

Issue: should the federal government add sexual orientation to civil rights laws?

Introduction

Lesbian, gay, bisexual, and transgender (LGBT) people have experienced a long and pervasive history of employment discrimination. Today, more than eight million people in the American workforce identify as LGBT, but there still is no federal law that explicitly prohibits sexual orientation and gender identity discrimination against them (Pizer, Mallory & Hunter, 2012). The Civil Rights Act of 1964 tended to focus on an individual's race, age, and gender. However, we overlook the sexual orientation discrimination in our workplace. LGBT people have little explicit protective regulations at the federal level. Current laws are incomplete, confusing and inadequate. Accordingly, we consider whether adding sexual orientation to civil rights laws. The proponents state that sexual orientation discrimination causes economic and psychological harm to LGBT employees. Opponents argue that such civil rights laws would grant gay men and lesbians "special privileges" because they seem to be a wealthy group even without civil rights protections. Therefore, we can conclude two arguments on this issue:

Argument 1: the federal government should add sexual orientation to civil rights laws because sexual orientation discrimination causes economic and psychological harm to LGBT employees.

Argument 2: such civil rights laws would grant gay men and lesbians "special privileges" because they seem to be a wealthy group even without civil rights protection.

The purpose of this paper to discuss these two arguments surrounding the key issue. I am in favor of the argument 1 that LGBT employees should be protected by the federal laws that prohibits sexual orientation and gender identity discrimination against them in workplace.

This article begins by illustrating the importance of this issue. And then shows the history of non-discrimination laws in labour market, like the Employment Non-Discrimination Act (ENDA), a bill pending in Congress that would prohibit sexual orientation and gender identity employment discrimination. In the next section, it summarizes the existing literature by illustrating the nature and scope of the discrimination against LGBT workers and the harmful effects of this discrimination on LGBT employees. Given the literature review, we assess these existing literature and evidence to explain why I support the argument 1. The final section of the paper consider the implications of the findings in the previous studies of sexual orientation discrimination.

Importance of this issue

LGBT employees face a variety of problems and challenges in the workplace. First, the number of LGBT employees within the population and within the total workforce is considerable and the majority of them tend to remain in the closet. Second, most of them who work in federal governments are not protected by specific laws or regulations against sexual orientation discrimination in the workplace. Third, LGBT employees may face difficulties if other workers, peers, or managers know their hidden sexual orientations. Fourth, unequal treatment of LGBT employees can cause negative consequences for workplace outcomes of LGBT employees as well as for overall organizational performance. Thus, the protection laws for LGBT individuals have significant influence on the contemporary labor market.

Law history

Legal discrimination on the basis of sexual orientation still persists in most parts of the United States. Despite many civil rights advances over the past three decades for gay employees, discrimination on the basis of sexual orientation remains legal in most places across the United States.

The history of the antidiscrimination legislatures based on sexual orientation experienced two wave research agendas. The first wave research agenda basically addresses overt forms of abuse directed at LGBT employees in situations in which legal and institutional protections are generally lacking. The second wave research agenda considers that LGBT employees have received some recognition in the public sphere and it focuses its attention on the extent to which policies and legislations can be effectively developed to address the variety of challenges encountered by LGBT employees in more inclusive environments (Ozeren, 2013). Currently, the efforts to reduce sexual orientation discrimination in U.S. are better suited to the second wave research agenda in which certain improvements have already occurred.

The first legal initiatives, the Employment Non-discrimination Act (ENDA), was proposed in the mid-1970s and was defeated in the U.S. Congress. ENDA aimed to protect gay workers and it would have extended civil rights laws (against discrimination based on race, religion, gender, national origin, and disability) to cover cases of discrimination based on sexual orientation (Berg & Lien, 2002). ENDA reappeared in various forms after the 1970s, including three different legislative proposals in 1994, 1995 and 1996, but all of them were defeated. After falling at the national level, laws similar to ENDA eventually passed at the state level and currently stand in ten states as well as the District of Columbia. In addition, some 165 cities and municipalities have local antidiscrimination laws based on sexual orientation (Berg & Lien,

2002). Although most of the 40 U.S. states have laws to protect LGBT employees, it is in fact legal to the federal governments to fire, harass, or not promote a worker because of sexual orientation.

