



Big Wins for LGBT Workers in New Bloomingdale's Contract

By Julie Bolcer

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More often than not, it's a dirty look or some unspoken signal that a customer would rather deal with another salesperson. Every now and then, things turn outright hostile, as happened recently for Desmond Anthony, an employee at Zara in New York City.

The young retail worker was talking with a group of gay male visitors when a female customer approached and said, "You're going to hell. I don't want to shop here. I feel uncomfortable." Anthony, who is also an actor, knew how to maintain composure, but the other men followed the woman to another part of the store, where an altercation ensued, complete with a tossed shoe.

No one was injured, and management comforted the customer. "We're sorry that this happened and we understand how you feel," she was told.

That response did not surprise Anthony, who said that the climate for LGBT people in his store could be so precarious that at least four managers opt to remain in the closet. He said the lack of an explicit non-discrimination policy makes it difficult for management to interject when shoppers express antigay sentiments, let alone ask those articulating such comments to leave the store. Instead, customers are always right, even when employees have been wronged.

"You do know that you are not protected if something happens, God forbid," he said. "They have this clause in our contract that if you are not fitting the company's image, they can get rid of you, where it basically comes down to discrimination. That's dangerous because they don't clarify what they mean by that, because if you are more flamboyant, or if you wear makeup, it's just not allowed."

Research suggests that Anthony's experience is not uncommon for non-unionized employees who make up the overwhelming majority of workers in retail, a fast-growing industry that attracts LGBT people in disproportionately high numbers. Compared to finance and law, industries that topped the Human Rights Campaign's 2012 Corporate Equality Index, workers in retail, which ranked a decent third, routinely lack health insurance, live with low compensation, and contend with unpredictable "just-in-time" scheduling. The situation is outlined in "Discounted Jobs: How Retailers are Selling Workers Short," a report from the Retail Action Project (RAP), a New York City-based membership organization of retail workers, many of whom identify as LGBT.

"It's an industry that welcomes self-expression, but it's also lower wage and so it attracts workers encountering other barriers because of sexual orientation or especially gender non-conformity," said Carrie Gleason, executive director of RAP. "Retail is where a lot of LGBTQ workers find employment.

That said, most retailers lack proper policies to deal with workplace harassment and discrimination on the sales force, and when you work retail, you're dealing with the public, not just your managers and co-workers."

Race, gender and immigration status exacerbate the problems. The majority of retail workers in New York City are people of color, and nearly half are immigrants, proportions that hold for the LGBT portion of the workforce. According to the RAP report, women and people of color are overrepresented in low-wage frontline retail positions, where they find less access to benefits and fewer opportunities for raises and promotions.

Advocates hope that a groundbreaking new contract secured by the employees at Bloomingdale's will influence the industry to make improvements. Last month, members of the Retail, Wholesale, and Department Store Union Local 3 ratified a five-year collective bargaining agreement that strengthened protections against discrimination on the basis of gender identity and expression. The agreement, which covers 2,000 employees at Bloomingdale's flagship store in Manhattan, also includes a new paternity benefit for gay men in marriages and domestic partnerships, which union sources believe could be the first of its kind in a retail contract. Wage increases, enhanced benefits and more employee control over scheduling are also part of the contract.

"The fact that Bloomingdale's and RWDSU have been able to come to an agreement to extend paternity leave for same-sex couples is phenomenal," said Gleason. "It's unheard of in the industry and it's a huge stride."

Under the agreement, which is expected to take effect soon, leaves of absence will be granted up to nine months for all male employees on the same basis that maternity leave is extended for female employees. Leave will be granted for the children of a domestic partner as well as a legal spouse. That follows the U.S. Department of Labor, which interpreted the Family and Medical Leave Act as covering same-sex parents in 2010, but FMLA only mandates 12 weeks of unpaid leave.

"We're thrilled that Bloomingdale's and the union representing their employees recognize that families don't fit one size," said Stacey Long, director of public policy and government affairs for the National Gay and Lesbian Task Force. "Any employer who considers itself pro-family should look at their policies and think about how they may affect what are typically seen as 'non-traditional families' - whether it's a same-sex couple raising children, or step-parents, or grand-parents raising children because it's good policy to provide employees with the tools necessary to care for themselves and their families."

