



ANSWERS TO COMMON OBJECTIONS TO PROMOTING HEALTHY MARRIAGES AND SEXUAL MORALITY

It's illegal for employers to promote marriage

No law prohibits making marriage education available to employees or adopting corporate policies that promote healthy marriages. Promoting healthy marriages is not the same thing as saying that married people are better than singles. The purpose of promoting healthy marriages is to help married employees, or those who are planning to marry, develop happy marriages and avoid divorce.¹ It is not necessary for an employer to denigrate unmarried employees, or to treat them less favorably, in order to promote healthy marriages.

Marriage education programs benefit employers by stabilizing marriages and the workforce—in general, employees in stable marriages are happier, healthier, more dependable and change jobs less often. In addition, marriage education programs benefit employers by improving employees' ability to resolve conflicts and communicate effectively with coworkers. These latter benefits can be increased by making interpersonal relationship and communication training available to unmarried employees as well.

Many policies or programs that enhance marriages also benefit unmarried employees. The 48.3 percent of the workforce that are unmarried² are as likely to face personal crises or financial problems as married workers. Unmarried workers are as likely as married ones to appreciate avoiding a sexually charged workplace and sexually compromised situations. And making

¹Slightly over 40 percent of couples getting married for the first time today are likely to divorce, and the odds of divorce are even higher for second marriages. David Popenoe and Barbara Dafoe Whitehead, "The State of Our Unions: The Social Health of Marriage in America, 2000," pp. 18-19 ("What Are Your Chances of Divorce?"), The National Marriage Project, marriage.rutgers.edu/state_of_our_unions%202000%20text%20only.htm. Marriage education programs can significantly reduce divorce. Five years after going through a Prevention and Relationship Enhancement Program (PREP), only 3 percent of the couples had divorced, compared to 16 percent of a control group. Scott M. Stanley, "Making a Case for Premarital Education," *Family Relations*, 50: 272-280, p. 277 (2001), www.prepinc.com/store2/docs/making_a_case.pdf. Only 3.1 percent of couples who went through a Marriage Savers mentoring program over a 10-year period have divorced. Catherine Latimer and Michael J. McManus, "How to Give Marriage Insurance to Premarital Couples," pp. 1, 4-5, www.marriagesavers.com/Marriage%20Insurance.htm.

²According to *Households and Families: 2000, Census 2000 Brief*, pp. 1, 3 and Figure 2, www.census.gov/prod/2001pubs/c2kbr01-8.pdf, households with married couples make up 51.7 percent of households.

equivalent training available to unmarried employees eliminates any basis for claiming unequal treatment.

Promoting healthy marriages will not constitute marital status discrimination, where prohibited, if the employer does not treat unmarried employees less favorably.

What I do in the privacy of my own bedroom is none of your business

The privacy of an employee's bedroom is not the issue in prohibiting a sexually charged workplace. If sexual activity is private, i.e., the activity and discussions about it stay in the bedroom, an employer will never know about it, and neither will coworkers. The problems arise from bringing sexuality into the workplace.³ Sexual relationships between coworkers cause distraction and decreased productivity for those involved, claims of sexual harassment, including lawsuits, and complaints of favoritism.⁴ If one or both of the employees are married, the affair may result in divorce, which diminishes productivity even further.

Employers have a direct interest in eliminating a sexually charged company culture. Sex in the workplace costs companies billions of dollars.⁵ In addition, divorce, most of which is related to adultery, diminishes workers' productivity for as much as three years.⁶ Regardless of management's personal views of sexual issues, an employer is better off if it adopts policies prohibiting sexual relationships among coworkers. Moreover, adultery raises issues of dishonesty in addition to the moral issues. As Ross Perot reportedly said in defense of his condemnation of adultery at EDS, "How can I trust a man if his wife can't?"⁷ Courts have repeatedly upheld employers' right to terminate employees for marital infidelity.⁸

³Karyn-Siobhan Robinson, "Cybersex Invades the Workplace," HR News Online, Society for Human Resources Management (SHRM), Feb. 9, 2001, www.shrm.org/hrnews/articles/default.asp?page=020901a.htm.

⁴SHRM Press Release, "Cupid's Arrows Sometimes Compete with Work Objectives," Jan. 28, 1998, www.shrm.org/press/releases/default.asp?page=980128-3.htm; Jathan W. Janove, "Sexual Harassment and the Three Big Surprises," *HR Magazine*, Vol. 46, No. 11, p. 123, Nov. 2001; "Employment Litigation an Ongoing Concern," SHRM, July 1997, www.shrm.org/diversity/members/ARTICLES/default.asp?page=0797a.asp.

⁵Robinson, p. 5.

⁶Maggie Gallagher, *Why Promoting Marriage Makes Business Sense*, p. 2, Corporate Resource Council 2002, www.corporateresourcecouncil.org/white_papers/Supporting_Marriage.pdf.

⁷Mary McGrory, "Perot's Bounty Is on Bush," *Washington Post*, p. A2, April 28, 1992, 1992 WL 2191021.

⁸*Marcum v. McWhorter*, ___ F.3d ___, 2002 WL 31084621 (6th Cir., Sept. 19, 2002); *Mercure v. Van Bren Township*, 81 F. Supp. 2d 814 (E.D. Mich. 2000); Jordan Lorence, *Answers to an Employer's Legal Questions about Domestic Partner Benefits and Sexual Orientation*

Our single employees will feel excluded and not valued if we promote marriage

Growing old as a single is an emotionally painful experience for many, and employers should be careful not to exacerbate the pain. Many older singles are highly sensitive to any implication—intentional or unintentional—that *normal* people get married. Even some singles in their twenties feel rejected because they are not married. Therefore, it is important for employers to promote healthy marriages in a way that does not insult singles.