Literature review

Previous studies have consistently noted the fact that LGBT employees have reported various kinds of discrimination in the workplace. Sexual orientation discrimination can be categorized in two forms: formal and informal discrimination. Formal discrimination includes firing or failing to hire an individual because of his/her sexual orientation, career difficulties, barriers such as decisions not to promote, unequal wages between homosexual and heterosexual employees, and LGBT employees' exclusion from other benefits. Informal discrimination includes verbal harassment, homophobic and bizarre jokes, loss of credibility, and lack of acceptance and respect by peers and managers. Both types of sexual orientation discrimination can create severe consequences for both LGBT employees and the organizations in which they work (Ozeren, 2014).

Croteau reports that as many as 66% of gay employees experience some form of workplace discrimination, though this number may actually represent a conservative estimate of the problem because of the relatively progressive local and organizational cultures of the research sites (Croteau, 1996). Myers report of military personnel, however, was significantly more inclusive and the findings more compelling with regard to the severity of discrimination. Using self-reports of over 71,000 service members, the report suggested that 80% of respondents had heard offensive jokes, speech, or language as well as derogatory remarks about gay individuals. More alarmingly, 37% of the sample had witnessed, or had been the target of,

harassment including limiting of career opportunities, unfair disciplining because of their sexual orientation or perceptions about their sexual orientation (Myers, 2000).

Studying labor market discrimination based on sexual orientation means seeing how themes related to sexual orientation discrimination, such as coming out, interacts with important economic outcomes in labor market, such as hiring and wages, and psychological outcomes in the workplace. The main purpose of adding sexual orientation into civil rights laws is to change homophobia (the fear of homosexuals and homosexuality) and heterosexist (the belief that heterosexuality is superior and should be an enforceable social form) attitudes in the work place affect LGBT workers.

Disclosure of sexual orientation (coming out). The term ‘coming out’ also refers to an individual’s disclosure of his/her sexual orientation. In order to avoid potential social ostracism, physical violence or other sanctions imposed by unaccepting society, LGBT people often choose to hide their sexual orientation. In addition, LGBT employees continue to face subtle forms of discrimination. These can be verbal harassment, jokes, and disparagement that include homosexual content rather than direct homophobic treatment. The hiddenness makes standard research techniques difficult and has impeded progress on issues of sexuality but hiding one’s sexual orientation may dampen the extent of social and economic sanctions faced by individuals (Badgett, 2008).

Self-disclosure of sexual orientation or sexual identity might be considered one of the most critical decisions a LGBT employee can make. Coming out is a complex process that involves questions such as whether the individual should come out, when the individual will come out, where the individual will come out, how the individual will come out, and to whom the individual will come out (Ozeren, 2014). Many risks related to the decision to come out must

be considered. For example, the overall perceptions of respondents interviewed by Ozturk revealed that homosexual men were the most likely employees to be fired once identity disclosure occurred (Ozturk, 2011). We concentrate on addressing the timing, methods, and consequences of coming out in the workplace.

Hiring process. LGBT employees faced a significantly lower chance of receiving an invitation for an interview. However, in cases where employers called applicants back, the wages offered did not differ significantly between gay and heterosexual applicants. Nevertheless, there is substantial evidence to suggest that discrimination based on sexual orientation does exist in the federal governments labour market, and at alarmingly high levels.

D. Weichselbaumer investigates discrimination against lesbians in hiring. He found that lesbian workers have repeatedly been shown to earn higher wages than heterosexual women. However, despite lesbian workers apparently privileged labor market status, 16–46% of gay and lesbian survey respondents report to have experienced some form of labor market discrimination, a number of reasons suggest that lesbians' earnings are overestimated, most importantly because of unobserved heterogeneity and statistical reasons (D. Weichselbaumer, 2003).

Wages. Previous research on the wage gap between gay and straight workers suggests that gay men are paid less than similarly qualified straight men, but it indicates that there is a great deal of variation in the estimates of the difference in earnings between lesbians and heterosexual women. A number of studies have documented a significant and dramatic relationship between sexual orientation and wages in the United States. Based on the data from the 1989–91 General Social Survey (GSS), gay men earned 28% less than heterosexual men and that lesbians earned 35% less than heterosexual women (Badgett, 1995). Black et al. employed GSS data from 1989–96 and found earnings to be between 14% and 16% lower for gay men than

for heterosexuals and between 20% and 34% higher for lesbian women than for heterosexuals (Black, 2003). Moreover, Carpenter used the Third National Health and Nutrition Examination Survey from the 1984–94 wave and found that gay men experienced a statistically and economically significant penalty on the order of 23–30% (Carpenter, 2007). Allegretto and Arthur used data from the 1990 Census on men and found a smaller gay male earnings penalty on the order of 3% (Allegretto & Arthur, 2001). Furthermore, Carpenter used data from a public health survey in California (California Health Interview Survey) and found small statistically insignificant earnings differentials for gay men and lesbians compared to heterosexuals (Carpenter, 2005).

