Abstract—This analysis investigates the association between nondiscrimination policy statements related to sexual orientation and gender identity and university rank. The nondiscriminatory statements included in the analysis are sexual orientation, gender identity and/or expression, marital status, parental or familial status, and pregnancy. All but one university included sexual orientation in the policy. Only 26% included gender identity/expression. In all cases, the percentage of top 25 universities including each individual statement exceeded the percentage of those ranked below top 25. In addition, the top ranked universities included more statements in their policies than the lower ranked universities.

I. INTRODUCTION

Universities strive to maintain superior environments with respect to peer institutions. In order to measure relative excellence, rankings are a common approach for comparing universities. Thus university administrators work to ensure that their institutions earn and maintain better rankings.

One way of supporting the mission of achieving and maintaining excellence is to recruit and retain the best faculty, staff, and students. Recruiting and retaining diverse groups of employees and students are a part of ensuring a high quality environment. Embracing such diversity in both educational and workplace settings is beneficial in numerous ways. For example, Gurin et al. [1] have found that informal interaction between students of different backgrounds during college years has important implications for intellectual engagement and the development of skills to successfully participate and lead in a diverse democratic system. In the workplace, diversity and openness attracts talented people. Diversity has been linked to regional growth and industrial success, especially in the area of high technology [2]. Ability to attract talent is more closely associated with diversity than it is with climate, cultural, and recreational amenities.

One method for helping universities with recruiting and retaining a diverse population is through nondiscrimination policies. When drafting nondiscrimination policies, universities must comply with federal, state, and local statutes. Specific nondiscrimination law protects some classes of people. Figure 1 highlights a sampling of federal and the Commonwealth of Virginia’s nondiscrimination related laws. The light blue shaded boxes are federal laws and the dark gray shaded boxes are Virginia’s.

While sex has been an important factor in nondiscrimination law (see the underlines in Figure 1 where sex is whether someone is biologically male or female), discrimination based on gender identity (the gender with which a person identifies, and not always congruent with biological sex) has been ignored in federal and Virginia nondiscrimination related law. Sexual orientation (the direction of an individual’s sexual or emotional desires) has been ignored at the federal level and in many states. In 34 states, people can still be fired at any time because of their sexual orientation or gender identity and expression [3].

A recent focus on sexual orientation and gender policies at the state level has had mixed effects on the rights for lesbian, gay, bisexual, and transgender (LGBT) citizens. This focus has created potential issues and opportunities for nondiscrimination policy. For example, some states have explicitly passed laws and some even have constitutional amendments making it impossible for gay or lesbian couples to marry. Some states even restrict civil unions and other forms of domestic partnerships arrangements for LGBT citizens. Virginia’s law is very broad and limits civil unions, “partnership contracts”, and “other arrangements”:

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

As states limit marital choices for LGBT citizens, universities may need to consider adding marital status to their nondiscrimination policies.

Manuscript received April 14, 2006.

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Figure 1. Sampling of Federal and Virginia laws impacting nondiscrimination policy.

- **The Equal Pay Act of 1963** – prohibits sex discrimination in the payment of wages to women and men performing substantially equal work in the same establishment.

- **Executive Order 11246 (1965, as amended)** – mandates nondiscrimination in employment by government contractors and subcontractors. Prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex in institutions with federal contracts and mandates a continuous commitment to affirmative action.

- **The Age Discrimination in Employment Act of 1967** – prohibits arbitrary age discrimination (age 40 and above) in hiring, discharge, pay, promotions and fringe benefits and other aspects of employment.

- **The Civil Rights Act of 1964 (as amended)** – prohibits discrimination on the basis of race, color, or national origin regarding civil rights.
  - **Title VI of the Civil Rights Act of 1964** – prohibits discrimination based upon race, color, and national origin under educational programs receiving federal financial assistance. The applicability of Title VI to employment practices is limited to those programs in which a primary objective of the federal assistance is to provide employment.
  - **Title VII of the Civil Rights Act of 1964** – prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

- **The Age Discrimination Act of 1975** – prohibits discrimination on the basis of age in programs and activities receiving financial assistance.

- **The Vocational Rehabilitation Act of 1973** – ensures equal opportunities in employment for qualified disabled persons.
  - **Section 503** – (applies to employment only) requires government contractors to take affirmative action to employ and advance in employment qualified disabled persons.
  - **Section 504** – (applies to employment and students) prohibits discrimination against persons in federally funded programs and activities.

- **The Americans with Disabilities Act of 1990** – prohibits discrimination in employment against a qualified individual with a disability. It states that it is unlawful to discriminate in all employment practices such as: recruitment, hiring, promotion, training, lay-off, pay, termination, job assignment, leave, benefits, and all other employment-related activities.