Employee assistance programs should be offered in a way that gives unmarried employees equal opportunities to choose educational programs to enhance their communication and interpersonal relationship skills. Other programs such as crisis counseling or financial training, while contributing to healthy marriages, may be of equal benefit to unmarried employees. Employers should promote pre-marital counseling, marriage counseling and marriage seminars as programs to help married employees or those planning to marry to improve their marriages, not as statements that unmarried employees are less important. Sensitivity to the feelings of unmarried employees will diminish any implication that the employer does not value its single employees.

10% of my workforce cannot marry because they are gay or lesbian

There is no basis for the oft-repeated assertion that gays and lesbians constitute 10% of the population. No random survey of a broad population has found that 10 percent of the population are gay or lesbian.⁹ In fact, the most broad-ranging, random surveys have found that only about 1.1 - 2.1 percent of the population have sex with persons of the same gender or identify themselves as gay or lesbian.¹⁰ Random surveys that estimate the gay and lesbian population at more than 2.1 percent

Nondiscrimination Policies, pp. 4-5, Corporate Resource Council 2002, www.corporateresourcecouncil.org/white_papers/Legal_Questions.pdf.

⁹Estimates that 10 percent of the population are gay or lesbian usually rely upon works by Alfred C. Kinsey, Ph.D. But even Kinsey did not estimate that 10 percent of the population was exclusively homosexual—he estimated 4 percent. Robert T. Michael, et al., *Sex in America, A Definitive Survey*, Warner Books: New York, 1995, p. 173. Moreover, Dr. Kinsey's studies were not random. *Ibid.*, p. 174; Dan Black, et al., "Demographics of the Gay and Lesbian Population in the United States: Evidence from Available Systematic Data Sources," *Demography*, Vol. 37, No. 2: 139-154, p. 140 n.1 (May 2000); Wardell B. Pomeroy, *Dr. Kinsey and the Institute for Sex Research*, Harper & Row: New York, 1972, pp. 97-137.

¹⁰A 1993 report from the Alan Guttmacher Institute found that only 1.1% of 3,321 men surveyed were exclusively homosexual, and only 2.3% had engaged in sex with another man *in the prior ten years*. (John O.G. Billy, et al., "The Sexual Behavior of Men in the United States," *Family Planning Perspectives*, Alan Guttmacher Institute, March/April 1993.) The largest survey ever of women's sexual practices (93,311 women) found that only 1.4% had *ever* had sex with another woman as an adult, and only 0.6 percent considered themselves to be lesbian. (Barbara G. Valanis, et al., "Sexual Orientation and Health: Comparisons in the Women's Health Initiative Sample," *Archives of Family Medicine*, 9:843-853, pp. 844, 848, Sep/Oct 2000.) The study labeled women

generally rely upon unusually broad definitions of “gay” and “lesbian.” For example, some studies include questions about same-sex fantasy and sexual attraction as measures of homosexuality.¹¹ However, reputable studies that include such criteria are careful to distinguish between responses based upon sexual attraction, fantasy, behavior and identification, and do not purport to conclude that same-sex fantasy or sexual attraction, without same-sex behavior or identification, necessarily means that a person is gay or lesbian.¹² Indeed, numerous studies raise the question of how to define gays and lesbians, without proposing a definitive answer. One study explained the problem, in part, as follows:

Does a man who has homosexual sex in prison count as a homosexual? Does a man who left his wife of twenty years for a gay lover count as homosexual or heterosexual? Do you count the number of years he spent with his wife as compared to his lover? Does the married woman who had sex with her college roommate a decade ago count? Do you assume that one homosexual experience defines someone as gay for all time? . . .

. . . Is a woman a lesbian if she finds it sexually arousing to look at other women, but has only heterosexual intercourse? Does it matter if she considers herself a heterosexual?¹³

Regardless of the theoretical value of considering isolated sexual acts or sexual desire for determining whether a person is gay or lesbian, such criteria have little, if any, value in assessing workplace issues for gays and lesbians. The issue in the workplace is whether a person considers him- or herself to be gay or lesbian. If not, he or she will not seek benefits for a same-sex partner, and will rarely, if ever, feel discriminated against because of sexual orientation. Accordingly, employers considering gay and lesbian issues in the workplace should expect that about 1.1 - 2.1 percent of employees are gay or lesbian. Employers should not sacrifice the well-being of the company and the vast majority of its employees out of a concern that the 1-2 percent of its employees who are gay or lesbian cannot marry.

as bisexual if they did not consider themselves lesbians, but had ever had sex with another woman as an adult. (*Ibid.*, p. 844.) *Sex in America: A Definitive Survey* reported that of 3,432 respondents, “about 1.4 percent of women said they thought of themselves as homosexual or bisexual and about 2.8% of the men identified themselves in this way.” (Michael, et al., p. 176.) An article published in *Pediatrics* likewise reported that of 34,706 adolescents surveyed (grades 7-12), 1.4% said that they were bisexual or predominantly homosexual. (Gary Remafedi, et al., “Demography of Sexual Orientation in Adolescents,” *Pediatrics*, Vol. 89, 1992, pp. 714, 719.) A generous estimate of the number of gays and lesbians represented in these studies, defined by behavior or self-identity, is from 1.1 - 2.1 percent (the average of 1.4 and 2.8 in the *Sex in America* survey is 2.1; the average of the men in the Guttmacher study and the women in the WHI study is actually only 0.85 percent).

¹¹Remafedi, et al., *supra*.

¹²*Ibid.*; Michael, et al.; Black, et al.

¹³Michael, et al., p. 172.