: The State of Young America*, PRRI (Jan. 1, 2018), <https://www.prii.org/research/mtv-culture-and-religion> [<https://perma.cc/JT8E-FTDF>]. Unfortunately, the experience of young Americans does not offer much positive news either. According to a recent survey of young Americans aged 15 to 24, 83% of those who identified as LGBTQ+ report having witnessed someone being mistreated because of their gender identity or sexual orientation or to have personally experienced such mistreatment. In addition, nearly one-third (32%) who identified as LGBTQ+ reported that they personally had been mistreated or targeted because of their sexual orientation or gender identity, with a majority (56%) saying they feared for their safety, and roughly as many (54%) believing the acts were direct and purposeful. Such discrimination is often also intersectional, in addition to other discrimination based on the individual's race, gender, religion, or nationality.

<sup>28</sup>IAN JOHNSON & DARREN COOPER, *LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 21* (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf> [<https://perma.cc/FY5M-QQMD>].

<sup>29</sup>JULIA DAWSON ET AL., *LGBT: THE VALUE OF DIVERSITY 3* (2016), <https://plus.credit-suisse.com/rpc4/ravDocView?docid=QYuHK2> [<https://perma.cc/4DBH-3PDM>].

<sup>30</sup>Blanck et al., *supra* note 1, at 49.

<sup>31</sup>According to the National Association for Law Placement, in 2016, the average number of billable hours required of a first-year associate was 1,892 hours, and the average number of billable hours required for first-year associates at firms with more than 700 attorneys was 1,930 hours. *Update on Associate Hours Worked*, NAT'L ASS'N FOR L. PLACEMENT (2016), <https://www.nalp.org/0516research> [<https://perma.cc/UH8X-ZJPC>].

<sup>32</sup>At least 55% of large law firm attorneys report working more than 60 hours per week on average. Natalie Rodriguez, *The Least-Stressed Attorneys in a Stressed-Out Profession*, LAW360 IN-DEPTH (July 23, 2018), <https://www.law360.com/articles/1065415/the-least-stressed-attorneys-in-a-stressed-out-profession> [<https://perma.cc/PJA6-GBJ9>].

<sup>33</sup>*Id.*

navigate instances of discrimination, bias, and subtle signals of exclusion, as highlighted in the study by Blanck et al.<sup>34</sup>

Thus, how can an organization create a work environment that is not only welcoming of LGBTQ+ employees, but that also allows employees to grow, thrive, and advance in their careers within that organization? Work environments are ecosystems, a complex network of interconnected systems. Mere good intentions do not create change, and no single policy, program, or training will eliminate subtle and overt bias and discrimination in corporations and law firms. As a result, organizations need a research-based, data-driven understating of the issues; otherwise, leaders will not successfully eradicate these behaviors or the challenges facing LGBTQ+ lawyers in both law firms and corporate law departments. Such data allows law firms and corporations to deeply reexamine their practices, policies, and procedures, for what Blanck and his colleagues refer to as D&I+<sup>35</sup>

## V. HOW LAW FIRMS AND CORPORATE LEGAL DEPARTMENTS CAN BUILD ON THIS RESEARCH

Using the research of Blanck et al. as a foundation, law firms and corporate legal departments must understand the specific experiences of their LGBTQ+ attorneys within their unique workplace environment. To do this, organizations need to utilize both self-identification and climate surveys and examine those organizational-specific findings alongside the more generalized findings of Blanck and his colleagues.

Self-identification is a best practice that asks employees to voluntarily self-identify their sexual orientation, gender identity, and gender expression. While federal laws require organizations to capture certain information related to the diversity of their workforces, there is no requirement to obtain data about LGBTQ+ employees.<sup>36</sup> Being counted is vital to ensuring that an organization fosters a diverse workplace where everyone is able to be heard, included, and valued. Thus, a voluntary self-identification program is a necessary component to achieving workplace inclusion.

A self-identification process utilizing existing human resources systems helps an organization improve recruitment, development, and advancement of LGBTQ+ employees, and allows it to track progress for its LGBTQ+ inclusion efforts, in the same way it does for other diversity data.<sup>37</sup> By harnessing this self-identification data, an

<sup>34</sup>See Blanck et al., *supra* note 1, at 17-22.

<sup>35</sup>See *id.* at 14.

<sup>36</sup>*EEO Data Collection*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION (May 7, 2020), <https://www.eeoc.gov/employers/eo-data-collections> [<https://perma.cc/A38X-8ME4>].

<sup>37</sup>See Kellan Baker et al., *How to Collect Data About LGBT Communities*, CTR. FOR AM. PROGRESS (Mar. 15, 2016), <https://www.americanprogress.org/issues/lgbt-rights/reports/2016/03/15/133223/how-to-collect-data-about-lgbt-communities/> [<https://perma.cc/DCX4-E85R>]; DIVERSITY BEST PRACTICES, SELF-IDENTIFICATION OF LGBT EMPLOYEES (2015), [https://www.diversitybestpractices.com/sites/diversitybestpractices.com/files/import/attached/anchors/files/\\_attachments\\_articles/rr\\_lgbt\\_self-id.final\\_.pdf](https://www.diversitybestpractices.com/sites/diversitybestpractices.com/files/import/attached/anchors/files/_attachments_articles/rr_lgbt_self-id.final_.pdf) [<https://perma.cc/5EZL-88XE>]; Human Rights Campaign, *Collecting Transgender-Inclusive Gender Data in Workplace and Other Surveys*, U. SASK. C. MED., <https://medicine.usask.ca/documents/research/edi-transgender-inclusive-gender-data.pdf> [<https://perma.cc/79MR-M8HL>]; OUT & EQUAL, WHERE ARE OUR LGBT EMPLOYEES? (2009), <https://www.bs.u.edu/-/media/www/departmentalcontent/counselingcenter/pdfs/safezone%20out%20at%20work/hrc-where%20are%20our%20lgbt%20employees.pdf?la=en&hash=82A00EDD1EC72B18B00902827E5097116CD44FF> [<https://perma.cc/72W8-ZR66>]; STONEWALL, DO ASK, DO TELL: CAPTURING DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY GLOBALLY (2016), [https://www.stonewall.org.uk/sites/default/files/do\\_ask\\_do\\_tell\\_guide\\_2016.pdf](https://www.stonewall.org.uk/sites/default/files/do_ask_do_tell_guide_2016.pdf) [<https://perma.cc/4RA8-E6GR>]. While the data may be used for statistical analysis and tracking, personally identifiable information should always be kept confidential and should not be shared an employee's manager or co-workers.



