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**South of the Rio Grande: Employment Policies Affecting Gays & Lesbians in Latin America**

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## Table of Contents

Introduction.....	3
Research Methodology .....	5
Data Limitations.....	6
The United States .....	7
Legal Factors.....	9
Economic Factors.....	10
Social/Cultural Factors.....	12
Latin America .....	12
Social/Cultural Outlook .....	13
Legal Outlook .....	16
Overall.....	18
Employment Benefits in Latin America: A Hypothesis .....	19
Survey Results .....	20
Respondents & US Policies .....	21
Respondents & Latin American Policies .....	23
Conclusions.....	26
Legal Explanations.....	26
Economic Explanations .....	27
Social/Cultural Explanation.....	28
Final Thoughts .....	30
Appendix 1.....	32
Endnotes.....	33

## Introduction

In regards to public policy affecting homosexual individuals, the United States of America is ahead of many other countries but nowhere near the forefront of improving public policies that affect gays and lesbians. In the United States, the government reserves marriage for a man and woman couple and in many states gays and lesbians are prohibited from adopting children. However, in the economic arena, gays and lesbians enjoy some of the most progressive employment policies in the world. These policies take many forms, but those that most frequently affect gays and lesbians are non-discrimination clauses that ban discrimination based on sexual orientation and employment health benefits that extend to domestic partners of the same sex. In both regards, American firms and local governments have made significant advances in extending these employment benefits and protections to gay and lesbian employees. Since 1970, the number of cities and counties that ban anti-gay discrimination has risen from 0 to 122 in 2001<sup>1</sup>. In 2001, 59% of the Fortune 500 had on record a similar ban against anti-gay discrimination<sup>2</sup>. In regards to same sex domestic partner health benefits, American firms have been implementing these policies at a rapid pace. Between August of 1999 and 2001, the number of employers offering these benefits increased 50%, from 2856 to 4285<sup>3</sup>. Clearly, the pace of American industry and government embracing employment benefits that benefit gays and lesbians is increasing.

In Latin America, however, the story is very different. Latin America has always differed socially, religiously and economically from the United States, and its economic and political policies towards gays and lesbians are less progressive than in the United States. As opposed to many cities and local governments in the United States, no legal

jurisdictions in Latin American countries require companies to offer same sex domestic partner benefits to gay and lesbian employees<sup>4</sup>. Because no agencies or governments keep statistics on the impact of employment policies on gay and lesbian individuals in Latin America, it is difficult to draw broad based conclusions on employment policies in this region. Nevertheless, one way to determine whether employment policies extend at all south of the Rio Grande is to observe whether American multinational corporations with progressive employment policies for gay and lesbian employees in America extend those same benefits to their operations in Latin America. By comparing the employment policies of American multinational corporations in the United States with their affiliates in Latin America, one can begin to paint a picture of the legal, economic and cultural factors that affect gay and lesbian employees in this region. By gathering data on these different multinational companies, one can even begin to explain any discrepancies between American and Latin American employment policies within the same company.

A general survey of the cultural, legal and economic conditions in Latin America would lead one to hypothesize that American firms would not offer employment benefits to gay and lesbian Latin American nationals, although they may offer them to expatriates working in Latin America. The results of this study were not entirely unexpected and generally confirmed this initial hypothesis. While all the firms surveyed extend their non-discrimination policies to Latin America and mostly extend their same-sex domestic partner health benefits to American expatriates working in their Latin American affiliates, these firms generally do not offer the same benefits to Latin American nationals who work out of their Latin American affiliates. The reasons for these discrepancies can be explained by legal, social and economic differences between the United States and Latin

America. The purpose of this study, however, is only to describe the current situation in Latin America. Regardless, it will offer some general conjectures as to why American firms implement different employment policies for their gay and lesbian employees than they do in the United States by analyzing the rationale for the existence of such policies in the United States and extrapolating these findings to Latin American societies.

### **Research Methodology**

In order to compare the difference between domestic and Latin American employment policies in regards to gays and lesbians, this study utilized a three question survey sent out to 28 companies listed in Forbes Magazine Top 100 US Multinationals for the year 2000 (listed in order of international sales)<sup>5</sup>. The top 30 companies on this list were selected and examined to see whether or not they either had a non-discrimination policy that included the words “sexual orientation” or whether they offered health benefits to domestic partners of the same sex in the United States. The Human Rights Campaign Worknet Employer Database<sup>6</sup> was used to determine whether or not these policies were offered in the United States. It was found that of these top 30 companies, 28 met the requisite criteria.

The survey, which can be found in Appendix 1, was sent to either the representatives of the pertinent company’s gay and lesbian employee organization, human resources professionals or public relations representatives. The survey asked these companies whether:

- a) the company’s non-discrimination clause extends to employees in Latin America

- b) same sex domestic partner health benefits (if offered in the US) extends to American expatriates working in Latin America
- c) same sex domestic partner health benefits (if offered in the US) extends to Latin American nationals working in the company's Latin American offices

Because many of the 28 companies surveyed have offices in more than ten Latin American countries, the survey focused on employment policies in the region's four largest economies: Argentina, Brazil, Chile and Mexico. By narrowing the scope of the survey to these four countries, where all of the 28 companies have at least one office, the study is able to encompass a broad cross-section of Latin America in a more focused manner.

### **Data Limitations**

Although the survey revealed interesting results, there are several potential sources of error. Because only 13 companies responded to the survey, it is possible that there is not a large enough sample size to make generalizations about the broader situation for gay and lesbian employees in Latin America. However, this study only attempts to give the reader a survey of the present situation for some companies, and does not attempt to make broad based conclusions for all of Latin America. The sample size is sufficiently large to give one a snapshot of the current status of gay and lesbian employment policies, and because the results are fairly consistent across companies sampled, the conclusions of this paper are sound for other companies operating in the region.

Another possible source of error of the study is the potential for response bias in the survey. It is possible that only firms with employment policies perceived as progressive would be inclined to respond. However, the survey promised anonymity to survey respondents and as such the effects of this bias should prejudice the results. Overall, the survey represents a broad sampling of US multinational corporations in Latin America and provides a clear snapshot of the current situation for gay and lesbian employees in the four largest economies of that region.

