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2010 may bring historic employment protections

Since the passage of Title VII of the Civil Rights Act of 1964, federal laws have protected employees from discrimination based on race, color, gender, religion and national origin, with further protections for age and disability added through subsequent statutes.



Stephanie Sipe

These laws prohibit employers from using a person's classification in one of these protected categories as the basis for making any decision that affects the terms and conditions of an employee's work, and they provide additional protections to employees who may suffer from harassment or retaliation in relation to these protections.

Further, states and local governments are free to expand these protections, and 21 states have enacted protections for sexual orientation, and 12 states have enacted

protections for gender identity.

The issue of lesbian, gay, bisexual or transgender discrimination has been politically charged, and federal laws currently do not provide these expanded protections. That permits employers in the majority of states to use a person's sexual orientation or gender identity as a basis for making an employment decision.

However, that may all change if the Employment Non-Discrimination Act (ENDA) is passed in 2010 as expected.

ENDA has been proposed and rejected in nearly every congressional term since 1994, but with the change in Congress that has resulted in a Democratic majority, experts believe ENDA stands its best chance ever of being enacted into law this year.

In June 2009, U.S. Rep. Barney Frank, D-Mass., introduced a bill to ban workplace discrimination based on sexual orientation and gender identity. This bill,

... 21 states have enacted protections for sexual orientation, and 12 states have enacted protections for gender identity.

H.R. 3017, is pending before the House Education and Labor Committee.

A similar bill was introduced to the Senate in August 2009. Each bill has bipartisan support and is expected to receive a majority vote, although a crowded congressional schedule may impact the timing of ENDA's passage.

Although this proposal has been controversial in the past, with opponents arguing that sexual orientation is a "lifestyle" choice and not an "identity" entitled to equal protection under the U.S. Constitution, evidence suggests that federal law is actually lagging behind business practices.

Research shows that among Fortune 500 companies, 85 percent (even conservative giant Walmart) have non-discrimination

policies that include sexual orientation.

Proponents of the statute argue that the United States prides itself on the principle that persons should be judged on merit and ability, not other extraneous factors. They say a person's sexual orientation is no more related to his or her ability to perform the essential functions of a job than race, color, religion, gender or other protected categories.

According to Stuart J. Ishimaru, acting chairman of the U.S. Equal Employment Opportunity Commission, allowing employment discrimination permits society to "cheat itself out of the contributions of very able and talented individuals."

With increasing international competition, he said, America does not "have the luxury of wasting talent or allowing workplace hostility

to overtake productivity and teamwork." This is from a Sept. 23 statement before the House Committee of Education and Labor.

If EDNA does pass as anticipated, employers with 15 or more employees are likely to be responsible for ensuring that members of the lesbian, gay, bisexual and transgender community are protected from explicit denial of employment, promotion or career-enhancing assignments because of that individual's sexual orientation or gender identity as well as from the use of anti-gay epithets to harass or belittle employees.

This will be a marked change from past legal requirements, and it will be important for employers to make sure all employees are aware of EDNA's requirements.

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