More employers broadening nondiscrimination policies to include transgender workers

The business case for fostering an inclusive work environment, rather than the threat of litigation, largely drives the decision to extend protections

By Matthew Heller

The Insider
DIVERSITY

LAST YEAR, CHEVRON CORP. published what may be one of the more remarkable documents in the 127-year history of the multinational energy giant. Titled "LGBT & Transgender @ Chevron," it was intended to "help foster dialogue and understanding of transgender issues in the workplace," even addressing which restroom an employee transitioning from one gender to another should use.

Chevron is now one of more than 300 U.S. companies with a nondiscrimination policy that includes provisions for gender identity, in addition to the more common policy for lesbian, gay and bisexual employees.

The company expected that the new policy would make a lot of employees uncomfortable, says Carole Young, general manager of global diversity at Chevron. But she explains, "These are issues we have to deal with as a company. ... It's part of the process of having an inclusive work environment."

Nationally, transgender people—those whose biological gender differs from the gender with which they identify—represent only a small fraction of 1 percent of the population. Still, there have been several moves recently toward protecting them from workplace discrimination.

Earlier this year, Washington became the eighth state to explicitly prohibit bias against transgender people, and the U.S. Postal Service also has joined the list of anti-discrimination employers. In the courts, the U.S. Supreme Court refused to hear an appeal of a $320,000 jury award to a Cincinnati police officer who was demoted while he was changing his sex from male to female. Trial court judges in Pennsylvania and Washington, D.C., have found that employers can be sued under Title VII of the 1964 Civil Rights Act for discriminating on the basis of gender identity.

Tolerance of transgender people in the workplace, however, still appears to be the exception rather than the rule.

"We still get calls from transgender people from all over the country saying they are being harassed," says Shannon Minter, legal director at the National Center for Lesbian Rights. More than 24 percent of nearly 200 transgender people recently surveyed in the famously tolerant San Francisco area reported being sexually harassed at work. More than 14 percent said they had encountered restroom-related discrimination.

"When you are transgender, discrimination can unfortunately come in many blatant and subtle forms," concluded the Transgender Law Center, which conducted the survey.

California amended its anti-bias law to include gender identity in 2003. In March, Danielle Ryan, a transgender employee of Parsons Brinckerhoff in Sacramento, sued the engineering firm, alleging, among other things, that a supervisor sent her home the first day she wore a dress to work. Another manager allegedly called her "Klinger," after the cross-dressing character in the television series "M.A.S.H."

"Transgenders evoke these vicarious reactions," says Heather Borlase, a San Francisco attorney who recently represented a transgender client in a bias suit against the University of California, San Francisco. "Many people just don't accept them as people with basic rights."

"DIVERSITY LEADERS"

Acceptance of transgender people is a relatively novel phenomenon. Through the 1990s, few employers had human resources policies covering them. The courts were uniformly hostile toward recognizing them as protected under the federal ban against discrimination "because of sex." Congress "never considered nor intended that [Title VII] apply to anything other than the traditional concept of sex," the 7th U.S. Circuit Court of Appeals in Chicago said in 1984.

But in the early part of this decade, the Human Rights Campaign, the country's largest gay and lesbian advocacy group, began lobbying Fortune 500 companies to adopt transgender-inclusive policies. Those that did get a boost to their rating in the HRC's closely watched Corporate Equality Index. In 2001, American Airlines, which had a transsexual employee, became one of the first employers to develop guidelines on how to handle the gender transition process.

Since 2002, the number of Fortune 500 companies with transgender HR policies has more than quintupled, from 15 to 82, representing nearly one-quarter of all employers with such policies. Among those on the list are such corporate behemoths as Coca-Cola, Ford, IBM and Microsoft.