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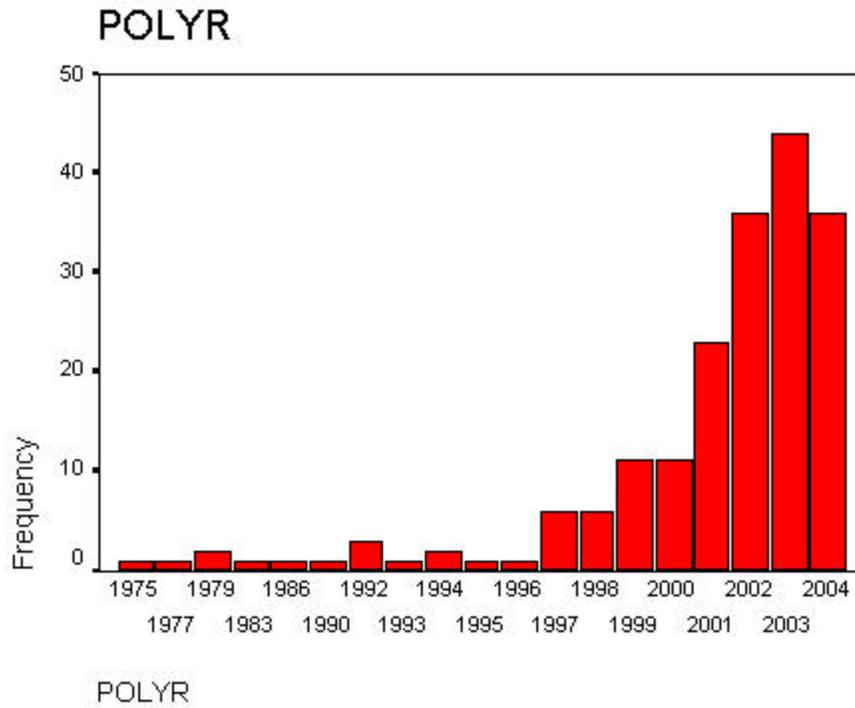
Adoption of Transgender HR Policies in US Employers

Summary - Dr. Jillian T. Weiss details some measures for the extent of the phenomenon, examines the motivating factors for transgender HR policies, and addresses “best practices” for the creation of transgender policy.

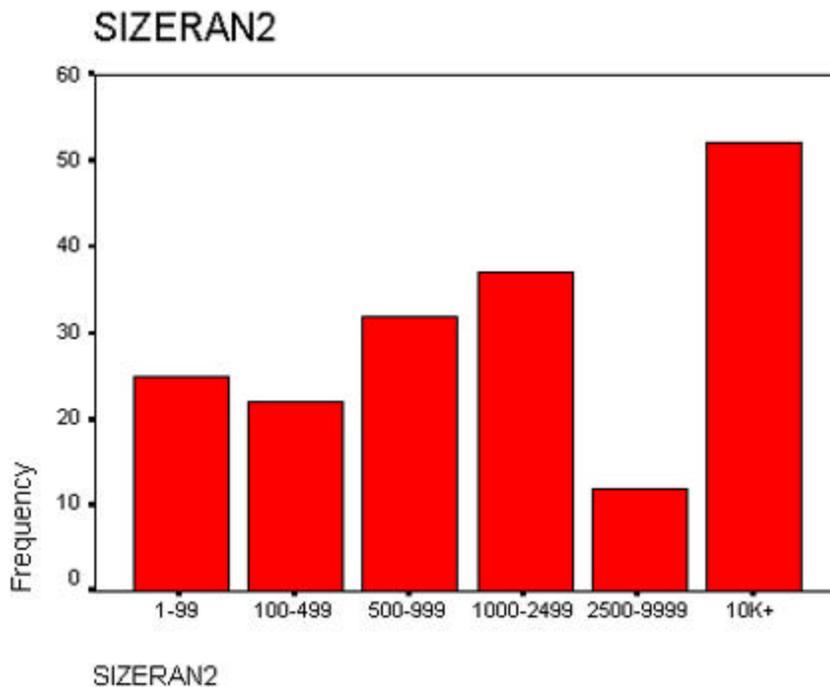
One of the most recent trends in equal employment policy is the protection of “gender identity.” In other words, a transgender employee will not be fired or disciplined, but will continue to be judged on job performance like any other employee. This paper provides some measures for the extent of the phenomenon, notes jurisdictions with legal protections, examines the motivating factors for transgender HR policies, and addresses “best practices” for the creation of transgender policy. It is based on two years of research, completed in August 2004.