Psychological outcomes. With respect to psychological workplace outcomes, Ragins and Cornwell pointed out that LGBT employees who experienced discriminatory treatment in the workplace demonstrated more negative job attitudes, felt reduced job satisfaction and organizational commitment (Ragins & Cornwell, 2001). The main purpose of adding sexual orientation into civil rights laws is to change homophobia (the fear of homosexuals and homosexuality) and heterosexist (the belief that heterosexuality is superior and should be an enforceable social form) attitudes in the workplace affect LGBT workers.

Discussions

The reasons I defend argument 1 (the federal government should add sexual orientation to civil rights laws because sexual orientation discrimination causes economic and psychological harm to LGBT employees) are discussed in more detail in the following parts.

LGBT employees who disclose their sexual orientation in the workplace will possess greater job satisfaction and lower role ambiguity. Federal governments that implement non-

discrimination laws based on sexual orientation are more likely to creating “gay-friendly” environments where LGBT employees perceive to be safe.

In addition, coming out at work can help LGBT employees feel confident, might encourage happier work experiences, foster more open interactions with colleagues, and improve productivity. Coming out may increase LGBT visibility within an organization, relieve LGBT employees’ intrapersonal tensions, and enhance intergroup interactions within the workplace. Interactions between heterosexual and gay/lesbian intergroup members could help reduce prejudice and discrimination. Inversely, LGBT employees may underperform when they devote their cognitive energy on hiding or concealing their true sexual orientation (Madera, 2010). Therefore, coming out may facilitate performance. In contrast, nondisclosure of sexual identity may exert a negative impact on performance.

The opponents who support “don’t ask, don’t tell” policy argue that LGBT employees may feel pressure each time they change jobs because they will have to repeat the coming out process in each situation. LGBT employees must renegotiate the coming out process when they are promoted to new work settings. However, the existence of an equal opportunity policy (that includes sexual orientation) can facilitate the coming out process for LGBT employees.

Also, non-discriminative laws based on sexual orientation may lead to higher job satisfaction and lower levels of job anxiety among LGBT employees. In a study conducted with 220 gay men and 159 lesbians, Griffith and Hebl found that sexual orientation disclosure at work and perceived gay supportiveness in the workplace were related to higher job satisfaction and lower job anxiety (Griffith & Hebl, 2002). In this relationship, co-workers’ reactions to gay or lesbian colleagues were considered mediating variables between disclosure and job attitudes of gay/lesbian employees.

The reason why I refute argument 2 (such civil rights laws would grant gay men and lesbians “special privileges” because they seem to be a wealthy group even without civil rights protection) are illustrated in the following parts.

Some people argue that requiring employees to work with LGBT colleagues who disclose their sexual orientation can undermine employees’ performance. However, several empirical studies have revealed contrasting effects. In Everly, Shih, and Ho study, for example, they discovered that participants who worked with openly gay partners actually performed better on both cognitive and sensory-motor tasks than individuals who were unclear about their work partners’ sexual orientation (Everly, Shih, & Ho, 2012).

Previous research investigating discrimination based on sexual orientation has provided ambiguous results for lesbians’ earnings, usually indicating higher incomes for lesbians. However, this advantage for lesbian workers could be due to a number of different reasons, e.g. selection bias (only high-income lesbians disclose their sexual orientation), insufficient controls for occupations, or unobserved differences in productive characteristics. Furthermore, since the available data does not provide information on disclosure on the job, a large number of investigated individuals might not be “out” on the job and therefore not confronted with an income loss—although discrimination based on sexual orientation does occur to those “outed” to the public.

The adopted gender role of lesbians and heterosexual women is one example for such unobserved differences in characteristics. Lesbians are documented as often behaving in more manly ways and being more masculine, i.e. more dominant, autonomous, assertive and detached than heterosexual women. It has been argued that since employers adhere to the ideal of

masculinity which is associated with labor market success, lesbians might be financially rewarded in contrast to heterosexual women (D. Weichselbaumer, 2003).