### **The United States**

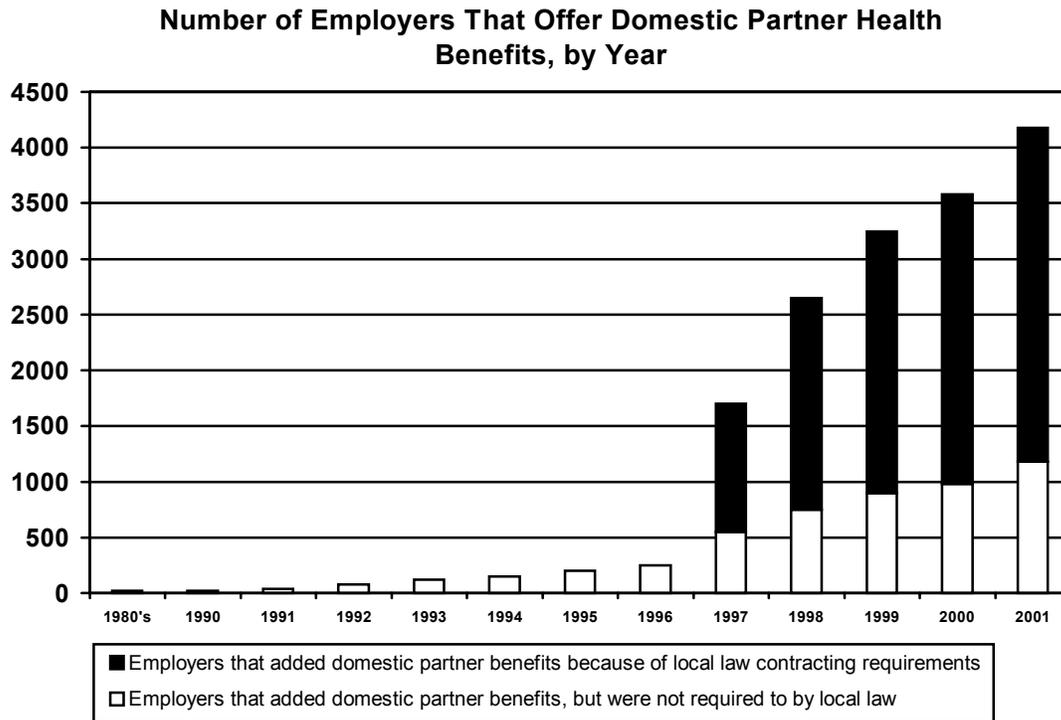
In order to begin to consider the current situation in Latin America for gay and lesbian employees, it would be prudent to thoroughly review the current situation in the United States. The United States provides a good model to analyze Latin American because Latin American firms and governments frequently model their own policies after similar ones that have been adopted in the United States and cultural ties between Latin America and the US are strong. Similarly, this study aims to analyze United States multinational corporations operating in Latin America and as such it makes sense to consider the current situation in the home region where these firms operate.

In general, “a slow, uneven increase in social accommodation and legal protection of homosexual men and women characterizes the American scene”<sup>7</sup>. These protections apply not only to the legal right of homosexual men and women in America to act freely, but it also applies to the economic and employments sectors as well. As of 2001, more than two-thousand companies, colleges, universities, state and local governments and

federal agencies had enacted a non-discrimination clause that includes the words “sexual orientation”, an increase of 17% in one year alone<sup>8</sup>.

Domestic partner benefits have become the *cause celebre* of many homosexual rights groups in the United States. Championed by many heterosexual and homosexual couples that believe private and public employers should not be setting social policy through employment policies, domestic partner benefits have become increasingly prevalent in the United States. Although a definition of a domestic partner varies significantly by employer and by jurisdiction, the following definition proposed by a leading Human Resources Journal has been accepted by many firms in the United States: “Domestic partners are 2 adults of any sex who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring, who live together and who have agreed to be jointly responsible for basic living expenses incurred during the domestic partnership”<sup>9</sup>. In addition to this general description, one journal has gone further in defining these benefits. According to the Review of Public Personnel Administration, domestic partner benefits are both similar to and different from traditional marriage. Domestic partnerships and marriage are similar in that they both involve two people who are above eighteen years of age, mentally competent, unrelated by blood or marriage, not currently married to another person and who are prepared to make an exclusive commitment. However, they are unique in that they are frequently require joint residency six to twelve months prior to registration, the partners should have an intention of continuing the relationship, members of any sex are eligible, unilateral termination is possible through a written notice, and a waiting period of 6 months between termination and the initiation of another partnership is required<sup>10</sup>.

Currently, 145 Fortune 500 firms offer these benefits, an increase of 36 in 2001 alone, more than in any other year<sup>11</sup>. Figure 1 illustrates the growth in the offerings of Domestic Partnership Benefits in the United States<sup>12</sup>:



This chart illustrates not only that the pace of progressive employment benefit offerings is increasing, but also that factors other than legal pressure are contributing to their growth. Even in regions where there are no laws mandating the growth of domestic partner benefits, the pace of employers offering these benefits has accelerated<sup>13</sup>. The other factors contributing to this increase are legal, economic and social/cultural in nature. These factors acting together have contributed to the increase in the prevalence of employment policies that benefit gays and lesbians in the United States.

#### Legal Factors

In the legal arena, it is interesting to note that non-discrimination policies affecting sexual minorities are closely linked with the offering of domestic partner

benefits in the United States. In most states, the legal forerunner of domestic partner benefits is the banning of discrimination based on sexual orientation in public employment<sup>14</sup>. The influence of local government in the increased prevalence of domestic partner benefits is unmistakable, and local governments have been the leaders in introducing and experimenting with domestic partner benefits<sup>15</sup>. In 1985, Berkeley, California enacted the first domestic partner benefit law in the nation. Other liberal communities on the east and west coast, as well as midwestern university-dominated towns followed suit over the next decade<sup>16</sup>. Local governments tend to extend three types of benefits to gay and lesbian citizens: public recognition of domestic partnership through a general registry, leave benefits for employees, as well as health insurance for an employee's dependents<sup>17</sup>. By the end of 2001 8 states and 105 city and local governments provided health benefits to government employees' domestic partners. Many more ban discrimination against sexual minorities in the public and private sectors<sup>18</sup>. By prompting and mandating private employers in their jurisdictions to ban discrimination in the workforce against gays and lesbians, and by setting the precedent of providing domestic partner benefits, legal forces strongly affect the prevalence of these employment policies in the United States.