Transgender Policy Metrics

Until 1999, there were few transgender HR policies at U.S. employers, and none in large employers. However, policy adoption began to rise in 1997, and began a rapid increase in 2001. The chart below shows the number of transgender HR policies adopted in each year between 1975 and 2004.

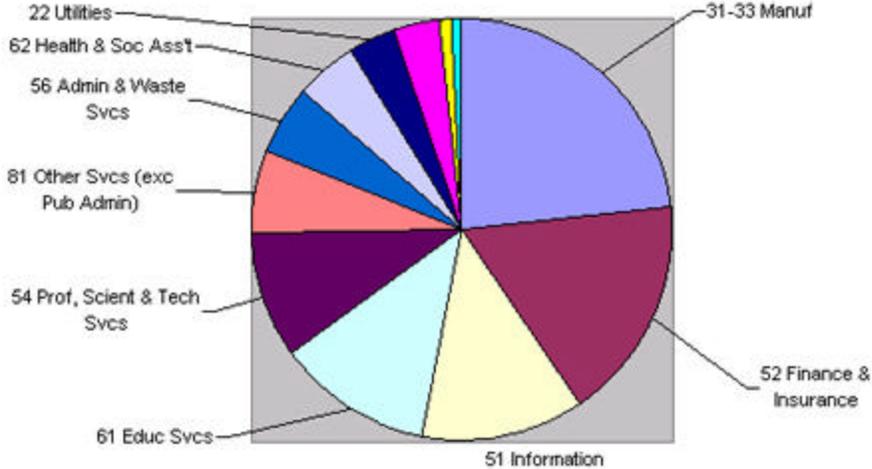


At this time, there are over 200 employers that have transgender human resources policies, and approximately 50 of these are Fortune 500 companies. Firms of all sizes have adopted these policies, though the largest category is those with over 10,000 employees. The chart below shows the number of employers with transgender HR policies, ranked by employee size.



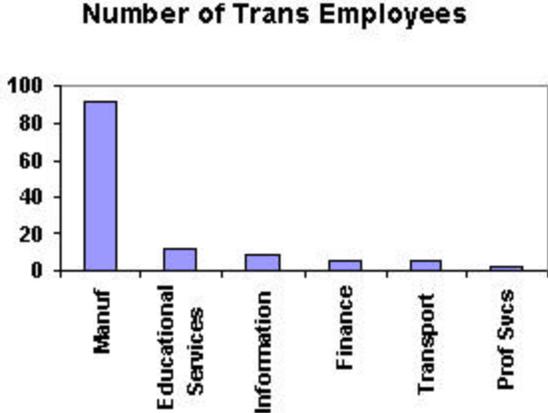
There is large geographic variation in the number of policies, but employers with transgender policies exist in every area of the country. California and New York together have 31% of the policies. This is not surprising, given the size of these states. When compared to the number of employers in each state, however, the dominance of those two states disappears. When viewed by region, the Northeast has the most policies (65), followed by the West (50), Midwest (48) and South (33). Interestingly, employers with such policies are headquartered in 11 of the 30 most conservative states.

When one looks at private employers, over 50% of those with transgender policies are in the manufacturing, finance and information sectors. This dominance hold true even when the sectors are compared by size.



It also appears that the manufacturing and information sectors have more known transgender employees than other sectors. In the sample used in my research, manufacturing had 73% of the known transgender employees. The next highest sector had only 10% of the total. Even so, the number of known transgender employees in manufacturing is a very small percentage of U.S. manufacturing employees.

Figure 22 – Number of known transgender employees by economic sector



Laws

Legal protections in the workplace for gender identity are constantly evolving. In the last ten years, there has been a rapid increase in protection on the international, federal, state and local levels.

Internationally, the European Union prohibits such discrimination, as well as Canada, Britain and Australia. In the U.S., several states and about one hundred local U.S. communities have passed laws protecting employees from discrimination based on gender identity. A list of these communities can be found at hrc.org/worklife. Minneapolis passed the first such law in 1975. On the state level, Minnesota passed the first such law in 1993, followed by Rhode Island (2001) New Mexico (2003), California (2004) and Illinois (2005). Federal and state courts and administrative agencies have also been active in extending protection to transgender employees, including courts in the Sixth Circuit, D.C., Massachusetts, New Jersey, New York, Washington, and administrative agencies in Connecticut, Florida, Hawaii, Illinois, Oregon and Vermont.

Interestingly, an analysis of U.S. employers with transgender policies shows that their policies were usually adopted prior to any transgender anti-discrimination laws in their home state.

Why Transgender HR Policies?

