

PUBLICATION

Senate Passes Bill Banning Workplace Discrimination based on Sexual Orientation and Gender Identity

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Yesterday, by a vote of 64 to 32, the United States Senate passed the Employment Non-Discrimination Act (ENDA), which would ban employers from firing, refusing to hire or discriminating against workers or job applicants based on their actual or perceived sexual orientation or gender identity. Religious organizations are provided an exception from this protection, similar to that found in the Civil Rights Act of 1964. Non-profit membership-only clubs, except labor unions, are also exempt.

Federal law already protects individuals from discrimination based on gender, age, race, national origin, religion, and disability. The prohibition against gender discrimination, until now, has not included sexual orientation or protected transgendered individuals. Advocates believe that this law will place all employees on a more equal footing and ensure that workplace decisions are made based on legitimate workplace needs.

The bill, which would apply to employers with 15 or more workers, provides similar remedies to those available under other employment non-discrimination laws, such as rehire, back pay, attorney's fees, compensatory and punitive damages. The law would not create a cause of action for disparate impact, meaning that employees would not be able to sue claiming that a facially non-discriminatory policy has the unintended impact of discriminating against employees based on their sexual orientation or gender identity.

Currently, more than 20 states and the District of Columbia have state laws prohibiting workplace discrimination based on sexual orientation. Most of those also bar discrimination based on sexual identity.

Though passed by a largely supportive Senate, ENDA will face a steep hurdle in the Republican-controlled and more conservative House of Representatives. Top GOP leaders have expressed concern that EDNA will be overly broad and will cause an increase in litigation against employers.

Whether or not ENDA ultimately passes and becomes law, we always recommend and believe that it is in the best interest of any employer to base employment decisions on legitimate non-discriminatory and job-related reasons.

For questions about these or any employment-related issue, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.