#### Economic Factors

Economic factors, however, also play a key role in the prevalence of these anti-discrimination clauses and domestic partner benefits. On first glance, it would seem that employers would be reluctant to grant gay and lesbian employees domestic partner benefits on economic grounds. In 1960, health coverage was only 10% of the average employment compensation plan. By 1992, however, health benefits were 40% of average

employment compensation<sup>19</sup>. Employers might naturally be concerned about the cost of adding even more health coverage for employees because of the high price of health plans today.

However, there are a variety of economic reasons in favor of adopting health coverage for domestic partners of any sex. One of these reasons is that human resources policies affect commitment and retention of employees, and some anecdotal evidence exists that flexible plans lead to employee satisfaction and improved morale<sup>20</sup>. One professional with experience with domestic partner benefits states that employees who are offered these benefits “become the company’s highest boosters”<sup>21</sup>. Another reason to implement these benefits is that a failure to do so makes it hard to recruit and maintain a committed, productive, and diverse workforce<sup>22</sup>. Related to this concept, many executives implement domestic partner benefits so as to avoid negative publicity from gay rights groups or other gay constituencies<sup>23</sup>. According to one economist, society at large has an economic incentive to provide domestic partner benefits to same sex and different sex domestic partners because it minimizes the public burden of providing health costs for uninsured individuals later in life<sup>24</sup>. Aside from these reasons, employers are finding out that their initial fears about the costs of domestic partner benefits plans were unfounded. Studies have demonstrated that the costs of providing domestic partner benefits are lower than expected. On average, only 1% to 2% of employees actually take advantage of domestic partner benefit plans and the cost of the plans tend to typically cost less than those for married individuals<sup>25</sup>. For a variety of economic reasons, employers are increasingly implementing domestic partner benefit plans.

### Social/Cultural Factors

The social and cultural reasons for implementing these plans are evolving in the United States. One cultural factor encouraging progressive employee benefits is the concept of employee fairness. The city of San Diego, in extending same sex domestic partnership benefits to employees of the city, claimed that the rationale for implementation was a “fairness issue to our employees”<sup>26</sup>. Similarly, Levi Strauss claimed it wanted to match its corporate benefits plan with the company’s non-discrimination policy when it implemented same sex domestic partner benefits<sup>27</sup>.

Many observe that the changing nature of the American “family” forces corporations to keep up with the changing times. In 1970, 40% of American households consisted of two married adults with children. By 1992, only 10.2% of households had a similar makeup<sup>28</sup>. Domestic partnership plans, therefore, can be considered a sociological response to the changing American family exhibited in employee compensation.

The increased prevalence of progressive employee policies can be explained through legal, economic and social/cultural developments. By analyzing the current situation in Latin America, one can begin to formulate a hypothesis about the prevalence of similar employment policies in Latin America based on similarities and differences between Latin America and the United States.

### **Latin America**

The situation in Latin America for gay and lesbians in general, as well as gay and lesbians employees specifically, is dramatically different from the current situation in the

United States. The following quote succinctly summarizes the current situation in this region:

“Latin America has imported the notion of “gay pride” from the United States, just as it has imported fashions and fast food chains. But it is still a region where men are macho and women are long-suffering, Catholicism dominates and the family reigns supreme.”<sup>29</sup>

Latin America, in all of the four countries analyzed as part of this study, is far behind the United States, both legally and culturally, in recognizing the civil and employment rights for gays and lesbians, as well as other minority groups. The reasons for this lag include the pervasiveness of religious institutions like the catholic church, military dictatorships that have hampered free speech and political mobilization in the 1980’s, and a poor economic outlook throughout the region that has made granting gays and lesbians equality a minor concern in comparison to the larger economic problems that plague many individuals in the region. Indeed, the indigenous population in Mexico, Chile, Brazil and Argentina continues to face discrimination in legal and social spheres, and indigenous peoples in Latin America have been fighting for equal rights for decades. Compared to these minority groups, gays and lesbians have begun clamoring for these rights only recently.

The current situation for gays and lesbians in each of the four Latin American countries can be analyzed through two lenses: the social/cultural lens the legal/political lens. After describing the current situation in these two perspectives, the next section will hypothesize the current state of progressive employment benefits in Latin America for gays and lesbians.

### Social/Cultural Outlook

Socially and culturally, each country has a different outlook on homosexuality. Brazil is clearly the most open society in the region for homosexuals, with Argentina following closely. The Mexican and Chilean societies, however, approve far less of homosexuality than Brazilian and Argentine societies.

In regards to a social outlook on homosexuality, Brazil appears to be the most liberal of the countries examined in this study. More homosexuals groups exist in Brazil than in other countries, and citizens more readily self-identify as gay or lesbian in Brazil. In 1994, 52 gay and lesbian groups existed in Brazil, up from 13 in 1991<sup>30</sup>. In São Paulo, the largest city in Brazil, one can find the largest gay community in Latin America. Gay clubs and culture flourish in this city. More middle-class men identify as gay in this city than any other city in the region. The reasons for this trend include the large growth of the city that has led to the immigration of many young Brazilians from the countryside seeking employment. Far from their families in this large city, gay Brazilians are able to openly identify as gay without worrying about the reaction of their families<sup>31</sup>. The city's gays tend to be "nominally catholic, somewhat traditional in their views, yet considerably more secularized than both their parents and gays in other Latin American countries"<sup>32</sup>. One possible reason for this trend might be found in the religion of Candomblé, a mix of Catholicism and African religions that is quickly gaining popularity throughout Brazil. As a religion, Candomblé does not condemn homosexuality and even tacitly encourages it through its religious mythology<sup>33</sup>.

In Argentina, the situation is different from Brazil and other Latin American countries. Although Buenos Aires, the capital, is more open to homosexuality than elsewhere in the country, discrimination against gays and lesbians still runs strong. The

most influential gay group in Argentina, Comunidad Homosexual Argentina, was founded in 1984, one year after the collapse of the military junta that ruled the country from 1976 to 1983. In 1992, this organization held its first gay pride parade in Buenos Aires. Despite these developments, gays and lesbians in Argentina continue to face “arbitrary arrest, torture and assassination”, according to one gay rights group<sup>34</sup>.

