



Sexual Orientation

March 2008

Produced by the SHRM® Governmental Affairs Department

Background

Several federal laws—including the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990—protect employees from discrimination in the workplace on the basis of race, national origin, sex, religion, disability, pregnancy and age, but not on the basis of sexual orientation or gender identity. However, the U.S. Supreme Court in the case of *Oncale v. Sundowner Offshore Services* ruled that federal laws banning on-the-job sexual harassment apply when both parties are of the same gender.

Additionally, the following 19 states have laws prohibiting discrimination in employment on the basis of sexual orientation: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington and Wisconsin. Oregon will bar sexual orientation discrimination in employment on January 1, 2008. Also, the following five states prohibit public sector employers from discriminating on the basis of sexual orientation in employment: Delaware, Indiana, Michigan, Montana and Pennsylvania.

Issue

During the past several years, many employers have adopted specific language in their employment policies barring the consideration of sexual orientation and, in some instances, gender identity in their employment decisions. These policies typically apply to the hiring, placement and advancement of employees, as well as other terms and conditions of employment. According to a December 2007 SHRM Question of the Week (QOTW) survey, 97 percent of survey participants believe that employment decisions should not be made on the basis of sexual orientation.

Many employers have extended this approach to their employee benefit plans, offering domestic partner benefits as an incentive to recruit and retain the best employees available. In addition, several state and local governments have enacted laws to require employers to provide coverage to an employee's domestic partner. However, the Employee Retirement Income Security Act (ERISA) preempts state and local employee benefit laws to ensure that plan sponsors are able to establish uniform employee benefit plans covering employees who live in different states.

In 2000, as part of its Fair Employment Practices principles statement, the Society for Human Resource Management (SHRM) adopted a position in support of fair employment policies without regard to a person's sexual orientation. As reflected in the SHRM December QOTW, 80 percent of participants agree that SHRM should support federal legislative efforts to prohibit workplace discrimination based on sexual orientation.

One such effort is H.R.3685, the Employment Non-Discrimination Act of 2007, which would prohibit employers and other organizations from discrimination against individuals on the basis of sexual orientation. The bill would exempt the Armed Forces and religious organizations from coverage.

Status

Rep. Barney Frank (D-MA) introduced H.R. 3685, the Employment Non-Discrimination Act of 2007, on September 27, 2007. H.R. 3685 passed the House by a vote of 235 – 184 on November 7, 2007.

SHRM Position

SHRM is committed to encouraging fair and consistent employment practices in the hiring, training, compensation, benefits, promotion, transfer and termination of workers. SHRM believes that employment decisions should be made on the basis of an individual's qualifications for a job; such as education, experience and demonstrated competencies and abilities; not on the basis of non-job related characteristics, including sexual orientation.

SHRM supports public policy efforts to bar workplace discrimination based on sexual orientation. Any such legislation should be carefully drafted to address this specific issue, while avoiding unintended consequences for employers and employees.

SHRM supports employers that want to provide domestic partner benefits to their employees, but opposes any legislative requirement on employers to offer these benefits. In addition, SHRM believes that the ERISA preemption standard must be maintained and strengthened, including the preemption of state or local efforts to require benefits coverage of an employee's domestic partner.

Talking Points

- SHRM strongly supports fair employment practices and believes that job decisions should be made on the basis of an individual's qualifications, experience and abilities, not on the basis of characteristics such as sexual orientation that have no bearing on job performance.
- SHRM supports public policy efforts to bar workplace discrimination based on sexual orientation.
- SHRM supports voluntary employer policies to provide domestic partner benefits to employees, but opposes legislative mandates on employers to offer such benefits.

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