

Workplace Fairness



Gender Public Advocacy Coalition

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From the Executive Director

FACT: 23 states protect against gender identity and expression discrimination.

FACT: Almost 100 major corporations have now enacted similar EEO policies.

FACT: The average award for discrimination claims is now almost \$2 million.

Gender stereotypes – how men and women are expected to look, act, or dress – are the new edge of workplace law. Recent lawsuits have been brought by employees who are straight, gay, and transgender; black and latino/a; male and female. Workers, courts, and legislatures clearly have new expectations. Corporate liability is only going to grow in this new area, along with the need for new training and new EEO policies.

FACT: The Supreme Court says training employees helps prevent punitive damages.

FACT: Changing policies is not enough; an affirmative defense requires training employees as well.

Welcome to the new edge of “**best practice**” in the workplace. Corporations must take a strong, unambiguous public stance by expanding their EEO policies to include “gender identity and expression” and training their workforce so they understand exactly what that means.

We can help. Our regional workshops have helped hundreds of Fortune 1000 employees to assess and understand such policies. Our customized, on-site trainings have helped “blue chip” corporations like AT&T, Citigroup, IBM, JPMorgan Chase, and Kodak to successfully implement their EEO policy updates.

Take a look at the chart on page 5. Corporate America is taking action. In 2002 only 2 changed their policies; last year 27 did and we’ve already matched that by June 2005. This is what change looks like. I hope this brochure will help your company, college, or union become a diversity leader in this new area of workplace equality.

Riki Wilchins
Executive Director

Language

Gender: A way of perceiving appearance, dress, and behavior as either masculine or feminine.

Gender Stereotypes: Expectations for how each sex should look, act, or dress.

Gender Stereotyping: Enforcing conformity to expectations of how an individual should look, act, or dress.

Gender Expression: Manifesting a feeling of being masculine or feminine through clothing, behavior, or grooming.

Gender Identity: An inner sense of being either male or female.

Sex: An individual's legal assignment at birth as either male or female.

Transgender: An umbrella term for people whose gender identity or expression does not conform to that associated with their sex.

Transsexual: An individual who has or wants to change their sex.

Intersexuality: When a person's genital sex does not necessarily match their chromosomal make-up or internal appearance.



PREVENTING GENDER STEREOTYPING IN THE WORKPLACE

Corporate growth today increasingly depends on the quality of your employees. Research shows that in a knowledge economy, skilled workers prefer employers who create diverse workplaces where every employee is valued and respected. Indeed, corporate diversity leaders attract – and deserve – a better caliber of workforce. That's why a fast-growing number of major corporations – 85 to date – are adding “gender expression and identity” to their EEO policies and conducting related diversity trainings. Corporations like American Airlines, AT&T, IBM, Citigroup, and JPMorganChase know how important it is to ensure a workplace free from discrimination and harassment caused by gender stereotypes.

Most Americans believe that employees should be judged by the quality of their work, and not by their race, sex, or ethnicity. Likewise, everyone should be free to contribute their talents and skills in the workplace and not be judged by how they measure up to outdated notions about masculinity or femininity.

Discrimination based on an employee's “gender identity or expression” is now illegal in 23 states, including key industrial centers like California, Ohio, New York, and Michigan. Along with such new rights and expectations are new liabilities. Lawsuits alleging workplace discrimination are now routinely heard by state and federal courts. Here are just a few of the new exposures these laws have created:

- Women who feel they are being denied advancement because they are viewed as “too aggressive” or simply “unfeminine;”
- New fathers who have taken paternity leave and feel that management has put them on a “Daddy Track” for not being sufficiently committed to their jobs;
- Workers who are harassed or discriminated against when they transition from one gender to another on the job;
- Male employees who are the target of locker-room, “boys will be boys,” antics and sexual harassment because they are viewed as unaggressive or not manly enough.

The adoption of gender expression and identity anti-discrimination policies and diversity training that educates employees can address these issues and help protect your return on investment in human capital:

- **Recruiting.** Recognized diversity initiatives, including gender expression and identity policies, help attract the best and brightest employees to your company. Qualified candidates are usually drawn to employers who show that they are committed to developing and promoting a wide array of people.
- **Retention.** It can cost up to twice an employee's annual salary to attract, recruit, and train them. When an employee quits because of discrimination or an unwelcoming environment, it undercuts the effectiveness of the organization as a whole. This is especially true in highly competitive industries where companies invest tens of thousands of dollars attracting and holding the right employees.
- **Productivity.** An environment where all employees feel included and valued yields greater commitment and motivation. Productivity declines when employees feel disregarded. Time is wasted with conflicts and misunderstandings and money is spent on lawsuits and settlements.