- **The Civil Rights Act of 1991** – provides additional remedies to protect against and to deter unlawful discrimination and harassment in employment and amends parts of Title VII of the Civil Rights Act of 1964.

- **Vietnam Veterans Readjustment Act of 1974** – (as amended) prohibits discrimination on the basis of Vietnam Era Service and other veteran status.

- **The Age Discrimination Act of 1975** – prohibits discrimination on the basis of age in programs and activities receiving financial assistance.

- **Uniform Service Employment and Reemployment Rights Act of 1994** – (as amended) prohibits discrimination and retaliation of past or present members of the uniformed services.

- **Virginia Human Rights Act (2001)** – states that it is the policy of the Commonwealth to protect all individuals in the Commonwealth from the unlawful discrimination based on race, color, religion, national origin, sex, pregnancy, childbirth, or related medical conditions, age, marital status, or disability in places of public accommodation, including educational institutions and in … employment.

- **Executive Order (2006)** – prohibits discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, age, political affiliation, or … qualified persons with disabilities. The policy permits appropriate employment preferences for veterans and specifically prohibits discrimination against veterans.
Parental and familial status is another area worthy of consideration in nondiscrimination policy. While Florida is currently the only state to ban adoption for gays and lesbians, the legislatures in Ohio, Kentucky, and Georgia (all states that ban same-sex marriage by constitutional amendment) are actively considering such bans. Such laws would not only limit gay and lesbian couples from adopting other people’s children, but they would also limit the non-biological co-parent from adopting his or her partner’s children.

Even pregnancy is an area worthy of consideration for nondiscrimination policy. The legislators in Virginia have recently considered limiting reproductive choices for unmarried women, of which lesbians would necessarily be. While it did not gain large scale support, the bill would have prohibited unmarried women from undergoing assisted reproduction, whether in vivo or in vitro [4].

Despite these obstacles, many companies and universities have the flexibility to expand their policies to provide more protections for their employees and students. In March 2005, 414 companies in the Fortune 500 included sexual orientation in their nondiscrimination policy, which is an increase of 4% from 2003 [3]. Exxon-Mobil is the only company in the Fortune 500 that does not include sexual orientation [3]. Additionally, 54 of the Fortune 500 companies include gender identity and/or gender expression in their policies, which was an increase of 89% from 2003 [3].

This trend to provide more inclusive nondiscrimination statements has begun to take root in institutions of higher education as well. More than 550 colleges and universities now include sexual orientation in their policies [3]. As recently as April 11, 2006, Harvard University announced that it would add gender identity to its nondiscrimination policy. The policy change makes Harvard the 53rd college or university to include gender identity in its nondiscrimination policy, according to the Transgender Law and Policy Institute (www.transgenderlaw.org/college/index.htm).

As one factor for improving university excellence is through diversity, the analysis presented in this paper investigates the relationship between nondiscrimination policy statements related to sexual orientation and gender identity and rank for the Association of American Universities (AAU). This group of universities was chosen because the University of Virginia often compares policies to those of other AAU members. The nondiscriminatory statements included in the analysis are: 1) sexual orientation, 2) gender identity and/or expression, 3) marital status, 4) parental or familial status, and 5) pregnancy. Marital status was included because several states limit marital choices for its gay, lesbian, bisexual, and transgender citizens. Parental or familial status was included as some states also limit adoption choices. Pregnancy was included as the Virginia legislature considered limiting reproductive rights for single women (of which lesbians would be as they cannot marry in Virginia).

II. METHODS

A. Nondiscrimination Policy Statements

Nondiscrimination policy statements from 61 members of the AAU were collected using the Internet in October 2005; McGill University in Montreal, Quebec, Canada was not used in this study as its policy statement was not found on its website.

Nondiscrimination policies were coded for the presence or absence of five types of nondiscriminatory statements (sexual orientation, gender identity and/or expression, marital status, parental or familial status, and pregnancy). An additional composite score was calculated for each university indicating the total number of nondiscriminatory statements in the policy statement.

For example, for the University of Virginia, its data were coded with a “1” for pregnancy and for sexual orientation and with a composite score of 2 (www.virginia.edu/eop/policies.html#non-discrim):

...[T]he University does not discriminate in any of its programs, procedures or practices on the basis of age, color, disability, national or ethnic origin, political affiliation race, religion, sex (including pregnancy), sexual orientation, or veteran status...

For the University of California-Berkeley, its data were coded with a “1” for gender identity, marital status, pregnancy, and sexual orientation and a composite score of 4 (www.grad.berkeley.edu/admissions/accuracy.shtml):

The University of California ... does not discriminate on the basis of race, color, national origin, religion, sex (including sexual harassment), gender identity, pregnancy/childbirth and medical conditions related thereto, disability, age, medical condition (cancer-related), ancestry, marital status, citizenship, sexual orientation, or status as a Vietnam-era veteran or special disabled veteran...