Lesbians might deviate from heterosexual women also in other dimensions. In particular, lesbians have been shown not to adhere to the traditional division of labor within the household where primarily one partner is responsible for household tasks. This is economically rational, since members of same-sex relations often have similar abilities and labor market opportunities which do not allow them to make use of comparative advantages. Furthermore, since most countries do not offer a legal substitute for marriage, specializing in housework becomes a risky choice. Since lesbian couples rear children less frequently, there is less need for a homemaker as well. As a result of reduced household responsibilities, lesbians might be more productive in the workplace and obtain higher wages than heterosexual women. The lack of children also makes higher investments in on-the-job-training profitable since lesbians expect a more continuous labor market participation than heterosexual women. Such higher on-the-job-training, unobservable in the data, might be another reason for the observed higher pay (D. Weichselbaumer, 2003).

In addition to unobserved differences, there are statistical reasons which bias lesbians' earnings upwards. Blandford (2003) reports that lesbian and bisexual women are more successful in entering male-dominated, well-paid occupations than their heterosexual peers and suggests that even controlling for occupations at the two-digit level might be insufficient to capture all effects of occupational clustering. Consequently, some of lesbians' higher incomes might be attributable to job subcategories which are not adequately captured by the data. Furthermore, it is most probable that the analyzed data suffer from sample selection bias. Higher income individuals are more willing to disclose their lesbian orientation. As a result, their observed

earnings are upwardly biased. Last but not least, the empirical data suffers from one additional major drawback: Available data sets do not provide information about disclosure at the workplace, which is a precondition for direct labor market discrimination by employers. Many gays and lesbians choose not to reveal their sexual orientation on the job to avoid mobbing and employment discrimination, and pass as heterosexuals. Badgett (1996) reports from survey data that significantly fewer lesbians out themselves on the job than gay men. This might be another reason why, on average, lesbians do not suffer from the same income loss as gay men (D. Weichselbaumer, 2003).

Implications

We should predict if non-discrimination laws based on sexual orientation affect LGBT employee outcomes in workplace in the future.

First, federal governments that have non-discrimination laws on sexual orientation appear to promote a generally positive environment for workers. In such environments, the LGBT employees will have higher levels of organizational citizenship behaviors, satisfaction with work and supervisor relationship quality. Non-discrimination laws are the first step in acknowledging that all employees may participate equally their workplaces. Additionally, the presence of such laws may be psychologically encouraging because the worker believes that his personal lifestyle cannot reasonably affect his livelihood or work.

Second, workplace hostility may be higher in federal governments with nondiscrimination laws. In those governments where gay employees do not fear retaliation, it is not unreasonable to expect that more reports of workplace hostility will emerge. The employees who disclose their sexual orientation report serious events such as avoidance by colleagues,

threats of being fired and even physical abuse. The gay employees in those work environments feel stigmatized and straight employees who do not share corporate beliefs against discrimination will feel more threatened. In that case the environment is indeed more hostile. Although the non-discrimination laws may offer some legal protections, disclosure can set into play social forces that can seriously impact the gay worker adversely.

Similarly, LGBT employees who disclose to their supervisors may have less promotion opportunities. Disclosure of sexual identity is profound and the current research reports no discernible benefit to disclosure. Hence, a rationale for disclosure of sexual orientation is not immediately obvious. Gay employees, therefore, might be cautioned that sexual orientation disclosure may not lead to positive outcomes. Sexuality in the workplace remains an understudied and important issue with unpredictable consequences.

Conclusions

Despite some expansion of coverage under Title VII, LGBT workers on the whole are not protected effectively by the existing federal statute and by piecemeal state and local protections (Pizer, Mallory & Hunter, 2012). Therefore, LGBT employees should be protected by the federal laws that prohibits sexual orientation and gender identity discrimination against them in workplace. This paper provides the reasons for defending this argument. First, federal governments that implement non-discrimination laws based on sexual orientation are more likely to creating “gay-friendly” environments where LGBT employees perceive to be safe. Second, coming out at work can help LGBT employees feel confident, might encourage happier work experiences, foster more open interactions with colleagues, and improve productivity. Third, non-discriminative laws based on sexual orientation may lead to higher job satisfaction

and lower levels of job anxiety among LGBT employees. While the more studies on our issue will continue, more implications emerge in time. First, federal governments that have non-discrimination laws on sexual orientation appear to promote a generally positive environment for workers. Second, workplace hostility may be higher in federal governments with nondiscrimination laws. Third, sexual orientation disclosure may not lead to positive outcomes. In summary, sexuality in the workplace remains an understudied and important issue with unpredictable consequences.

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