What makes this a particularly interesting phenomenon is the fact that the transgender population appears to be extremely small, far less than one percent of the population. Why are transgender HR policies rapidly proliferating when the number of known transgender employees is so low? Traditional theories of organizational action, focusing on efficiency and control, cannot explain this. My research with officials and employees of dozens of companies with such policies suggest that it is considered very important, but for reasons having little to do with the number of transgender employees.

The people to whom I spoke repeatedly indicated the reason for policy adoption was a “business case” – it’s good for business. At first I was skeptical, but after seeing one long, involved torturous policy adoption process after another, I realized they wouldn’t spend so much time and effort on it unless they were serious. The employer’s commitment to overall diversity was repeatedly mentioned, and the respondents were generally not clear what “transgender” meant.

Diversity has become an important issue for U.S. employers partly because of changing U.S. demographics. In 2012, only 7 years’ distant from the writing of this paper, 40% of U.S. 22 year olds will be African-Americans, Hispanic-Americans and Asian-Americans. Additionally, it seems likely that there will be more jobs than candidates in the next decade, particularly jobs requiring a college education. This will cause severe competition among employers for talent. Employers that can attract top minority candidates will win the talent war, and that may mean the difference between profitability and bankruptcy. There are a number of factors that may change this scenario, but employers are acting on these assumptions.

Every employer nowadays has a non-discrimination policy on race and ethnicity, so that is no mark of distinction. Even so, the unemployment rate for college-educated racial and ethnic minorities is about twice that of white college-educated workers. In addition, the “diversity paradox” requires employers to increase minority hiring, but without calling much attention to minority differences. When minorities with top marks in college go looking for employers that

they feel comfortable with, other things will start to loom large. One of these is transgender policy, which offers a way out of the “diversity paradox”. Transgender HR policies avoid the paradox because they stand as a symbol of minority-friendliness without racial or ethnic overtones. This makes employers receptive to transgender HR policies despite the paucity of “out” transgender employees. Employers with such policies are talking to minority candidates: “We take care of everybody, even this tiny socially disfavored group. They can be themselves here, and so can you. You’ll feel more comfortable here.”

While part of the motivation for some employers in adopting transgender HR policies includes altruistic impulses or liberal political beliefs, these do not account for most of the policies. I spoke to transgender employees at many of these companies, and found that employers varied widely in their efforts to understand transgender employees and their needs. Management often dealt poorly with the issues of transgender employees. Many of the management and HR respondents stated that their employers were committed to accommodating the needs of transgender employees. However, they also indicated that, when confronted with those needs, such as dress codes, medical privacy or facilities usage, managers fell back upon discriminatory norms. Though there were important exceptions, employers often created policies that stereotyped transgender identity, generally seemed to put little effort into making sure that managers had resources necessary to understanding and implementing the policies, and created ambiguous policies that enforced a need for stealth and shame among transgender employees.

Best Practices

It is clear to most knowledgeable employers that good diversity policy means more than adding another protected category to the EEO policy. Similarly, it is insufficient to add “gender identity” (the term most often used to protect transgender employees) to the EEO policy and expect that transgender employees will receive proper protection or a welcome reception.

On an organizational level, transgender HR policy must address certain issues clearly in order to circumvent discriminatory norms and support the needs of covered employees. The balance struck varies greatly, dependent upon the employer’s corporate culture, the nature of the business, legal considerations and the social norms of local areas. This complex determination cannot be addressed for every circumstance here. However, best practices in transgender HR policies require addressing six categories of policy issues.

- How to reduce workplace distractions, such as co-worker information and response issues, resources available for employees, and standards for harassment/discrimination.
- How to set up workable procedures, such as clearly defining what constitutes protected “gender identity,” what procedures kick in when the employer is notified of a gender transition, and the procedure for successful transition planning.
- How to provide leadership, including clear provision regarding who is going to guide the process, how they will be trained in the policy issues prior to the issue arising, and how they will facilitate organizational resources to address issues such as ID changes and medical leave.
- How to address facilities usage, providing clear and reasonable criteria to be used that properly balance the rights of transgender employees and co-workers without violating medical privacy rules.

-Whether to manage the transition by means of employee agreement or top-down management direction, and whether management direction should be informal or provide written documentation of the situation

-How to ensure legal compliance by means of management supervision and internal grievance procedures with reasonable standards

Properly addressing these issues helps overcome the discriminatory norms that often prevent policy from penetrating from HQ to the line. It ensures that transgender employees receive the benefit of the altruistic intentions of the employer. It also avoids adverse public relations and lawsuits.

Given the increasing number of employers adopting transgender HR policies, the rise in importance of employer diversity generally, and new legal standards, the issue of transgender employees cannot be ignored for long. It behooves HR management to begin to address these issues before a crisis arises.

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