In Mexico, although there is some ambiguity about whether homosexuals are acknowledged by society at large, the general consensus appears to be that society disapproves of publicly self-identifying as gay and lesbian. According to one writer on the subject, “the culture, due to early Spanish occupation, is strongly influenced by Judeo-Christian ideology which ... strongly censures and seeks to suppress any form of non-reproductive sexual activity.”<sup>35</sup> In Mexico, “homosexuality attracts wide social disapproval”. The traditional concept of the family, consisting of a married couple with children, is what many men, both homosexual and heterosexual, strive for in Mexico. Information about homosexuality is generally unavailable and myths and superstitions about homosexuals pervade Mexican society<sup>36</sup>. There appears to be a “conspiracy of silence” among gays and lesbians to avoid confrontation<sup>37</sup>. Additionally, there is “ignorance” of lesbianism in Mexican society, where most expect women to remain true to their historically traditional role as homemaker of the household<sup>38</sup>. Many men who are homosexual take pains to keep their relationships with other men covert. Sociologists have documented how many men try to present a front of heterosexuality with friends, family and especially coworkers<sup>39</sup>. The only men who appear to mix openly in gay circles or cohabit with a lover are those who have “frequent same-sex sexual contact”<sup>40</sup>.

As for the few homosexual rights groups that exist in Mexico, it appears as if most are currently more focused on civil rights than on employment rights.

Little information on the status of gays and lesbians in Chile is available. However, the information that can be found seems to indicate that although gay groups exist, homosexuality is not considered acceptable social behavior. A conservative military dictatorship led by Augusto Pinochet ended only recently, and the presence of the military in Chilean politics and society is perhaps one explanation of the current state of affairs in this South American country.

### Legal Outlook

Legally, the situation in these four countries closely mirrors the current social acceptance of homosexuality. In most Latin American countries, homosexual acts are not criminal acts. According to one sociologist, Latin Americans view homosexuality “more as ridiculous than criminal”<sup>41</sup>. Brazil is the most legally accepting of homosexuality, followed by Argentina, Mexico and Chile.

Brazil, the most liberal of the four countries studied, decriminalized homosexuality in 1823. Currently, homosexuality is only illegal in the Brazilian military. Brazil is more legally accepting of homosexuality than 26 states in the United States. In 1991, Salvador, Brazil’s fourth largest city, became the first in Latin America to ban discrimination based on sexual orientation. By 1994, 73 cities and towns, 3 states and the federal capital district protected gays and lesbians from discrimination<sup>42</sup>. In 1998, the President of the Brazilian Supreme Court announced he supported amending the constitution to support registered domestic partnerships and allowing gays and lesbians to serve in the military<sup>43</sup>. Despite the amelioration of the legal environment for gays and

lesbians in Brazil, there have been some legal setbacks. In 1997, a civil union law was derailed in the Brazilian parliament due to strong opposition from the Roman Catholic Church, which claimed the bill was immoral and “violated God’s law”<sup>44</sup>. Police harassment of gays and lesbians exists under the pretext of “safeguarding morality and public decency”<sup>45</sup>.

In Argentina, the situation for gay and lesbians is slowly improving in the capital, yet gays and lesbians still face discrimination and persecution because of their sexual preference. Argentine police, as late as 1996, used “police edicts” to harass and arrest visible gays, lesbians and transvestites in Buenos Aires<sup>46</sup>. However, despite this discrimination, government and labor unions have made Argentina a very progressive country for gay and lesbian employees by Latin American standards. On August 30, 1996, the city of Buenos Aires approved a measure forbidding discrimination on the basis of sexual orientation, among other criteria, making Buenos Aires the first Spanish-speaking city in Latin America to do so<sup>47</sup>. In 1997, Rafael Freda and Eduardo Vazquez, exploiting a loophole in an employment benefits policy, became the first gay couple in Argentina to be awarded domestic partner health benefits from a teacher’s social security provider. In 1998, four Argentine labor unions extended National Security System medical benefits to same-sex partners<sup>48</sup>. Although the legal situation outside the capital for gays and lesbians may be quite different, Buenos Aires has one of the most progressive employment laws for gays and lesbians in the region.

As opposed to Buenos Aires, Mexican law does not recognize employment rights for gays and lesbians. Although no state in Mexico criminalizes homosexuality, the Mexican legal system is not friendly to gays and lesbians. Corrupt police officers, like in

other Latin American countries, have been known to bend “public decency laws” to harass homosexual citizens. A majority of openly gay men surveyed in Mexico City reported experiencing police extortion<sup>49</sup>. The legal environment in Mexico does not have many provisions protecting gay and lesbian employees.

In Chile, laws protecting gays and lesbians still do not exist. Only in 1998 did Chile decriminalize same-sex sexual relations between consenting adults<sup>50</sup>. There are no laws currently prohibiting discrimination and there is no record of gays and lesbians receiving employment benefits for their domestic partners.

### Overall

Clearly, the situation in Latin America varies by country. However, a general trend does seem clear. Over time, the legal protections of gays and lesbians have increased as more people self-identify as gay and lesbian and more gay and lesbian organizations are founded. In a few cities, gay and lesbian employees are protected from discrimination and in a few limited cases, they are even successful in securing domestic partner health benefits from their employer. In general, however, the legal protections afforded to gays and lesbians are limited to large cities in Brazil and Argentina. Discrimination and harassment are still regular occurrences for many gays and lesbians in the region, and publicly self-identifying as a sexual minority continues to be a risky proposition for many.

The following chart summarizes the situation both legally and social/culturally in the region. On a relative scale of 1 to 10 with 10 being the best and 1 being the worst, each country has received the author’s subjective assessment of its openness to gay and lesbians.

	<b>Legal</b>	<b>Social/Cultural</b>	<b>Overall</b>
Brazil	<ul style="list-style-type: none"> <li>• Homosexuality legal since 1823</li> <li>• Non-discrimination laws in at least 73 cities/towns, 3 states and capital district</li> </ul>	<ul style="list-style-type: none"> <li>• At least 53 gay organizations in 1994</li> <li>• Accepted in large cities</li> <li>• Self-identification among young middle class prevalent</li> </ul>	<b>10</b>
Argentina	<ul style="list-style-type: none"> <li>• Non-discrimination clause in capital</li> <li>• Private organizations permit limited domestic partner benefits</li> </ul>	<ul style="list-style-type: none"> <li>• Gay groups slowly increasing in number, after being suppressed by military dictatorship</li> <li>• Social stigma of self-identification high</li> </ul>	<b>7</b>
Mexico	<ul style="list-style-type: none"> <li>• Homosexuality is not considered a crime</li> <li>• Homosexuality essentially ignored in legal code</li> </ul>	<ul style="list-style-type: none"> <li>• Limited self-identification</li> <li>• Social stigma of self-identification runs high in employment</li> </ul>	<b>4</b>
Chile	<ul style="list-style-type: none"> <li>• Homosexuality de-criminalized in 1998</li> </ul>	<ul style="list-style-type: none"> <li>• Harassment and discrimination common</li> <li>• Gay advocacy groups in infancy</li> </ul>	<b>1</b>

Now that the situation in Latin America for gay and lesbian employees has been described, it is possible to formulate a hypothesis, based on the legal, economic and social/cultural model presented earlier, as to why American firms operating in Latin America may or may not extend to their Latin American employees domestic partner benefits.