Both the paternity leave benefit and the enhanced non-discrimination language were generated from employee input. All workers in the collective bargaining unit filled out a paper saying what they wanted to see in the new contract. Union sources said the company easily approved those requests, where others areas of the contract were much more contentious.

"Everybody supported those things," said Allen Mayne, deputy director of field operations for RWDSU. "And I'm also happy to say that the company is open to those things as well. They did a good job of being open to it, of being aware of trying to have equal treatment in the workplace for all persons."

While no specific numbers are available, anecdotal accounts suggest that a significant population of Bloomingdale's employees will benefit from the new guidelines. In addition to LGBT employees who will be protected under the non-discrimination policy, the paternity leave benefit applies for all fathers regardless of their sexual orientation.

"There's a lot of open gay and lesbian people in the store," said Jimmy Eisenberg, a member of the contract negotiation committee and 18-year veteran of the display department. "There's a couple of transgender people in the store, most of which people wouldn't even know. It fosters good will and equality. It opens the door for options if people say, 'I want to be a parent but I don't want to lose my job.'"

Sources involved with the negotiations said that the legal and political context, especially the marriage equality law passed in New York last year, affected the discussions. Representatives for the workers sought to equalize the terrain and fill in gaps not covered by laws. While the federal Employment Non-discrimination Act awaits action in Congress, New York state also lacks a law against discrimination on the basis of gender expression and identity.

"I think one of the reasons that why it was so important to us right now is that we see that as we talk about marriage, there are ancillary concerns, such as same-sex fathers, and we wanted to make sure that they are protected as well," said RWDSU president Stuart Applebaum, a prominent gay labor leader. His union represents some 100,000 workers across North America, including employees at other high-profile stores in New York such as Macy's, H&M, Modell's Sporting Goods, and parts of Saks Fifth Avenue.

"What we're doing with marriage throughout the country is obviously important, but it's not enough at this time," he continued. "We still have to make sure that working people have all the protections that they need. That's why we look in our contracts to ensure that all people receive the benefits and rights that they deserve."

The Service Employees International Union, which represents more than 2 million workers mostly in health care, unanimously passed a resolution at its national conference last month pledging that local groups would bargain for transgender-inclusive health coverage in their contract negotiations with businesses and employers. When unions manage to put such benefits in their contracts, it can exert a ripple effect and become the standard for other companies, although not always for the reason unions would prefer.

"A lot of non-unionized companies will copy and try and mirror those benefits in order to prevent people from trying to join a union," said Mayne of RWDSU. "They look to companies like Bloomingdale's, but we want people to know that the reason you have all of these protections and benefits and holidays and vacations is because the union is out there fighting for it."

Even in locations with inclusive non-discrimination laws, retail workers and advocates say that persistent bias still warrants enhanced protections like those in the new Bloomingdale's contract. A report from Make The Road New York in 2010 found pervasive discrimination against transgender job seekers

despite the fact that gender identity has been covered under New York City's human rights law for a decade. The report prompted then-Attorney General Andrew Cuomo to investigate stores including American Eagle Outfitters, which agreed to drop a "personal appearance standard" requiring employees to "wear gender appropriate clothing."

"As long as you are presenting in the way that is passable for a straight man, then you are fine," said Desmond Anthony, the employee at Zara, where a representative was not available for comment. "I have noticed that when we do have more flamboyant, showy [applicants], they are not offered jobs. The same thing with lesbians. If lesbians are not passable as straight, or if they don't have feminine qualities, they are not hired. A company can just say, 'That does not fit our image.'"

The new contract at the large and iconic Bloomingdale's could change the conditions at other retailers. Macy's Inc., which employs a total of 166,000 workers, owns Bloomingdale's. As a result, union leaders and advocates expressed optimism that the paternity leave benefit and enhanced non-discrimination language would be included in the next round of contract negotiations for Macy's stores in New York, including the world-famous flagship store in Herald Square.

"You're successful, especially with an employer like Bloomingdale's and a store like Macy's, they have prestige," said Mayne. "When you're able to get that language in their contracts, then you can propose it for other contract. When that employers pushes back you can say, 'Really? You're going to reject what an employer like Bloomingdale's and Macy's supported? Why wouldn't you want to be like them?' It makes it easier to take the argument to other employers."