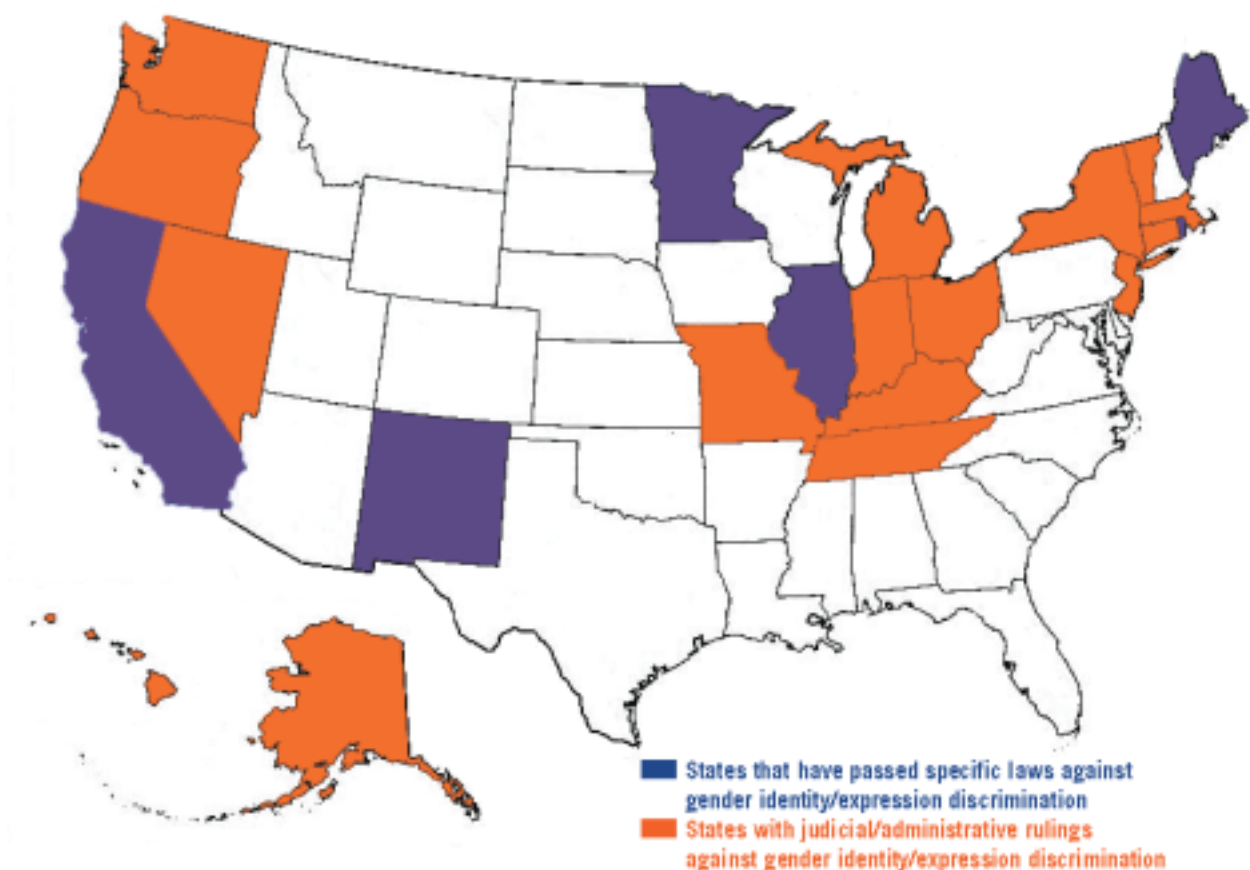
Beyond the bottom-line economics, adopting a gender expression and identity policy is a mark of a socially responsible organization. Diversity leaders that adopt “best practices” EEO policies cannot help but be rewarded with a measure of public goodwill for their efforts.

GenderPAC's Workplace Fairness Program helps major corporations add gender expression and identity to their EEO policies and provides follow-up trainings. GenderPAC is the first and oldest organization providing such trainings and has trained more than 2,000 managers, human resources professionals, attorneys, and employees since 1999.