### **Employment Benefits in Latin America: A Hypothesis**

Upon examining the social/cultural and legal environment in Latin America and comparing the situation in this region to that in the United States, it is difficult to imagine why a Latin American subsidiary of an American firm would offer same sex domestic partner benefits to Latin American employees. Legally, there is currently no requirement in any Latin American country studied for firms not to discriminate against

gay or lesbian employees, let alone offer domestic partner benefits. Although it is true that many Brazilian cities, three Brazilian states and Buenos Aires, Argentina outlaw discrimination against gays and lesbians, they make no provision for providing domestic partner benefits. Economically, there is also little reason why firms would offer domestic partner benefits to their Latin American employees. The economic situation in many Latin American countries is bleak. Companies are having little trouble attracting or retaining employees in these regions as unemployment has reached all-time highs in countries like Argentina. Additionally, the state in many Latin American countries takes it upon itself to provide health insurance to its population, removing the onus of providing benefits from employers. The strongest reason for implementing progressive employee benefits in Latin America is probably social/cultural in nature. Because companies like Levi Strauss in the United States claim that “fairness” is a primary motivator in their decision to implement same sex domestic partner benefits in the United States, it is possible that if a company’s non-discrimination clause extends to Latin America, then it may also offer these benefits to Latin Americans as well out of fairness. However, because there are not many gay and lesbian employee groups in Latin America as there are in the United States, and because there is little political mobilization of gay and lesbian individuals, it is doubtful social and cultural factors will strongly influence American firms operating in Latin America.

### **Survey Results**

The following section details the results of the survey. Overall, the survey results revealed that if a company instated a non-discrimination clause that included the words

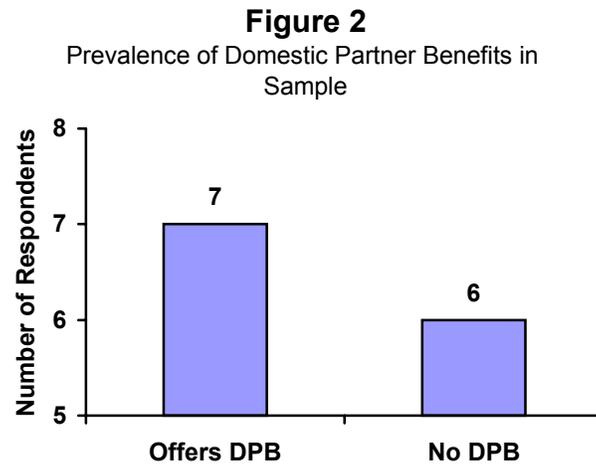
“sexual orientation” in the United States, that same non-discrimination clause also applied in the four Latin American countries studied. In regards to domestic partner health benefits, most of the companies studied extended those benefits to American expatriates working in their Latin American offices who also qualify for the benefits in the United States, but did not offer domestic partner benefits to Latin American nationals working in their Latin American offices. Analyzing the respondents by country affiliates revealed no significant differences. The first few sub-sections will first look at the respondents’ policies in the United States, and the second sub-section will analyze the respondents’ policies in the four Latin American countries studied.

#### Respondents & US Policies

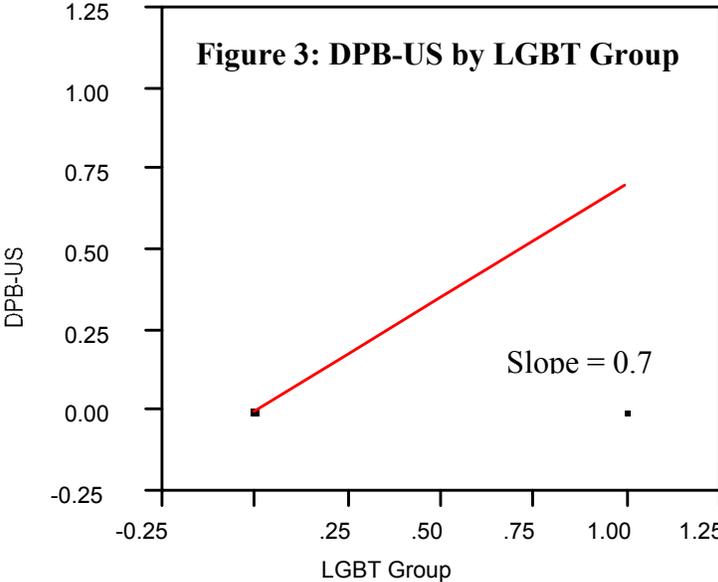
The response rate for this survey is 46% and should be considered a random sample size of the original 28 companies to which a survey was sent. The chart below lists the 13 respondents to the survey and the status of their employment policies in the United States. A majority of respondents offer both same-sex domestic partner benefits and have a policy of non-discrimination that includes the words “sexual orientation”.

Company Name	“Sexual Orientation” in non-discrimination clause <sup>51</sup>	Same-sex Domestic Partner Benefits offered in US <sup>52</sup>
3M	Yes	No
Chevron/ Texaco	Yes	Yes
Coca-Cola	Yes	Yes
Dow Chemical	Yes	No
Du Pont	Yes	No
Ford Motor	Yes	Yes
General Electric	Yes	No
IBM	Yes	Yes
Ingram Micro	Yes	No
Johnson & Johnson	Yes	No
JP Morgan Chase	Yes	Yes
Motorola	Yes	Yes
Xerox	Yes	Yes

Figure 2, which follows, illustrates that a narrow majority of the respondents offered domestic partner benefits in the United States.



