

LGBTQ+ Protections in the Workplace Post Bostock - Part 2

June 2021

As Pride month draws to a close, we turn our focus to the actual lived experience of LGBTQ+ employees in the workplace ... inclusivity in action.

Jackson Lewis P.C. | LGBTQ+ Protections in the Workplace Post Bostock - Part 2

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Transcript

Alitia (00:06):

Welcome to Jackson Lewis' Podcast, We get work™. Focused solely on workplace issues everywhere and under any circumstances, it is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate a workforce that is engaged, stable, and diverse. Our podcast identifies the issues dominating the workplace in its continuing evolution and helps answer the question on every employer's mind, "How will my business be impacted?"

It's Pride Month, and we kicked it off by exploring the impact of the Supreme Court's Bostock verses Clayton County decision, on how to best promote an inclusive culture where employees feel comfortable bringing their best selves to the workplace, and our recommendation for employers starting from the hiring process through retention and training. Now, as Pride Month draws to a close, we turn our focus to the actual lived experience of LGBTQ+ employees in the workplace. Inclusivity in action.

On this episode of We get work™, we speak with Jackson Lewis' lawyers about their experiences of being out in the workplace, what drove their career decisions and journey and the benefits of real inclusivity initiatives. Our host today, Michelle Phillips, who also joined us for part one of our series.

And in part two, we take an intergenerational approach. Michelle, the leader and founder of our LGBTQ+ employee resource group known as OPAL, Out Professionals and Allies in Law is joined by

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Kristopher Peters a first year associate in White Plains and Christopher Repole a senior associate in the New York city office of Jackson Lewis. Chris-R has benefited greatly from the guidance of the excellent workplace mentors, including out professionals and allies. In large part because of the encouragement of those mentors, he has remained active in the LGBTQ+ legal community while growing his labor law practice. Kris-P practices immigration law, and has leveraged his experience as an out professional to develop his network and to contribute to a host of LGBTQ+ related issues, both inside and outside the workplace. They both have much to share about their own personal experiences as well as what employers must do moving forward from a legal and human perspective. Michelle, Chris and Kris, the question on everyone's mind today is what conversation should organizations be having even after pride month 2021 ends, and how will that impact my business?

Michelle Phillips (02:41):

Great to be together on this podcast, why inclusion is essential? I'm Michelle Phillips and with me is Chris Repole, or Chris-R as you'll come to affectionately know him, who is a senior associate in the New York office of Jackson Lewis and Kris Peters, who you come to know as Kris-P, who is a new associate, I'm very proud to say in our White Plains office. We're thrilled to be wrapping up Pride Month with this podcast, touching on inclusivity in the workplace, what it means, what it looks like and what employers must do moving forward. Before we get down to discussing what employers best practices are and inclusivity, how has everyone's Pride Month been so far?

Kristopher Peters (03:22):

Well, Michelle, and this is Kris-P just for the listeners here. Pride Month has been great for me, I'm definitely in the spirit, you saw that New York is reopening as of yesterday. And I'm very much looking forward to attending the Pride March next week.

Michelle Phillips (03:36):

Great.

Christopher Repole (03:37):

Yes, same. This is Chris-R, I live in Manhattan and I've been seeing the pride flags all over the city and I'm really looking forward to attending some events and I'm feeling the spirit.

Michelle Phillips (03:49):

Awesome. I was up in Carmel, New York, I've been attending pride in New York city for years. And it's like this massive event where you could barely have to jump up to see everyone. But the Carmel Pride was only 200 people. And I was thinking how important it is to have pride in the small towns because that's where we really need to make the difference. And I think for employers, we have to be thinking about, for people who are in the smaller towns, it's a big deal still to come out in the workplace and in your communities. And so employers still need to be very sensitive to what that's like for someone to put their orientation on the line with the fears that they have, that they could still be discriminated against in a very real way. And that's the distinction between the lived experience, despite the fact that under the Bostock decision, you can't be discriminated against based on either your sexual orientation or your gender identity, but that doesn't... how people feel internally about coming out at work.

And that's actually the next question that I want to talk to both of you about, maybe we can just spend a little bit of time. I know in this intergenerational podcast, all three of us have had very different experiences coming out in the workplace. I know for myself, I was thinking about actually the distinction between my coming out at Jackson Lewis. And before I came to Jackson Lewis, I was at three other firms and I never once seriously considered coming out. And the prior firms I was at, it was kind of like mad men a little bit and again, I'm going back 30 years, right? So I've been practicing for 33 years and it was really like the Wild West to a certain extent where gender stereotypes absolutely were present and sexual harassment to a large extent was rampant.

