



Sexual Orientation Becomes Protected Status in Washington

By Jane H. Graham

After unsuccessful attempts 29 years in a row, the Washington State Legislature has passed a law adding sexual orientation to the list of “protected classes” under the Washington Law Against Discrimination, RCW 49.60. Governor Gregoire signed the law on January 31, only four days after its passage. Washington becomes the 17th state to have such a law. Although Tim Eyman has already commenced efforts to place an initiative on the November ballot to overturn the law, for the present it is “the law of the land” in Washington.

The law protects Washington residents from discrimination based on sexual orientation, not only in employment, but also in housing, credit and insurance transactions, and the use of public accommodations. The employment provisions of the law apply to employers with eight or more employees. Although the new law has been referred to as the “gay rights bill,” sexual orientation is defined to include heterosexuals, homosexuals, bisexuals and transgendered individuals.

Sexual orientation is not currently a protected status under the federal anti-discrimination laws. Previously, sexual orientation was protected only under certain cities’ anti-discrimination ordinances, including Seattle and Tacoma. Complaints of sexual orientation discrimination were fairly rare. With the protection of state law added, complaints are likely to increase. Complainants may file charges with the Washington State Human Rights Commission if they wish. However, unlike federal law, the state law does not require an administrative complaint prior to filing a lawsuit.

As with any other discrimination case, if a lawsuit is filed, the issues will be whether a protected individual was treated differently than others not in the protected class, and, if so, whether the individual’s sexual orientation was a motivating factor in that differential treatment. Unlike a race or gender discrimination case, where the employee’s protected status is usually obvious, the issue of whether the decision maker knew of the employee’s sexual orientation when s/he made the challenged decision will more often be an issue.

Successful plaintiffs in a sexual orientation discrimination case will be able to collect actual damages, potentially including lost wages, emotional distress and other compensatory damages, and attorneys’ fees. The good news for employers is that punitive damages are not permitted under state law. The bad news is that individual managers may be liable for discrimination, as well as the employing entity.

Washington employers should take a few simple steps in light of the passage of the law:

- Review your policies, procedures, application form, and any other document that discusses equal opportunity or harassment and add sexual orientation to the list of protected statuses if it is not already there.

- Consider a communication with employees reminding them of the new law and reaffirming your commitment to non-discrimination. This is a good opportunity to reissue and reinforce your EEO and harassment policies and complaint procedures.
- If you have not offered anti-discrimination or anti-harassment training for a while, this is a good opportunity to update your training and to make sure your training materials and presentations cover sexual orientation discrimination and harassment.

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