organization can actively monitor promotions and advancements to ensure LGBTQ+ employees are not being left behind and determine if certain segments of the organization (or practice groups within law firms) are lagging in either LGBTQ+ representation or advancement.

While a self-identification program is foundational, it is not sufficient. Organizations must also understand and bridge the gap between policies and the lived experiences of LGBTQ+ attorneys within the workplace. Focusing on policies and procedures does not provide a complete picture. For example, while LGBTQ+ non-discrimination policies are key to creating a welcoming workplace environment, their existence alone does not indicate that LGBTQ+ employees find the workplace inclusive.<sup>38</sup> A thoughtful workplace climate survey helps organizations determine where gaps may exist between LGBTQ+ friendly policies and programs and the day-to-day experiences of LGBTQ+ employees.<sup>39</sup> When designing generalized workplace climate surveys, organizations should ensure that the survey's content is fully inclusive and addresses potential concerns by LGBTQ+ employees.<sup>40</sup>

After collecting data from both self-identification and workplace climate surveys, law firms and corporate legal departments must parse the data to understand the perceptions of LGBTQ+ employees. Importantly, organizations must focus on employees with intersectional identities to ensure that the organization's programs and practices are not solely benefiting White LGBTQ+ employees.<sup>41</sup> Then, using the significant research of Blanck et al. as a guide, the organization can dig further into the experiences of LGBTQ+ employees, with a special emphasis on those with intersectional identities. Combining information from these three data points will help the organization develop a deeper understanding of the true picture of workplace inclusion and what is necessary to achieve it. A program built on research will also be better able to identify root causes, set goals, create change, and measure progress.

Furthermore, a research-based and data-based grounding also minimizes the risk of "solutioneering," a term that is used to describe what occurs when someone fixates on a perceived solution before actually understanding the problem that needs solving.<sup>42</sup> Oftentimes, leaders want to cut and paste initiatives from other companies, without taking the time to use both internal and external research to understand the underlying issues, or develop a solution before the problem is diagnosed.<sup>43</sup> Unfortunately, this approach does not take into account unique factors within the organization and typically results in initiatives that fail to fully deliver the intended benefit.

No single policy, program, or practice will eliminate workplace bias and discrimination against LGBTQ+ individuals, or any other individual. Instead, creating an

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<sup>38</sup> See Baker et al., *supra* note 37; OUT & EQUAL, *supra* note 37, at 10.

<sup>39</sup> See OUT & EQUAL, *supra* note 37, at 6; STONEWALL, *supra* note 37, at 9.

<sup>40</sup> IBM has created a thoughtful guide on workplace climate surveys that include LGBTQ+ employees. GENA COX ET AL., GETTING LGBT+ INCLUSION RIGHT IN EMPLOYEE SURVEYS (2017), <https://www.ibm.com/downloads/cas/WVRO4E5Z> [<https://perma.cc/3UHA-ADRXX>].

<sup>41</sup> Much has been written about how women's diversity programs primarily benefit white women. Similarly, efforts to make workplaces more welcoming to LGBTQ+ individuals cannot just benefit white LGBTQ+ employees and perpetuate racial disparities that already exist within the LGBTQ+ community. Cf. Courtney Conley, *How Corporate America's Diversity Initiatives Continue to Fail Black Women*, CNBC: MAKE IT (Jan. 12, 2021, 2:11 PM), <https://www.cnbc.com/2020/07/01/how-corporate-americas-diversity-initiatives-continue-to-fail-black-women.html> [<https://perma.cc/Z8U5-54PM>].

<sup>42</sup> James Lawther, *Solutioneering*, SQUAWKPOINT ORGANISATIONAL MECHANICS (Dec. 29, 2015), <https://www.squawkpoint.com/2015/12/solutioneering/> [<https://perma.cc/G6RR-N6XV>].

<sup>43</sup> Cf. GENA COX ET AL., *supra* note 40 (finding that employers should start with employee listening efforts in order to better identify the unique needs of the workplace).

inclusive and welcoming workplace requires a holistic approach that utilizes thoughtful research and good data. Utilizing a three-pronged, macro- and micro-level research approach focused on data-based problem identification will help corporations and law firms develop programs and practices that ensure all LGBTQ+ attorneys have a workplace experience that is not only free from discrimination and bias but that also helps LGBTQ+ attorneys succeed.

## VI. CONCLUSION

There are many strategic insights and tactical actions companies and law firms can take to develop their workplaces into ones that are open and welcoming to LGBTQ+ employees. Such actions must always be grounded in both organizational, micro-level research and societal, macro-level research. Blanck and his colleagues have added significantly to this topic by exploring the experiences of LGBTQ+ attorneys in the workplace, which will help individual corporations and law firms implement concrete initiatives to transform their workplaces to be fully inclusive and welcoming. The National LGBTQ+ Bar Association appreciates the opportunity to assist in this research effort and looks forward to further analysis by these researchers.