And I'm not saying it was illegal. It was just the culture of the different places. And it was in subtle ways. It wasn't so specific. But for example, one partner who is giving me what was arguably supportive and good advice, said to me, "Michelle, what's up with the bulky sweaters you're wearing?" And now for me as a gay woman, I would be wearing bulky sweaters because I didn't want my body to be exposed. I didn't want people to be making comments about me. So that was actually good advice. But is that really the thing you should be saying to someone, right? Wouldn't it be better if societally someone could wear what they wanted and not feel that people would be making comments about them. And so really when I came to Jackson Lewis was the first time that I felt I really could be my authentic self and that I could be accepted for who I am and that I could wear suits and it would be fine. I realized that I never took a girlfriend to an event before I came to Jackson Lewis.

And I remember the first time Mary came with me to the Jackson Lewis holiday party and the

managing partner of my office, Joe Saccomano came up and said, "Hi Mary, it's a pleasure to meet you." And what that means to you internally when the managing partner of your office comes up to you and introduces themselves to your partner, to the person that is your closest supportive person in your life. And I remember when Jason Collins came out as the out basketball player in the NBA and the same thing, Joe Saccomano came to my office, "Michelle, what are you going to write a blog post about that?" Actually pressured me to do it. I'm like, ah, so, these are key moments. I'd love to hear from both the Chris's as to how your coming out was.

Christopher Repole (07:28):

Yeah, this is Chris-R. And I think that my coming out, I was very lucky to have an experience where I was out at both of the substantive legal positions I've had since law school. And there wasn't much of a question about whether or not I would, because I had, and we'll talk about mentors in a bit. I had great mentors who made it a non-issue for me. That's in contrast to when I was in law school when I wasn't out and when, not because of necessarily any pressure or external reason on me, but just because I didn't feel comfortable at that point and felt more comfortable compartmentalizing and not being my full self either professionally or personally. But when I did get my first legal job and had a boss who was out himself and who lead by that example, it made it almost a non-issue for me.

And that I'm lucky enough to say carried through to Jackson Lewis too, where from the first round of the first interview I had me being out and me having a boyfriend, now fiance, wasn't only something that happened to get mentioned, or that was danced round, not at all. It was a topic of conversation and it was something that people were interested in. And I think that that was a really solid example for me from literally day one of inclusion, of feeling included and not just being tolerated, but the people at the firm taking active steps to show, like in your example, Michelle, with Joe coming up to you, people coming up to me and saying, "Oh, that's great. How is your fiance? What does he do?" Those little things from the beginning, set a tone that made me comfortable and made it really easy to be out at Jackson Lewis.

Kristopher Peters (09:37):

Yeah. And this is Kris-P and I share both of your guys' sentiments as well. I worked in a professional environment before law school and while I was out in my personal life, I wasn't necessarily out in my professional capacity. And looking back at it now, I think the kind of subtle differences that makes in terms of your performance, your happiness at work, your ability to connect with your coworkers and all of those things kind of play in to your happiness and your productivity as an employee. And it just avoids unnecessary stress, when you can talk about all your life experiences with the people that you're sharing so much of your time with on a daily basis. And when I was interviewing for law firms, I made a conscious decision to be out on my resume. And by that, I mean, I was very involved in my LGBTQ+ group at law school, did a lot of advocacy over a variety of topics ranging from raising awareness on the gay panic defense, to raising awareness and pushing back, signing petitions, eliminating the gay blood ban, which is still an ongoing issue in this country right now.

And I had been interviewing at several firms. And when I came to Jackson Lewis, I remember Joe Saccomano, who was the managing partner in our White Plains office interviewing me. And these interview tactics, they can point at any little thing on your resume and ask you about it. And he chose to ask me about that. And that had been the first interview that I was on, where he specifically asked me, "Tell me about Outlaws, tell me about your experience." And I discussed the things that we're working on and what are we had accomplished and what we plan on doing moving forward, but it didn't stop there. There was a follow-up conversation and it really turned into a substantive discussion about my interests and what I want to do with this. And it's the first time I felt that level of comfort and acceptance and acknowledgement, not just in the legal field, but also just like in my professional capacity at all.

