Still waiting for federal protection of LGBT employees

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Current federal law makes it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex, national origin, age, disability or genetic information. Sexual orientation and gender identity, however, remain unprotected classes. As a result, lesbian, gay, bisexual and transgendered (LGBT) employees continue to face discrimination, are denied job opportunities, and can legally be fired simply because of their sexual orientation or gender identity.

Many businesses have taken the lead by implementing workplace anti-discrimination policies. As of March, 87 percent of Fortune 500 companies had implemented nondiscrimination policies that include sexual orientation, and 46 percent had policies that include gender identity, according to The Human Rights Campaign. Why? A 2011 study by The Williams Institute at the UCLA School of Law says such policies make good business sense by increasing companies’ ability to recruit and retain qualified employees and can improve the productivity and satisfaction of employees.

Most states have followed suit by enacting legislation to include sexual orientation and gender identity in their employment discrimination laws.

However, no federal legislation exists that governs and binds each state. In 29 states it remains legal to discriminate based on sexual orientation, and in 37 states it is legal to do so based on gender identity or expression.

The Employment Non-Discrimination Act (ENDA) is a proposed federal bill that would prohibit discrimination against employees on the basis of sexual orientation or gender identity. First introduced into Congress in 1994, ENDA was originally drafted only to ban employment discrimination based on sexual orientation. ENDA was revised in 2007 to include gender identity under its protected classes. The revised version of ENDA died in committee and was revised and re-purposed later that year. The second version of ENDA to come before Congress in 2007 did not include protections for transgender people.

There are two basic schools of thought behind ENDA. Some believe that a “sexual orientation only” bill has a better chance of being enacted, thus providing protection at least to the LGB community. The other view is that ENDA should provide protection for the entire LGBT community, as it does in the current proposed legislation, and that transgender people necessitate protection from employer discrimination just as much, if not more, than most people in the LGB community.

On April 6, U.S. Rep. Barney Frank, D-Mass., only the second openly gay member of the House of Representatives, reintroduced the bill to Congress.

Whether or not the latest version of ENDA (which prohibits employment discrimination on the basis of actual or perceived sexual orientation or gender identity) will pass into legislation is difficult to say. The best barometer one can use is political and social climate.
With more and more states enacting legislation that serves identical ends to those sought under ENDA, Congress falls further and further behind the times.

We have just entered into a new decade, the third since ENDA was first introduced to Congress. While it cannot be said with any certainty that we will see ENDA enacted in 2011, indications tend to favor the bill. The repeal of the military’s “Don’t Ask Don’t Tell” policy certainly provides positive reinforcement to those senators and representatives who have tirelessly championed ENDA since 1994.

Proponents of ENDA have shown little willingness to compromise on the terms of the bill — although ENDA was briefly proposed without offering protection for transgender people; it has provided such protection for most of its legislative life and does today. The senators and representatives behind ENDA have shown unwavering poise and dedication, and when their dedication pays off it will be a huge step in the history of U.S. human rights.

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