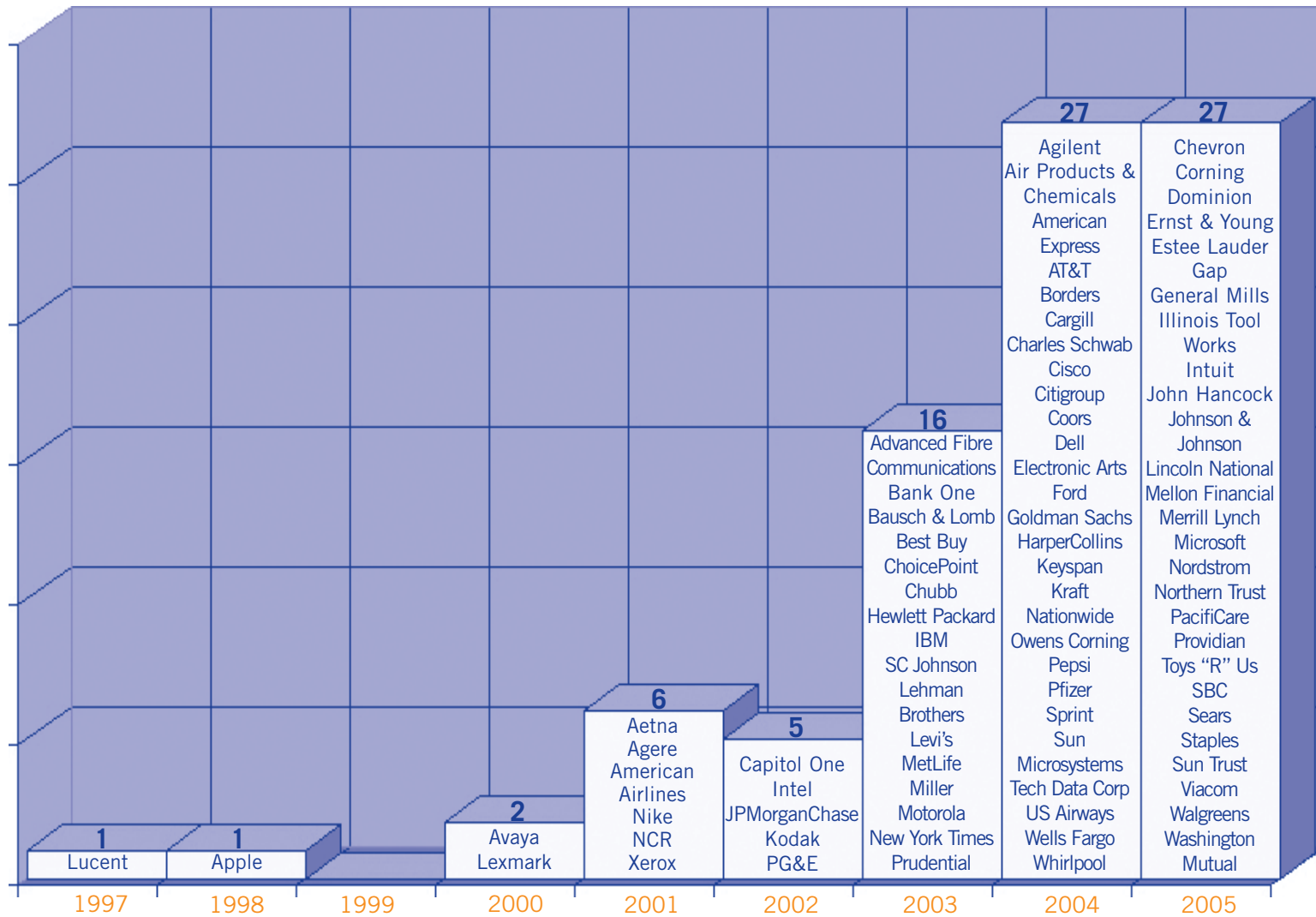


*Employees should be
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dards for masculinity
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| States passing specific laws | 6 | CA, IL, ME, MN, NM, RI |
| Favorable state law rulings by state courts | 3 | MA, NJ, NY |
| Favorable state law rulings by state administrative agencies | 3 | CT, HI, VT |
| Favorable federal law rulings by federal courts | 11 | AK, AZ, ID, KY, MI, MO, NV, OH, OR, TN, WA |



MAJOR CORPORATIONS



With Gender Identity/Expression in EEO Policy

(as of July 2005)



Why should my company add gender identity & expression to its EEO policy?

Recruiting: Recognized diversity leaders attract the best and brightest employees, and qualified candidates are drawn to employers who show that they are committed to developing and promoting a wide array of people.

Retention: It can cost up to twice an employee's annual salary to attract, recruit, and train them. When an employee quits because of discrimination or an unwelcoming environment, it undercuts the effectiveness of the whole company. This is especially true in highly competitive industries where companies invest tens of thousands of dollars attracting and holding the right employees.

Productivity: An environment where all employees feel included and valued yields greater commitment and motivation. Productivity declines when employees feel disregarded. Time is wasted with conflicts and misunderstandings and money is spent on lawsuits and settlements.

Isn't gender stereotyping in the workplace only a women's problem?