And when I interviewed with Michelle and we followed up on that discussion and just having this clear message sent to you that look, this is okay, we accept that, we welcome that. We want to learn that, learn about who you are as a person, and also bring that and bring your whole self to work. And so those kinds of things are very valuable and have just made my experience here at Jackson Lewis all the much better for work.

Michelle Phillips (12:07):

Well, I have to tell you, Kris-P, I remember our interview, like that was very impactful for me to be interviewing a candidate that would feel comfortable including the work that you did in law school, in the LGBTQ community. That was mind altering for me, because I would never have felt comfortable doing that. And the fact that you felt comfortable and the fact that you took a stand that in other words, you would only want to go to a firm that accepted you for who you are. So, one thing that was high self-esteem on your part, but also that that's a generational difference, right? And I think employers need to understand that. So when we talk about this concept of diversity, equity and inclusion, about

attracting and retaining the best and the brightest, you have to think about that in terms of what are your recruiting, what are your retention strategies?

If you have people who are awkwardly, they see it on the resume and the hiring manager is thinking, do I ask it, do I not ask it? Well, a hiring magic, a completely bumble and fumble that if they don't know what's the appropriate questions to ask about that particular thing, or if they avoid it, and then why are they avoiding it, right? As employers, we need to train our managers so they're better equipped to ask the right questions, to ask it in the right way so that the candidates come away from these interviews, understanding that we are promoting an inclusive environment, and we're not asking it in an illegal way. And then we're not considering it or not considering rejecting a candidate, which also could be discriminatory and also can lead to a failure to hire lawsuit. So these are important considerations to consider, not just because it's the right thing, but because it's a legal issue.

Kristopher Peters (14:05):

Touching on the generational thing, and this is something I've thought about. And I think it just goes back to, it's a value based judgment. And I think it's kind of reflective in the younger workforce today, in millennials and younger workers, when we're evaluating talent and who we want to hire, there has to be that consideration where for at least people my age, and I don't want to speak for everyone that being competitive from a market perspective is of course important, but also being, can this individual that you're seeking to hire, can they see themselves and your organization, can they see some of their values and their lifestyle and what's important to them reflected in their work environment if they come to work for you. And I think a lot of that starts from the recruiting stage from, are we asking these questions? Are we being welcoming? Are we making it an uncomfortable situation? Or are we just treating it as kind of standard operating procedure?

Michelle Phillips (15:01):

Yeah. Excellent. I was just doing transgender training for a client. I'm actually in a hotel in Atlantic City right now. And after the training, someone came up to me who looked very straight and he's like, I want to thank you so much. I'm gay and I was in your training and this group needs it. And it was really unbelievable because people look at him, they make a value judgment. They're assuming he's straight and he happens to be gay. And we have to think about that, the way we perceive people, the assumptions we make about people, by the way they look and the prejudgments that we make about people. I want to switch to another topic and I want to look at mentorship and how important mentorship is. And as companies are rolling out these diversity, equity and inclusion initiatives and goals, and Chris-R, I wanted to talk to you a little bit and Kris-P, of course, but just about the mentorship program and how do we teach people the informal rules of the road?

I think about this example, it was actually a former Jackson Lewis attorney that I've worked closely with since that person has left Jackson Lewis. And I remember I had gotten a call at one point that this person was eating, but not contributing financially as his group would order food. And someone complained to me about it because there were a client. And so I took my former mentee aside. I said, what's up with the eating? You have to pay, if you're going to eat the food you got to pay. So, and the person was like, "Oh, I just hadn't thought about it," right. So of course for their in the person paid, it was a non-issue after that point, but like no one would give you a guidebook. Like that's not an employee manual anywhere. Like, it's these informal rules of the road. Chris-R, what's been your perspective on that.

Christopher Repole (16:52):

I think that it's a great example. I think that what you're talking about Michelle is that there has to be a multi faceted approach to this. There's not one silver bullet to ensuring that diversity and inclusion is valued. I think two essential components are you do have to have the policies. You do have to have the procedures and the handbook in place, but it's more than that. It's about personal interactions. It's about individuals following those policies, but also taking concrete steps to make personal contact and to make sure that there is mentorship, not just a mentorship program, but that you're actually following up on it and going above and beyond and taking steps. And I've been very lucky at Jackson Lewis to have been the recipient of great mentorship. Michelle, you are one of them. I don't mind saying it and I've had others.

