



Anti-bias protection for gay workers lacks traction

By Philip Walzer
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A call came in to Equality Virginia, a statewide gay advocacy group, from a Hampton man a few months ago. He was being harassed by his co-workers, he said. They mocked him by lisping and waving limp wrists. They shut down his computer when he left.

He complained to the people in Human Resources, but they told him there was nothing they could do: It's not illegal to discriminate against gay people in the workplace in Virginia.

They're pretty much right.

Federal laws ban office discrimination based on factors such as age, race, color, religion and gender. But "there's no federal law protecting against discrimination against sexual orientation, and there's no Virginia state law," said John Bredehoft, an attorney with Kaufman & Canoles in Norfolk.

Gov. Timothy M. Kaine last year renewed an executive order banning discrimination against sexual orientation in state offices. But "unless you're a state employee, you're not in a protected category under Virginia law," said Norfolk lawyer Michael B. Hamar. "You're open game."

A bill advancing through Congress seeks to protect gay people in the workplace. Observers doubt it will get passed soon. Last month, the House passed the Employment Non-Discrimination Act, which would prohibit an employer from firing, refusing to hire or otherwise discriminating against someone based on "actual or perceived sexual orientation." To quell opposition, supporters carved out a religious exemption and dropped references to transgender people. But the first change hasn't won over conservatives; the second diluted support from gay groups.

The House approved the bill, 235-184. Local legislators split along party lines: Republicans Randy Forbes and Thelma Drake opposed it; Democrat Bobby Scott supported it.

In a related issue, House and Senate negotiators last week agreed to drop a controversial provision attached to a defense bill that would have expanded hate crime laws to include gay people. Nevertheless, Sen. Edward Kennedy, D-Mass., a supporter of the Employment Non-Discrimination Act, expects to begin Senate action by January on the workplace bill, said Melissa Wagoner, an aide.

Sen. Jim Webb, a Virginia Democrat, will be a co-sponsor because he believes in "basic notions of fairness for all Virginians, including the belief that discrimination has no place in our society," said spokeswoman Jessica Smith. Republican Sen. John Warner is reviewing the bill, said Bronwyn Lance Chester, a spokeswoman. Don't count on any anti-gay employment legislation getting into the law books anytime soon, said Jesse Richman, assistant professor of political science at Old Dominion University.

If opponents seek a filibuster in the closely divided Senate, Democrats aren't likely to pick off enough Republicans to round up the 60 votes needed to cut off debate, Richman said. And if the bill gets through the Senate and President Bush vetoes it – as an administration official vowed this year – it's unlikely the House and Senate could draw two-thirds support to override the veto.

"I think it will pass eventually," Richman said, "but maybe not for some time."

Matt Foreman, executive director of the National Gay and Lesbian Task Force , also considers the bill a long shot – which is why he sees the deletion of the transgender clause as a premature concession.

“We felt it was politically inexplicable and morally unconscionable,” said Foreman, whose group has withdrawn its support. “Our experience ... is that every time we give up something, that becomes the high-water mark. We keep losing ground.”

Hampton Roads Business OutReach – a coalition of businesses owned by or supportive of gay people – still backs the bill.

“We were unhappy that it excluded the transgendered population,” said Shannon Bowman , a vice president, “but we feel it’s at least a step in the right direction. If we don’t stand behind it the way it’s written now, it might be completely thrown out and everyone would lose.”

On the other side, Victoria Cobb , president of the Family Foundation in Richmond , complained that the bill’s exemptions dealing with religious organizations are not wide enough. “Their goal is to force employers to hire someone whether or not they have a religious objection to homosexuality,” she said.

The U.S. Chamber of Commerce has stayed neutral. “It would be highly unusual for us to support a new way for people to sue our members,” said Michael Eastman , executive director of labor policy. One issue dividing the sides is the extent of discrimination in the workplace against gay people, and whether there has been a history of bias.

To illustrate her position, Cobb complains that the case hasn’t been made that gay people are “systematically disadvantaged as a class.” Foreman counters, pointing to a recent UCLA report that found “consistent evidence” of workplace bias. It cited surveys in the past decade showing that 15 percent to 43 percent of gay men and lesbians faced problems.

At a recent reception of Hampton Roads Business OutReach , a handful of guests said they hadn’t encountered significant work problems.

Bowman, who is a lesbian, said she has avoided discrimination by seeking jobs with “companies that are more liberal-minded.” It’s no problem now because she works for a company she founded, Kaboom Advertising in Norfolk.

But Dyana Mason , executive director of Equality Virginia, said she gets a couple of complaints each month – usually from people in blue-collar jobs who face harassment from colleagues or think they’ve been fired because they’re gay. Mason says she’d get more if there were legal repercussions.

Norfolk attorney Hamar represents a former employee of the Virginia Museum of Natural History in Martinsville who says he was fired after his boss interrogated him about his sexuality . He filed a complaint with the state, saying the firing violated Kaine’s order. Museum officials have denied the allegation. The complaint is pending.

Bredehoff has represented employers or employees for more than 20 years. He counts a handful of complaints from workers who believe they were fired because they were gay. One example: “They told me they fired me because I was late, but they didn’t fire the straight guy.”

“Do I perceive it as an overwhelming problem, given the totality of the work force? No,” Bredehoff said. “Is it a problem for those specified sectors where it occurs? Yeah, it is.”