



Frequently Asked Questions about the Employment Non-Discrimination Act (ENDA)

GENERAL QUESTIONS

What does ENDA do?

ENDA prohibits an employer from using an individual's sexual orientation or gender identity as the basis for adverse or different treatment in employment or employment opportunities. An employer cannot make an employment decision, such as hiring, firing, promotion, training or compensation, based on sexual orientation or gender identity.

Why is ENDA necessary?

ENDA is necessary because lesbian, gay, bisexual and transgender people face serious discrimination in employment, including being fired, being denied promotions and experiencing harassment on the job.

Are there any state or local laws that already address workplace discrimination against lesbian, gay, bisexual and transgender workers?

Twenty states currently have laws making it illegal to fire someone based on their sexual orientation and 12 states protect individuals from discrimination based on their gender identity. Various municipalities have similar ordinances, but coverage is spotty and local ordinances are often underenforced. A strong federal law is needed to provide uniformity of coverage and to close the gaps in state and local law.

Is ENDA modeled after any civil rights laws that are currently in place?

Yes. ENDA is modeled after Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other existing federal discrimination statutes. ENDA generally covers the same entities and provides the same enforcement mechanisms and remedies as Title VII.

Are lesbian, gay, bisexual and transgender workers singled out in this legislation?

No. ENDA protects heterosexuals, lesbian, gay, bisexual, transgender and non-transgender people from discrimination in the workplace. All people are protected from discrimination regardless of their sexual orientation and gender identity. Just as men are protected by sex discrimination laws, heterosexuals are protected by ENDA.

Will ENDA lead to an onslaught of frivolous lawsuits?

No. In the states that have already enacted statutes prohibiting employment discrimination on the basis of sexual orientation and gender identity, there has been no onslaught of litigation. In fact, very few cases have been filed. Three General Accounting Office (GAO) studies have shown that discrimination claims by lesbian, gay, bisexual and transgender people in the states with nondiscrimination laws make up a very small percentage of overall discrimination claims. According to a GAO report dated July 9, 2002, relatively few formal complaints of employment discrimination on the basis of sexual orientation have been filed, either in absolute numbers or as a percentage of all employment discrimination complaints in the states. The GAO reported that the percentage of overall claims that alleged discrimination based on sexual orientation or gender identity varied from state to state, ranging from 1.3% to 3.9% of all claims. State discrimination laws have not led to a flood of litigation, but rather have provided appropriate remedies for the modest number of cases of discrimination.

Will ENDA be a burden on businesses?

Similar to Title VII, ENDA specifically exempts businesses with fewer than 15 employees. As for larger companies, corporate America opposes discrimination and has enacted policies protecting its gay, lesbian, bisexual and transgender employees. In fact, as of January 2007, 430 (more than 85%) of the FORTUNE 500 companies had implemented nondiscrimination policies that included sexual orientation, and 121 (nearly 25%) had policies that included gender identity/expression.

Judging employees by the quality of their work is considered a best business practice as it is efficient to retain experienced employees and to hire the best qualified applicants. Corporate America has voluntarily put in place policies prohibiting discrimination against lesbian, gay, bisexual and transgender people for exactly this reason — it's good for business.

EMPLOYERS/COVERED ENTITIES

To whom does ENDA apply?

ENDA applies to the same entities that are covered under Title VII of the Civil Rights Act of 1964. These include private employers with 15 or more employees, federal, state, and local governments, labor unions and employment agencies.

Is there a small business exemption?

Similar to Title VII, private employers with fewer than 15 employees are exempt from compliance with ENDA.

Does ENDA apply to the military?

No. ENDA does not apply to the relationship between the United States government and members of the Armed Forces. Thus, the bill does not affect current law on lesbian, gay, bisexual and transgender people in the military.

Does ENDA affect religious organizations or religious schools?

Some religious organizations may be affected; however, religious and religiously-affiliated entities are exempted in three ways:

1. All houses of worship, missions or schools that have the purpose of religious worship or teaching of religious doctrine are completely exempt for all employees.
2. For religiously-affiliated entities, employees that teach or spread religion, take part in religious governance or supervise those who teach or spread religion are completely exempt.
3. A religiously-affiliated entity can also require all or some employees to conform to religious tenets as set forth by the organization. Requiring employees to conform to religious tenets relating to sexual orientation or gender identity is not prohibited by ENDA.

BASES FOR CLAIMS/RELIEF

What kind of relief is available under ENDA?

ENDA uses the same enforcement mechanisms and remedies as Title VII in most cases. An employee who has faced discrimination may file a complaint with the Equal Employment Opportunity Commission (EEOC). After going through the EEOC process, the employee may file a lawsuit in federal court; if the plaintiff prevails, the employee may receive injunctive relief (such as being reinstated into the job) as well as compensatory and punitive monetary damages to the same extent as available under Title VII. Attorney's fees are also available to the same extent as available under Title VII.

Certain employees, such as employees of the federal government, follow the same remedies available under other federal employment discrimination laws.

Does this bill require employers to provide health benefits to unmarried partners of employees?

No. ENDA does not mandate the provision of health benefits to unmarried partners. In fact, the bill explicitly states that it does not apply to the provision of benefits to an individual's unmarried partner. However, this does not preclude any employer who chooses to provide benefits to unmarried partners from doing so.

NO QUOTAS/SPECIAL RIGHTS

Does ENDA create special rights for lesbian, gay, bisexual and transgender employees?

No. ENDA explicitly prohibits giving preferential treatment to any individual based on sexual orientation or gender identity. Thus, employers may not provide special treatment to lesbian, gay, bisexual, heterosexual, transgender or non-transgender people. The bill provides that an employer may not use an individual's sexual orientation or gender identity as the basis for positive or negative action against that individual in any employment opportunity.

Does ENDA encourage the use of quotas?

No. ENDA explicitly states that employers may not adopt quotas on the basis of sexual orientation or gender identity.

MISCELLANEOUS QUESTIONS

Why does the bill need to protect people who are *perceived* to be gay, lesbian, bisexual or transgender?

Individuals who are *perceived* to be of a certain sexual orientation or gender identity but who are actually not of that sexual orientation or gender identity often face the same discrimination experienced by those who are lesbian, gay, bisexual or transgender. This is similar to the Americans with Disabilities Act, which protects people who are perceived to have disabilities.

Does ENDA protect people who associate with lesbian, gay, bisexual and transgender people from discrimination in the workplace?

Yes. Individuals are often subject to harassment and other job discrimination because of their association with their gay, lesbian, bisexual or transgender family members or friends. ENDA protects these individuals from discrimination.

Will employers still be able to enforce dress standards on the job?

Yes. Under ENDA, an employer may require employees to follow reasonable dress codes and reasonable grooming standards. However, if a person has undergone gender transition before beginning employment or has notified the employer that the individual is undergoing gender transition, the employee must be permitted to conform to the dress code and standards of the gender with which the employee identifies.

Will employers be required to provide separate bathrooms for an employee who is transitioning from one gender to another?

An employer will not be in violation of ENDA as long as an individual who has transitioned to the other gender, or is in the process of gender transition, is able to use the restroom consistent with that person's gender identity.

Will employers be required to provide separate shower or dressing facilities for an employee who is transitioning from one gender to the other?

For shower and dressing facilities in which being seen fully unclothed is unavoidable, an employer is complying with the law if they provide reasonable access to adequate facilities that are gender-neutral or comport with the gender the employee is transitioning to (or has transitioned to).

More questions?

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