And I think that what is made for great mentors in my experience, hasn't just been following the policy, reaching out when they're supposed to reach out. It's been the personal touches, sort of like the example that you gave, where the person's coming to your office and talking to you and asking you about, your work, but also asking about, if it's something that you've talked about before, you're comfortable your fiance in my case, or that committee that you work on, that's LGBT related outside of work. Just showing an active interest and not just going through the motions, but making sure that on a personal level, that that person feels like they're being mentored. They feel like they have someone that they can go to. And if ever the need arises to get advice from.

I've always felt very supported in that regard here. And I think it's not just a function of having the program in place. Jackson Lewis does have the formal mentorship program, but the individuals that I've been lucky enough to work with really following through and going above and beyond to make sure that they're showing an active interest and showing that they're not just going through the motions.

Michelle Phillips (19:12):

Kris-P, any more thoughts you want to add on that?

Kristopher Peters (19:15):

Yeah. I think Chris raised some important points and I think it just a formal mentorship program is of course important. And that's a key component of any inclusivity initiative, but these kinds of informal touches, these create real avenues for connection for employees in the workplace. They open up opportunities that may not otherwise be available, especially for new employees, such as myself.

I have been a part of... there're different tiers of this mentorship program and I'm in a junior tier and stuff like that, but just having access, having this open door policy with senior members of the firm or the organization, I mean, that is invaluable to someone that's early on in their career. And the fact that you have that kind of more informal relationship and the opportunity to connect with these people and express your interest both personally and professionally and find new ways to get involved and find new ways to develop new connections that can lead to more business development or for the promotions down the road and things like that. Chris, even yesterday when we were discussing, possible opportunities to collaborate together and some pro bono opportunities and things like that. And so those are the kinds of things that really become available to employees when you not only have that formal program, but also have those kinds of informal follow-ups, that more personal touch that really can make a difference in a person's career.

Christopher Repole (20:38):

And if I could just jump in there. One thing that Kris-P that you said that really hit home for me, I think that the members of the mentorship program, it's very important to make sure that there is representation from senior leadership. I've been the recipient of great mentorship, as I said. And part of that has been having people that are senior at the firm, being people that I've felt that I had, if not an open line to, access to, that I could ask questions of. And that really was instrumental in giving me a sense of what advancement might look like within Jackson Lewis. And I've always felt very comfortable having that conversation. And I think from a retention point of view, and from a re advancement point of view, it's essential that the mentors, aren't just people that maybe are in my neck of the woods in terms of seniority, but that the leadership is encouraged to take part and is part of the process.

Michelle Phillips (21:42):

As I'm listening to the two of you and it's so important to hear what you have to say, that's so amazing about this podcast is there's reverse mentoring, right? So maybe for purposes of experience, I might have more skills from a legal perspective, but there's a lot that YouTube bring to the table as well. Like I'm learning as much as I'm also imparting. And I think that's the beauty and even myself as having 33 years of legal experience, I have mentors too, that I go to and that I speak to. And so it really is an enhancement and something that I think everyone needs at all levels from a vertical and a horizontal and a circular and in every which way. And I mean, even just the fact that there's an openness in our firm to doing an intergenerational LGBTQ podcast, I think speaks volumes.

I'm also thinking of people who aren't even LGBTQ. Like I was thinking about a partner I work closely with Scott Bacon. He always say, "Well, if Michelle's in, I'm in, like, I'm an ally and whatever Michelle's doing, I'm in it." And it's like, that's just wonderful. Like how that makes you feel, just so supported. And again, just for employers, this is a time, this is an opportunity to seize, there's two weeks left of June or whatever you run this podcast, but there's time left. Like the biggest part of gay pride is literally the last weekend in June. And so please, just asking your employees, how was your pride, what did you do over that last weekend? Sending out an Instagram posting is really important. Sending out a message from the leadership in the firm is really important, or the company, wherever you are. Including a segment of your anti harassment training on LGBTQ issues is really important.

Making sure it's covered in your harassment policy, thinking about how, when you conduct internal investigations, making sure there's LGBTQ+ sensitivity in terms of pronoun usage, in terms of assumptions that you don't come from a heterosexual perspective when you ask someone, if they're partnered, for example. These are things that we can help you with. We work with employers around the country on LGBT. If you have an employee that's transitioning, we have a whole practice group devoted to that with talking points, gender transition plan. So please don't hesitate to call upon us. We're here to help. Thank you.

Alitia (24:28):

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