As a final example, the data for Texas A&M were coded with all “0”s as its nondiscrimination policy is (www.tamus.edu/offices/policy/33-02.pdf):

...The Texas A&M University System shall provide equal opportunity for employment to all persons regardless of race, color, religion, sex, national origin, disability, age, or veteran status...

B. University Rankings

The Academic Ranking of World Universities (2004) was used to determine whether members of the AAU were ranked in the top 25 of North and Latin American
universities [6]. These rankings are compiled by the Institute of Higher Education at Shanghai Jiao Tong University. They rank universities using several metrics regarding academic or research performance (Table 1). These include Nobel Prizes earned by alumni or staff, highly cited researchers, and academic performance with respect to size of an institution. For each metric, the highest scoring institution is assigned a score of 100, and other institutions are calculated as a percentage of the top score.

Table 1. Metrics used by the Institute of Higher Education at Shanghai Jiao Tong University to rank universities [2].

<table>
<thead>
<tr>
<th>Category</th>
<th>Metric</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality of Education</td>
<td>Alumni of an institution winning Nobel Prizes and Fields Medals</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Staff of an institution winning Nobel Prizes and Fields Medals</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td>Highly cited researchers in 21 broad subject categories</td>
<td>20%</td>
</tr>
<tr>
<td>Quality of Faculty</td>
<td>Articles published in Nature and Science</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td>Articles in Science Citation Index-expanded and Social Science Citation Index</td>
<td>20%</td>
</tr>
<tr>
<td>Research Output</td>
<td>Academic performance with respect to the size of an institution</td>
<td>10%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

22 out of the 61 (36%) AAU members are ranked in the top 25. From these rankings, binary variables used to indicate each university’s inclusion or exclusion in the top 25.

III. RESULTS

It is clear that universities consider sexual orientation as an important statement. Of the 61 AAU universities, 60 include sexual orientation in their nondiscrimination policy (Figure 1). Similar to the trend with the Fortune 500 companies, a much lower percentage (16 out of 61 = 26%) of universities includes gender identity/expression. For the related categories, 35 include marital status, but only 8 include familial status and 8 include pregnancy.

For each of the 5 types of statements, a comparison of the proportion of top 25 universities including the statement was made with the proportion of those with lower rank. In all cases, the percentage of top 25 universities with the statement exceeded the percentage of those ranked below 25. For example, the 15 out of 22 (68%) of the top 25 that include marital status is higher than the 20 out of 39 (51%) of the lower ranked universities. Using the Fisher’s exact test, pregnancy was the only statement of interest that showed significant association between the inclusion in the top 25 rankings and the statement’s presence in nondiscrimination policies. The 7 out of 22 (31.8%) top 25 universities with pregnancy in their nondiscrimination policies are significantly higher than the 1 out of 39 (2.6%) universities with the lower ranking that include pregnancy (p=0.002).

No member of the AAU includes all nondiscriminatory statements of interest. However, sixteen universities include at least three of the statements (Figure 2). The higher ranked universities tended to include more statements than those of lower rank. For the top 25 universities, the mean number of nondiscriminatory statements was 2.50, while the mean number of statements included for universities not in the top 25 was only 1.31 (t = 2.789, df = 59, p = 0.07).

IV. DISCUSSION

While only a portion of the results presented in this paper are highly statistically significant, they indicate that the higher ranked institutions include more LGBT friendly statements in their nondiscrimination policies. All of the top 25 universities specified sexual orientation in their policies and were more likely to have included additional statements from the four remaining categories.

To validate this initial exploration, further work should certainly extend the analysis to universities not in the AAU and to consider alternate ranking systems, such as the U.S. News and World Report. However, all such analyses only investigate association and do not provide insight into how nondiscrimination policy influences university excellence.

Further studies should investigate the mechanisms of how nondiscrimination policies can enhance excellence. For example, how do such policies directly influence faculty candidates’ decisions to apply to a particular university? How do such policies influence a faculty’s decision to remain at a university? Can such policies mitigate the trend for states to limit marriage, adoption and related rights for LGBT citizens or will universities in states with restrictive laws lose potential candidates to universities in states that allow LGBT citizens more freedoms?

ACKNOWLEDGMENT

The authors would like to thank Julianne Koch for helping collect the nondiscrimination data and Jeffrey Boyd for technical editing help.
Figure 2. Frequency of AAU universities having individual nondiscrimination statements.

Figure 3. Frequency of AAU universities having composite nondiscrimination statements.

REFERENCES