A regression analysis was performed on the survey respondents to determine whether the presence of a Lesbian, Gay, Bisexual or Transgender (LGBT) employee group had a significant determination on the prevalence of domestic partner benefits in the same company. Of the 13 respondents, 10 companies have a registered employee LGBT group while 3 do not. The regression analysis, visible in figure 3, illustrates that if a company has a US –based LGBT group, it has a 70% chance of offering domestic partner benefits in the United States<sup>53</sup>. Clearly, as is visible from this sample of 13 companies, the presence of an LGBT group makes a difference as to whether a company offers US employees same sex domestic partner benefits.



Respondents & Latin American Policies

The following charts and graphs illustrate the results of the survey. The data has been aggregated to maintain the anonymity of survey respondents. Understandably, firms that do not offer domestic partner benefits in the United States also do not offer domestic partner benefits to partners of the same sex in Latin America. Figure 4 below illustrates that all 13 of the companies surveyed extend their non-discrimination clause that includes the words “sexual orientation” to their employees in Latin America.

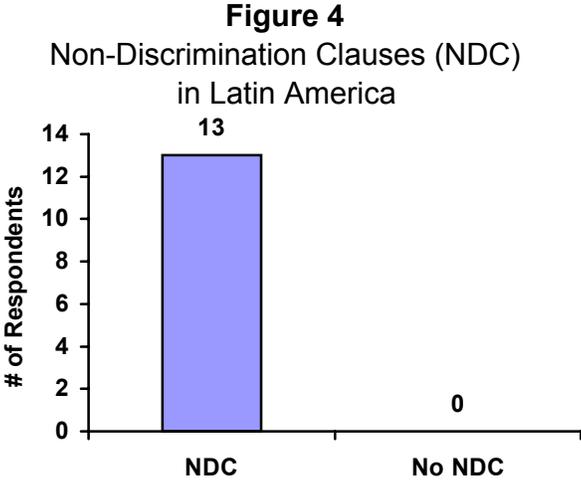


Figure 5 illustrates that of the 7 companies that offer domestic partner benefits in the US, 6 extend these benefits to American expatriates working in Latin America (86%). Of these 7 companies, only one of them extends domestic partner benefits to Latin American nationals in their Latin American operations (14%). One company offered domestic partner benefits to both expatriates and to Latin American nationals. Additionally, one company did not offer benefits to either expatriates or nationals in Latin America.

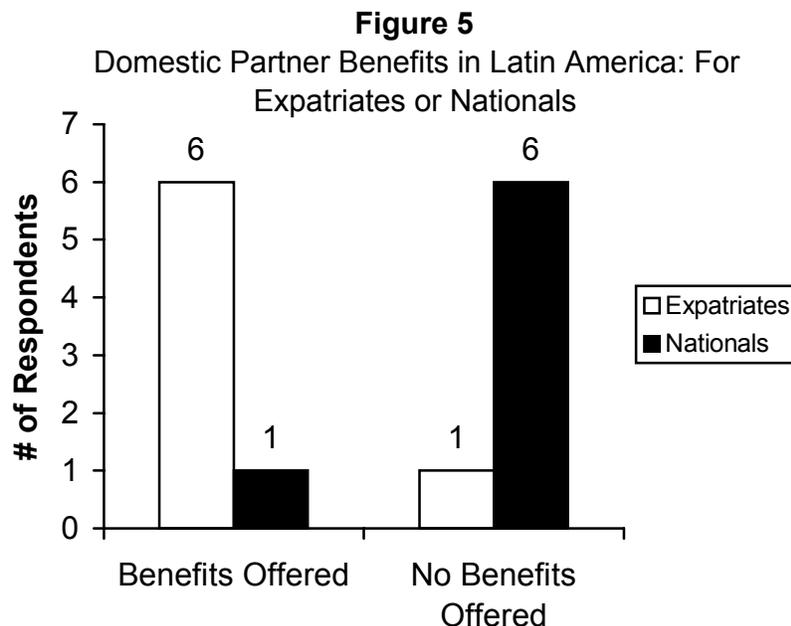
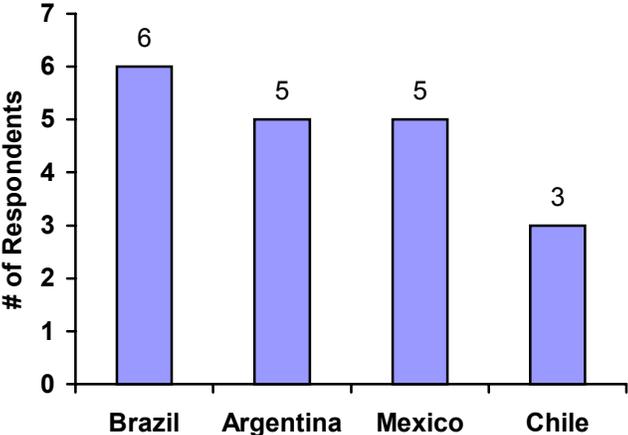


Figure 6 below illustrates in which countries in Latin America these seven companies have their offices. 6 of the 7 companies that offer domestic partner benefits in Latin America have offices in Brazil, 5 have offices in Mexico and Argentina, and 3 have offices in Chile. Three of the companies have offices in all four countries. Unfortunately, the sample size is too small to run a multiple regression test to determine whether the location of the offices significantly affects whether or not a company offers

domestic partner benefits in a country to its nationals or expatriates. Anecdotally, however, it is interesting to note that the only firm that offered domestic partner benefits to both its expatriates and the Latin American nationals working in its offices had offices in all four of the countries studied. In comparison, the firm that did not offer benefits to either expatriates or nationals had offices only in Mexico and Brazil.

**Figure 6**  
Offices in Latin American Countries



The results of the survey illustrate that if a firm offers domestic partner benefits to its employees in the United States, it will likely offer those same benefits to an employee if he or she travels to the company’s offices in Latin America. Additionally, the survey also revealed that a company is unlikely to offer domestic partner benefits to Latin American nationals working in the company’s Latin American subsidiaries. The following section will offer conjectures as to why these results have been observed.

## **Conclusions**

The results of the study demonstrate that expatriates are likely to receive same sex domestic partner benefits, but their Latin American counterparts are not. It appears as if the original hypothesis is correct. Using the same framework that has been used to analyze the situation in the United States, it is possible to offer conjectures as to why Latin American nationals do not receive domestic partner benefits by looking at the legal, economic and social/cultural aspects of the Latin American countries studied.

