

# Asking the Right Questions: How to Gather Information on “Openly Gay” and “Disabled” Employees for the NALP Form

by Stuart D. Smith

One of the many daunting tasks I faced as a new recruitment director was filling out the NALP Form. It was the first time that I had looked at the form since law school, and there were a few notable changes. One was that the form now asked for the number of “openly gay” attorneys and staff at the firm.

I quickly discovered that my office had never reported this number. Realizing that an employer’s acceptance of gay and lesbian employees, as well as the overall diversity of its staff, is important to law students and other prospective employees, I went to the head of the office and asked if I could send out an email asking employees to self-identify as “openly gay” for the purpose of the NALP Form. (We already reported the number of disabled staff). The boss, plainly uncomfortable, asked if there was any other way to gather the information. I offered to informally contact those colleagues I knew who were “out” at the office and ask them to spread the word. Within one week’s time, I had 16 lawyers willing to self-identify as “openly gay” for the purposes of the form.

The following year, I raised the question with a new boss. After I explained the prior year’s discussion, he exploded. “This is the 21st century! My former firm has asked this question for years. Of course we’ll send out an email to the entire office.”

Ironically, the firm-wide email elicited only 12 responses. So much for email! With a little prodding of the people who had responded the prior year, we were able to report 17 lawyers as

“openly gay” — one of whom had been overlooked by the informal search the year before.

The “openly gay” question was added to the NALP Form in 1996. In the most recent *NALP Directory of Legal Employers*, 28% of firms reported one or more gay attorneys. The category “handicapped” first appeared in 1984, being changed to “disabled” one year later. In the most recent *Directory*, 12% of firms reported having one or more disabled attorneys.

Although resistance to gathering data for both questions has persisted — with one firm writing on its NALP form that “we do not attempt to ascertain the kind of information requested, nor do we believe it would be appropriate to do so,” the trend has been steadily toward reporting. While only 11 of the 25 largest New York-based firms reported “openly gay” attorneys in 1996, this year 24 of those firms reported — with the 25th not listing in the *NALP Directory* this year.

Taking an informal poll of law firms that have gathered this information, I found that some firms still rely on estimates and informal email chains. The consensus, however, was that a carefully worded email to the staff asking them to “self-identify” was the best way to elicit responses for both questions. As the anecdote above suggests, a combination of both approaches might provide the most accurate number.

Having been asked to suggest a model email, one firm offered the following:

“Each year, our firm is asked by the National Association for Law Placement, Inc. (NALP) for statistics relating to the demographic background of our legal and non-legal staff. These figures will be published in the *NALP Directory*, which is available to job-hunting law students and attorneys. For recruiting purposes, it is probably the most important piece of paper that we produce.

“While the office has much of the demographic information requested on file, NALP also asks for the number of ‘disabled’ and the number of ‘openly gay’ attorneys and support staff. If you would like to be counted either as ‘disabled’ and/or ‘openly gay’ for the purposes of the NALP Form, please reply to this email as soon as possible.”

Several employers raised the question of who exactly is “openly gay” or “disabled” for the purposes of the NALP Form. NALP has no official definition of either phrase. For the purposes of self-identifying as “openly gay,” it would seem best to leave the definition up to the individual employee. Whether an employee be lesbian, bisexual, transgender, etc., if they choose to self-identify as “gay,” that should be sufficient. As to the meaning of “open,” it would seem that anyone who is willing to tell their recruiting office that they’re gay for the purpose of the NALP Form is sufficiently “open” to meet the NALP definition.

The definition of “disabled” presents more complications. Several firms admitted that they just looked around the office to see who had obvious physical impairments. But others pointed out that such an approach underreports the number of disabled by missing those with less visible impairments — employees with vision or hearing problems, respiratory diseases, or blood diseases or other impairments that would qualify them as disabled.

As mentioned above, NALP has no official definition of “disabled.” Looking to the law adds some clarity, but also some confusion as well. While there are different local, state and federal definitions of “disabled,” since only the federal

government’s definition of disabled is applicable to all employers filling out the NALP Form, that definition would seem to be best. The federal definition of “disabled,” however, goes on for pages and judicial decisions interpreting the definition are legion.

An abbreviated definition derived from federal regulations (see 41 CFR sec. 60-741.2) might provide some guidance, permitting firms to add a paragraph to their email requesting lawyers to self-identify as disabled:

“For the purposes of defining ‘disabled,’ you might want to consider one definition found in federal law — having ‘a physical or mental impairment which substantially limits one or more of such person’s major life activities’ including ‘functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.’ If you feel that you fall within this definition, or if you would like to be reported as ‘disabled’ nevertheless, please let us know.”

The importance of gathering this information should not be underestimated when recruiting from a new generation of attorneys. One indication of how times have changed was demonstrated when our firm’s gay attorneys held our annual June Pride Month “lavender lunch.” When the lunch was publicized, eight summer associates (out of 60) signed up. It turned out that half of the eight were straight, the products of the gay-straight alliances that are now common at many high schools and colleges. A lesson, if not learned, at least reaffirmed: a firm’s willingness to embrace diversity is important to all potential employees.

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