

## **Sexual Orientation Frequently Asked Questions**

***Q1: Why did SHRM adopt this statement now?***

**A:** SHRM continuously monitors the policy environment of the federal and state legislatures for emerging HR policy issues. One of the issues that we see gaining momentum in the policy arena is legislative efforts to prohibit discrimination in the workplace on the basis of sexual orientation. SHRM had not taken a position on the sexual orientation issue until the Board's action.

After carefully considering the views of our members and consistent with the Society's bed-rock principle that employment decisions should be made on the basis of an individual's qualifications for a job not on the basis of non-job related characteristics, the SHRM Board believed it should approve a policy statement supporting legislation to prohibit employment discrimination based on sexual orientation.

The Board also believes that this is an opportunity for the Society to demonstrate strong leadership on a significant, national workplace issue and to "set the agenda" for the HR profession.

***Q2: What process for member input and involvement did SHRM undertake in developing this statement?***

**A:** SHRM staff followed the same process in developing the Sexual Orientation statement as we have done with previous public policy statements. In this particular instance, the Government Affairs department partnered with the Knowledge Development department to conduct a "Question of the Week" survey of HR professionals in December 2007. The survey found that 97 percent of respondents believe employment decisions should not be made on the basis of sexual orientation and 80 percent believe SHRM should support federal legislation to prohibit workplace discrimination based on sexual orientation.

The Government Affairs department also hosted eight focus group discussions during SHRM's Annual, Leadership, Strategic, Diversity and Staffing conferences, as well as at state conferences. Finally, we solicited views and advice from the Diversity, Employee Relations, Labor, and Staffing Special Expertise Panels. The information garnered from these meetings and consultations is the basis for the policy statement. All four of the Special Expertise Panels endorsed the statement prior to the board's action.

***Q3: What are the key provisions of SHRM's public policy statement on sexual orientation?***

**A:** SHRM supports public policy efforts to bar workplace discrimination based on sexual orientation. SHRM's public policy position supports the following key principles:

- **Disparate Treatment** – Employers should be prohibited from making employment decisions on the basis of an employee's sexual orientation.
- **Disparate Impact** – Sexual orientation discrimination claims should be based on actual discrimination. Claims should not involve activities, policies or programs

that in design are not discriminatory but that may in practice have a disparate impact on a particular group of individuals.

- **Domestic Partner Benefits** – Employers should not be required by law to provide domestic partner benefits.
- **Religious and Religious-Affiliated Organizations** – To the extent that same sex relationships and sexual orientation issues may be contrary to particular religious beliefs, religious and religious-affiliated organizations should be permitted to make employment decisions on the basis of sexual orientation, if the nature of the employment requires that a position or occupation be filled by an employee of a particular religion or religious belief. This is consistent with other federal civil rights statutes.

**Q4: *Is there legislation currently pending before Congress that would prohibit discrimination on the basis of sexual orientation?***

**A:** Yes. The U.S. House of Representatives passed the “Employment Non-Discrimination Act” (ENDA) by a vote of 235 - 184 in November 2007. The Senate is expected to vote on the bill by August of 2008. ENDA would prohibit discrimination in employment on the basis of individual’s actual or perceived sexual orientation.

**Q5: *Will SHRM endorse the Employment Non-Discrimination Act (ENDA)?***

**A:** Yes. SHRM’s statement is compatible with the intent of the legislation that has passed the House of Representatives in the 110<sup>th</sup> Congress.

**Q6: *Are other employer groups endorsing ENDA?***

**A:** Several employer groups, namely the U.S. Chamber and the National Association of Manufactures, have remained “neutral” on the legislation, thereby removing major resistance to ENDA. The neutral stance is an unusual position for most employer groups; while not an endorsement of the legislation, it is perceived to be a sign of “no objection” to Congress moving forward with the bill. Some HR groups, including the HR Policy Association and the College and University Professional Association for Human Resources, may consider supporting the bill.

**Q7: *What is the White House’s position on ENDA?***

**A:** The White House opposed an earlier version of ENDA because it covered prohibited discrimination based on both sexual orientation and gender identity. In addition, the White House expressed concern that religious organizations (churches, synagogues, mosques, etc.) and religious affiliated entities (hospitals, schools, bookstores, etc.) would be required to comply with provisions that conflict with their religious tenets and beliefs.

Since that time, the gender provision was removed and a religious exception, modeled on the exception in the Civil Rights Act of 1964, was added to ENDA. The White House did issue any type of a statement as the House considered the most recent version of the ENDA legislation.

***Q8: Why does the SHRM statement not cover “gender identity”?***

**A:** While most SHRM members who participated in the development of our sexual orientation statement believed people should not be discriminated against based on their gender identity, there was universal concern expressed over the process to accommodate individuals in transgender situations. Since these accommodation challenges raised so many concerns among supporters and opponents alike, “gender identity” was not included in the SHRM statement.

***Q9: How will SHRM alert its members to the policy change?***

**A:** SHRM has briefed key elements of our volunteer leaders and other member constituencies about this change through conference calls and other information. We will also be announcing this change in the HR News, and at our annual conference.

***Q10: I would like to talk to someone directly about SHRM’s adoption of this statement. Who can I talk with?***

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