

A New Beginning for Employment Non-Discrimination Act (ENDA)? The Return of the Employment Non-Discrimination Act

Article By:

Labor & Employment Practice

On April 25th, federal lawmakers reintroduced the latest version of the Employment Non-Discrimination Act (“ENDA”) in both the House and Senate. If passed, ENDA would prohibit covered employers from discriminating against employees and applicants on the basis of their sexual orientation or gender identity.

ENDA is certainly not new legislation. ENDA, in one form or another, has been introduced in every Congress, except one, since 1994. In 1996, ENDA failed to pass the Senate by only one vote. In 2007, the first transgender-inclusive version of the bill was introduced. That same year, a modified bill excluding transgender protections passed the House but did not come up for vote before the Senate. Since 2007, all versions of ENDA have included prohibitions on discrimination based on gender identity; however, no transgender-inclusive version of ENDA has ever passed the House or Senate.

The question then becomes, will ENDA fare any better in the 113th Congress? Even ENDA’s strongest supporters acknowledge that the bill currently has no clear path to passage in the House. Still, support for the bill, and cultural attitudes towards LGBT individuals as a whole, has likely never been better. Recent polls have shown that a majority of Americans are in favor of laws protecting LGBT workers from employment discrimination. Additionally, 87 percent of Fortune 500 companies already maintain policies prohibiting discrimination based on sexual orientation, and over 50 percent of those companies likewise prohibit discrimination based on gender identity. This support has carried over into the legislative arena. 21 states and the District of Columbia now prohibit employment discrimination based on sexual orientation. Of those 21 states, all but 5 also prohibit discrimination based on gender identity.

It is all but certain that if ENDA passes both chambers of Congress, President Obama will sign the bill. We plan to watch the bill closely and keep you posted on its developments.

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