

Transgender People and the Employment Non-Discrimination Act

The Employment Non-Discrimination Act (ENDA) (H.R. 2015/H.R. 3685)

As originally introduced this year, the Employment Non-Discrimination Act (H.R.2015) would have prohibited discrimination in the workplace against people based on sexual orientation and gender identity. The version of the Employment Non-Discrimination Act (H.R. 3685) set to be considered on the floor this week includes sexual orientation but omits “gender identity” protections. Congresswoman Tammy Baldwin is offering an amendment to restore “gender identity” to H.R. 3685.

Gender Identity

Gender identity refers to a person’s own sense of gender as well as how that self-identification manifests itself, such as through a person’s appearance, characteristics, or mannerisms. Gender identity was included in ENDA to protect transgender and other gender non-conforming people from discrimination at work.

Transgender is an “umbrella” term used to describe a wide range of identities and experiences and is used to refer to many types of people, including transsexual people; cross-dressers (who need protections for off-the-job cross-dressing); and androgynous people. Many transgender people from a very young age feel a deep-seated identity that does not match the gender they were at birth and later in life transition to life in their new gender. No one knows exactly why people have these feelings (science has not provided answers), but medical experts have found that the only solution is to support a transgender person in a decision to transition gender.

Gender non-conforming lesbian, gay, bisexual and even heterosexual people (effeminate men or masculine women) also need protections afforded by “gender identity.” The LGBT legal organizations such as Lambda Legal, National Center for Lesbian Rights, Gay & Lesbian Advocates & Defenders and the ACLU LGBT Rights Project issued legal analysis that gender non-conforming LGB people will not be fully protected by ENDA without “gender identity.”

Lesbian, Gay, Bisexual and Transgender Rights

Over the years, lesbian, gay and bisexual rights have been connected to transgender rights. The reasons for this may not be intuitive; after all, there is a real difference between gender identity and sexual orientation. Sexual orientation refers to a person’s attraction to members of the same sex or different sex—whether a person is gay, lesbian, bisexual, or heterosexual. On the other hand, gender identity refers to a person’s internal sense of their gender. Despite the difference between sexual orientation and gender identity, LGB and T people have joined into one community for a variety of reasons:

- Many members of each community also belong to the other because LGB people often are gender non-conforming
- Society often sees and treats LGB and T people as the same. The root of discrimination against all LGBT people is the same—it is all about gender and gender roles
- For decades, LGB and T people were relegated to the same social spaces and networks because of discrimination in society, and we are now culturally tied together

Although through the mid-1990s there were separate political movements for gay and transgender people; in the past decade the LGBT community has reunified. Today, there are virtually no organizations that identify as “gay and lesbian” only, nearly all identify as LGBT.

Transgender People and Pervasive Discrimination

Transgender people face pervasive discrimination in every area of life. Transgender people are often rejected by families, harassed and kicked out of school, and discriminated against in daily life in supermarkets, malls, on public transportation, etc. Although all of these problems are terrible, the most acute need for transgender people is anti-discrimination protections in the workplace. When a transgender person loses a job and can't find another one due to additional discrimination, they can become homeless, are unable to provide for their families, and can end up on state-sponsored welfare programs.

Laws and Policies Protecting Transgender People From Discrimination

A growing number of states and localities prohibit discrimination against transgender people, yet coverage remains spotty and laws are often not enforced. Nationally, 37% of the U.S. population lives in a jurisdiction that prohibits gender identity discrimination. In comparison, sexual orientation protections cover 51% of the country. Currently, there are trans-inclusive laws in 12 states and more than 90 local jurisdictions, including Iowa, Colorado, and Oregon which passed this year.

Corporate America and Transgender Employees

Corporate America has been voluntarily adopting nondiscrimination policies including gender identity. Over 150 Fortune 500 companies have done so thus far; most cite the twin goals of recruitment and retention of talented and experienced employees as the reason.

Businesses have shown they are able to comply with non-discrimination policies and laws. When an employee informs a supervisor of plans to transition, there are straightforward actions an employer can take to make the transition smooth and successful for both parties. Issues like bathrooms and dress codes are less complicated than some might imagine. Businesses that have decided to treat their transgender employees well, and not discriminate against them, easily work these issues out. On the other hand, businesses who want to discriminate often disingenuously point to these issues as insurmountable. The Baldwin amendment includes language dealing specifically with dress codes and shower/dressing facilities that ensures businesses will not be burdened by this law.

Public Support for Transgender-Inclusive Discrimination Laws

According to numerous surveys, over 60% of likely voters in the U.S. support a transgender-inclusive federal employment non-discrimination law. Polling data from 2006 shows that voters are more likely to support a candidate who votes for an LGBT discrimination law than they are to vote against. There is also state-specific polling data. In New Jersey, for example, voters supported state legislation to add gender identity protections with a high margin: 70%-19%.

The ENDA the LGBT Community Demands

The LGBT community is unified in its support of restoring the gender identity language in ENDA. Since the sexual orientation-only ENDA (H.R. 3685) was introduced on September 27 this year, already over 340 LGBT and allied organizations formally took a stance of opposition to the legislation. *Not one LGBT organization has endorsed H.R. 3685.* Passage of the Baldwin amendment would restore LGBT support for ENDA.