Not any more. According to the EEOC, male-on-male sexual harassment accounts for one in seven claims filed with the EEOC—double just ten years ago. For example, Joseph Oncale, plaintiff in the Supreme Court case *Oncale v Sundowner* 523 US 75 (1998), was menaced by co-workers for being slender, blond, long-haired, and wearing an earring.

Isn't “sexual orientation” protection sufficient?

No. Gender discrimination may be unrelated to sexual orientation. A female employee may feel she has been denied advancement because her manager thinks women are nurturing and sensitive and poor candidates for high-pressure executive positions. A new father returning from paternity leave may feel he has



An environment where all employees feel included and valued yields greater commitment and motivation.

been quietly steered onto a “Daddy Track.” A transgender employee may be harassed or discriminated against for transitioning from one gender to another. And male employees may be the target of locker-room, “boys will be boys,” sexual harassment because they are seen as unaggressive or not manly enough. Both forms of protection are crucial; neither one replaces the other.

Is discrimination caused by gender stereotypes already illegal?

Increasingly it is. Through a combination of state laws, state and federal court rulings, and favorable administrative rulings, discrimination based on an employee's “gender identity or expression” is now illegal in 23 states, including key industrial centers like California, Ohio, New York, and Michigan. In addition, 70 cities including Toledo, OH; Iowa City, IA; and El Paso, TX have passed similar laws.

Isn't "gender identity" protection sufficient?

"Gender identity"—which refers to an inner sense of being male or female—is most commonly understood to protect transgender employees. Today many kinds of employees may suffer discrimination because of gender stereotypes: a female employee denied advancement because she is viewed as "too aggressive;" a new father back from paternity leave denied promotion and put on a "Daddy Track;" or a male employee targeted for locker-room type sexual harassment. Most major corporations have adopted EEO policies that ban discrimination based on an employee's "gender identity or expression."

Does this mean my company has to abandon dress codes?

No. Employers have a long established and recognized right to set and maintain standards of dress in the workplace. However, it does mean a willingness to be flexible in applying dress codes, such as when a female employee prefers a suit-coat and slacks to dresses and high heels.

Don't only gay and transgender people have problems with gender stereotypes?

No. Anyone who fails to meet expectations for a "real man" or a "real woman" can become a target. This can include anyone from a successful professional like Ann Hopkins (*Price Waterhouse v. Hopkins* 490 U.S. 228 (1989)), who was fired for being "too aggressive," to a waiter like Antonio Sanchez (*Nichols v. Azteca Restaurants* CV-96-10870-JDS (2001)), who was forced from his job when co-workers began harassing him for acting "like a woman" and taunting him as "she," "her," and "f—king female whore."

The word "gender" is sometimes used interchangeably with "sex" and other times to mean how we express feeling masculine or feminine through our dress, grooming, and behavior.

How is protection for "gender" different from that for "sex?"

The word "gender" is sometimes used interchangeably with "sex" and other times to mean how we express feeling masculine or feminine through our dress, grooming, and behavior. To clearly specify their intent to combat gender stereotypes, major corporations and legislatures most often use the phrase "gender identity and expression."

How do we handle bathroom access?

This issue most often comes up with a transgender employee who has transitioned from one sex to another on the job. We recommend that companies recognize individuals in the sex in which they live their normal daily lives. For example, if an employee comes to work as female, she should be recognized as such and use the appropriate facility. We do not recommend that companies put themselves in the position of having to arbitrate "real" sex by examining doctors' letters, etc. In cases where there are shared locker rooms or showers and an employee has not completed their physical transition, we recommend "reasonable accommodation," which might include designating one facility as gender-neutral at certain times of the day or in a particular location.



WHAT THEY'RE SAYING

"Not only educates, but inspires..."

Athena Wong, Proctor & Gamble



"Citigroup recently added 'gender identity or expression' to our non-discrimination policy, and the Gender Public Advocacy Coalition was instrumental in helping us design training for our human resources managers, offered by Riki Wilchins, who provided a meaningful perspective on gender issues in the workplace."

**Ana Duarte McCarthy, Director,
Citigroup, Global Workforce Diversity and College Relations**

"One of the ways IBM maintains its leadership position is working with organizations like GenderPAC to help us better read the GLBT marketplace and understand the issues."

**Cynthia Neff, Director of Global Human Resources Public Policy
IBM, Somers, NY**



"GenderPAC's *Gender on the Job* presentation was really useful, and extremely helpful for Human Resources and all employees. GenderPAC is helping make our vision of the ideal workplace a reality."

**Stephen Young, Corporate Diversity Executive
JPMorganChase, New York, NY**

"*Gender on the Job* really helped explain the issues and language behind gender stereotyping. GenderPAC helped people get more comfortable with the issue and get more involved."

**Amy Friend, President, Lambda Network
Eastman Kodak, Rochester, NY**