Overwhelmingly, the available evidence seems to illustrate that it is the absence of laws mandating companies to implement domestic partner benefits, the hesitancy of individuals to self-identify as gay or lesbian in large numbers and the corresponding lack of politically powerful gay organizations, as well as the poor economic situation in Latin American countries that have contributed to the absence of domestic partner benefits in the region. Indeed, one can note the absence in Latin America of the factors that have led to the prevalence of domestic partner benefits in the United States: laws mandating domestic partner benefits, a tight labor market, and a changing definition of the family as well as strong LGBT representative employee groups.

### Legal Explanations

One possible explanation of the absence of domestic partner benefits in Latin America is the absence of laws mandating such benefits. It is easy to observe the difference in legal environments between the United States and Latin America in this regard. As has been previously noted, there are many legal jurisdictions in the United States that not only provide domestic partner benefits to employees in the public sector, but also mandate that private employers based in their jurisdiction do the same. Laws of

a similar nature are completely absent from the Latin American scene. One can easily make the case that in the United States these laws are primarily responsible for the prevalence of same-sex domestic partner benefits. A majority of firms that offer these benefits do so for legal reasons<sup>54</sup>. In the absence of similar laws in Latin America, it is not difficult to see why the same sex domestic partner benefits are not offered to Latin American nationals by American firms.

#### Economic Explanations

The economic situation in Latin America is poor, to say the least. It has been shown in the United States that in tight labor markets, firms offer more employment benefits to attract and maintain employees. In the absence of a tight labor market, firms have less of an incentive to offer new employee benefits, such as same sex domestic partner benefits, because recruitment and retention are no longer difficult. In Latin America, the unemployment rates in all four countries are much higher than the United States. In Argentina, unemployment in 2001 stood at 18.3%<sup>55</sup>, in Brazil unemployment in 2000 was 5.58%<sup>56</sup>, in Chile unemployment was at 9.2% in 2000<sup>57</sup>, while in Mexico official unemployment in 2000 stood at 2.2%<sup>58</sup>. These unemployment rates are not near the full employment rate. Unlike in the United States, employment benefits probably would not be offered in Latin America due to the absence of a tight labor market.

Related to this argument is the lack of competition between firms for qualified laborers. It has been observed in the United States that when one company in an industry extends domestic partner benefits to its employees, many competitors quickly follow suit. This frequently occurs in the airline, management consulting, accounting and telecommunications industries. For example, two years after United became the first

major airline to offer domestic partner benefits, nine of the ten US passenger airlines followed suit with similar benefits. In Latin America, that fact that few firms offer domestic partner benefits means competitors have little incentive to follow suit<sup>59</sup>.

An additional economic reason firms in Latin America may not offer same-sex domestic partner benefits is that the government in Latin America generally provides health benefits<sup>60</sup>. As such, there is neither a need nor an incentive for firms to extend additional health coverage to Latin American employees. Indeed, while one argument in the United States for same sex domestic partner health benefits is that it will cover a sector of the population that would not otherwise be insured, this argument is not as strong in Latin America.

Another economic reason why same sex domestic partner benefits are not offered in Latin America is because of the simple fact that health benefits are expensive. One economist notes, “the biggest obstacle to widespread domestic partner benefit coverage is related to concerns about high labor costs from increased benefit spending”<sup>61</sup>. Indeed, healthcare tends to be the highest source of labor costs aside from wages<sup>62</sup>. The cost alone in Latin America of same sex domestic partner benefits may be enough to prevent American employers from offering them to their Latin American employees.

The economic situation in Latin America clearly differs from that in the United States, and can be considered a key reason why domestic partner benefits are not available to Latin American nationals in this study.

#### Social/Cultural Explanation

The social/cultural explanation is also a very potent argument as to why domestic partner benefits are not very prevalent for Latin American employees. Latin Americans,

as opposed to Americans, appear to be less likely to publicly self-identify as gay. In Brazil or Argentina, this could be partially due to the fear of social stigma and the fear of upsetting delicate parent-child relationships that tend to be strong in the region. In Mexico, it could also be partially due to a fear of discrimination in employment or harassment by the local police. In Chile, it could be the fear of imprisonment, for homosexuality was only decriminalized in 1998. Regardless, it is without doubt that individuals in Latin America do not self-identify as a sexual minority as readily as their American counterparts. This is even truer in the Latin American workforce, where employment discrimination is more costly for individuals in a poor labor market. The absence of a critical mass of employees who self-identify as gay or lesbian probably translates to weaker political power for those who do so.

Political power is important for gay and lesbian employees because it has been shown to significantly affect employment policies in the workforce for these employees. This study has shown that employers in the United States with a gay or lesbian constituent organization are much more likely to offer domestic partner benefits. One possible reason is the political pressure brought to bear by these groups. In the United States, employee groups using shareholder resolutions have pressured companies to change their employment policies. For General Electric, McDonald's, ExxonMobil, and Johnson & Johnson, shareholder resolutions brought by LGBT employee groups and other gay and lesbian political groups have forced these companies to change their employment policies<sup>63</sup>.

In Latin America, it is the conspicuous absence of these political action groups, probably caused by the social stigma of self-identification that can partially explain the

absence of employment policies that benefit gays and lesbians. Until such groups gain political power and the ability to pressure corporations, it is unlikely American firms will offer domestic partner benefits to Latin American nationals.

Clearly, the situation in Latin America in the legal, economic and social/cultural arenas is very different from that in the United States. In Latin America, the absence of employment laws that benefit gays and lesbians, the lack of an economic motivation to offer new employment benefits to gays and lesbians, and the dearth of active gay and lesbian political representation that have probably contributed to the results observed in this study.

### **Final Thoughts**

The situation for gay and lesbian Latin American employees has not changed dramatically over the past few decades. Indeed, what has changed for gay and lesbian Latin Americans is the legal and social atmosphere in a few large Latin American cities like São Paulo and Buenos Aires. For the denizens of these cities, recent ordinances that have banned discrimination based on sexual orientation are a potential harbinger of improvements in the employment situation in the future. It is possible that the legal and social/political environment in Latin America is proceeding along the same path that was taken in the United States in the 1980's and 1990's. Increased gay and lesbian visibility in these large cities pressures governments to enact employment laws that benefit gays and lesbians. When these laws lead to domestic partner benefits in the public work place the same benefits in the private workplace eventually follow. At least, this has been the case in the United States. In order for a similar situation to occur in Latin America, the

economic situation must improve and the political and social visibility of gay and lesbian individuals must rise. If and when these changes occur, it will only be a matter of time until gay and lesbian Latin Americans receive progressive employment benefits in their workplace.

## Appendix 1

The is the survey sent out to the 28 selected companies:

Dear [Company],

I am writing to ask for your assistance in regards to employment policies at [company] for LGBT individuals. I am a student in the Wharton School of Business at the University of Pennsylvania conducting a study into corporate practices towards LGBT people in Latin America. I was hoping you could help me obtain some information about [company]'s affiliates in Latin America.

[company] currently has a non-discrimination policy that includes the words "sexual orientation" as well as domestic partner benefits for partners of the same sex in the United States [the survey did not mention domestic partner benefits if the company did not offer them].

My question to you is whether these benefits apply to:

- 1) American employees working as expatriates in your Latin American affiliates, especially [Argentina, Brazil, Chile or Mexico, if applicable].
- 2) Latin American nationals working in those countries

I would appreciate an answer to my inquiry as soon as you can.

Please respond to this email (guym@wharton.upenn.edu) or call at 215-746-2108. Many thanks for your assistance in this matter.

## Endnotes

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- <sup>2</sup> IBID. pg. 18.
- <sup>3</sup> IBID.
- <sup>4</sup> The International Lesbian and Gay Association. World Legal Survey. [http://www.ilga.org/Information/legal\\_survey](http://www.ilga.org/Information/legal_survey), March 2002.
- <sup>5</sup> Forbes Magazine. Forbes 100 Largest US Multinationals 2000, <http://www.forbes.com/lists>, February 2002.
- <sup>6</sup> Human Rights Campaign. HRC Worknet Database, [http://www.hrc.org/worknet/asp\\_search/detail\\_search.asp](http://www.hrc.org/worknet/asp_search/detail_search.asp), February 2002.
- <sup>7</sup> West, Donald J. and Green, Richard. Sociolegal Control of Homosexuality: A Multination Comparison, Plenum Press, New York, 1997, pg. 164.
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- <sup>10</sup> Hostetler, Dennis and Pynes, Joan E. "Domestic Partnership Benefits: Dispelling the Myth" in Review of Public Personnel Administration, Winter 1995, pg. 41.
- <sup>11</sup> Human Rights Campaign, Op. Cit., pg. 5
- <sup>12</sup> IBID. pg. 19.
- <sup>13</sup> IBID.
- <sup>14</sup> Hostetler, Dennis and Pynes, Joan E. Op. Cit., pg. 44.
- <sup>15</sup> IBID. pg. 47.
- <sup>16</sup> IBID. pg. 44.
- <sup>17</sup> IBID. pg. 47.
- <sup>18</sup> Human Rights Campaign. Op. Cit., pg. 6.
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- <sup>22</sup> Hostetler, Dennis and Pynes, Joan E., Op. Cit., pg. 56.
- <sup>23</sup> Knowles, Robert G. "Fifty Firms Offer Partner Benefits: Hewitt Study" in National Underwriter, August 24, 1995, pg. 13.
- <sup>24</sup> Anfuso, Dawn. Op. Cit.
- <sup>25</sup> IBID.
- <sup>26</sup> Greenwald, Judy. "San Diego offers domestic partner benefits" in Business Insurance, June 13, 1994, pg. 6.
- <sup>27</sup> Anfuso, Dawn. Op. Cit.
- <sup>28</sup> Kane, Sara Wyn. Op. Cit., pg. 25.
- <sup>29</sup> Author Unkown. "Living La Vida Loca" in The Economist, December 18 – December 24, 1999, pp. 81-83
- <sup>30</sup> The International Gay and Lesbian Association. "Brazil" in World Legal Survey, [http://www.ilga.org/Information/legal\\_survey/americas/brazil.htm](http://www.ilga.org/Information/legal_survey/americas/brazil.htm), April 2002.
- <sup>31</sup> Murray, Stephen O. Male Homosexuality in Central and South America, Instituto Obregón, San Francisco, CA and GAU-NY, New York, 1987, pg. 24.
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- <sup>36</sup> IBID.
- <sup>37</sup> IBID. pg. 89.
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<sup>39</sup> IBID. pp 88-89.

<sup>40</sup> IBID.

<sup>41</sup> Murray, Stephen O. *Op. Cit.*, pg. 26.

<sup>42</sup> The International Gay and Lesbian Association. "Brazil" in *World Legal Survey*, [http://www.ilga.org/Information/legal\\_survey/americas/brazil.htm](http://www.ilga.org/Information/legal_survey/americas/brazil.htm), April 2002.

<sup>43</sup> IBID.

<sup>44</sup> IBID.

<sup>45</sup> IBID.

<sup>46</sup> The International Gay and Lesbian Association. "Argentina" in *World Legal Survey*, [http://www.ilga.org/Information/legal\\_survey/americas/argentina.htm](http://www.ilga.org/Information/legal_survey/americas/argentina.htm), April 2002.

<sup>47</sup> IBID.

<sup>48</sup> IBID.

<sup>49</sup> The International Gay and Lesbian Association. "Mexico" in *World Legal Survey*, [http://www.ilga.org/Information/legal\\_survey/americas/mexico.htm](http://www.ilga.org/Information/legal_survey/americas/mexico.htm), April 2002.

<sup>50</sup> The International Gay and Lesbian Association. "Chile" in *World Legal Survey*, [http://www.ilga.org/Information/legal\\_survey/americas/chile.htm](http://www.ilga.org/Information/legal_survey/americas/chile.htm), April 2002.

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<sup>52</sup> IBID

<sup>53</sup> In the regression analysis, a value of 0.00 represents either the absence of an LGBT group or the absence of domestic partner benefits in the US. 1.00 represents the presence of an LGBT group or the presence of domestic partner benefits in the United States.

<sup>54</sup> Human Rights Campaign. *The State of the Workplace 2001*. The Human Rights Campaign Foundation, 2001, pg. 19.

<sup>55</sup> "Argentina" in *ISI Emerging Markets*. <http://www.securities.com>, April 17, 2002

<sup>56</sup> "Brazil" in *ISI Emerging Markets*. <http://www.securities.com>, April 17, 2002

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<sup>58</sup> "Mexico" in *ISI Emerging Markets*. <http://www.securities.com>, April 17, 2002

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