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LGBT Discrimination: Employment Discrimination and Inequality

Discrimination against gay, lesbian, bisexual, and transgender Americans remains pervasive given the current lack of anti-discrimination legislation at both the federal and state levels. Specifically, discrimination in the workplace based on sexual orientation or gender identity remains legal in most states, while the federal government has failed to expand employment discrimination protections to LGBT employees.

Keywords:

Employment Non-Discrimination Act (ENDA), gay rights movement, HRC, ACLU, workplace discrimination

I. LGBT Employment Discrimination: State Legislation and Statistical Evidence

As with many other civil rights issues, legislation on LGBT employment discrimination varies widely by state and local governments' jurisdiction. Currently, only 21 states have passed LGBT employment discrimination laws; therefore, it remains legal in 29 states to fire or refuse to hire someone based on their sexual orientation or gender identity. Moreover, some states' anti-discrimination laws apply to discrimination based on sexual orientation, but not gender identity, which excludes transgender Americans from the same legal protections. LGBT anti-employment discrimination laws are virtually absent throughout strongly Republican southern states, with the exception of a very limited number of local anti-employment discrimination laws enacted by individual counties.

Several studies have found significant evidence of the severity and pervasiveness of LGBT workplace discrimination and harassment. For example, according to a 2013 report by

UCLA's Williams Institute, 21% of LGBT employees reported having directly experienced discrimination in hiring, promotions, and/or pay. Wage inequality also significantly affects the LGBT population; according to the study, on average, gay and bisexual men made only \$0.68-\$0.90 for every dollar earned by heterosexual men in similar positions.

II. The Employment Non-Discrimination Act

Supporters of the gay rights movement emphasize the need for federal legislation in order to effectively guarantee equal protections to the LGBT population. As seen in the systematic obstacles to civil rights legislation in the 1960s, implementing effective federal legislation is an extremely slow process, especially due to the ability of opponents from conservative southern states to block civil rights legislation from passing in Congress.

The Employment Non-Discrimination Act (ENDA), a proposed bill that would ban employment discrimination in both the public and private sectors based on sexual orientation or gender identity, has consistently failed to pass in Congress since its introduction in 1994. The 2013 version of the ENDA passed in the Senate last fall, but the House has not yet voted on the bill.

ENDA's supporters argue that it would provide long-awaited effective federal protection against anti-LGBT discrimination and harassment in the workplace. LGBT civil rights advocacy groups like the Human Rights Campaign (HRC) and American Civil Liberties Union (ACLU) played a significant role in lobbying for the passage of ENDA. According to the ACLU, "ENDA provides what simple justice demands—that no one should lose a job because of who they are or whom they love."

Federal anti-LGBT discrimination legislation also enjoys widespread support among politicians and voters. Surprisingly, according to the HRC, "supermajorities of Republicans and

Democrats back ENDA,” and “more than 2/3 of voters—including a strong majority of Republicans—support a federal law protecting LGBT people from discrimination in the workplace.”¹ However, according to a national survey, nearly 75% of Americans believe that workplace discrimination against LGBT Americans is already illegal under federal law.²

ENDA’s passage in the Senate and its reception in the House has strongly corresponded to the climate of party politics in Congress. For example, although ENDA has consistently failed to pass in Congress, it came closest to passing in 2006 after Democrats won House and the Senate, as well as the majority of state governorships, which ended 12 years of Republican Congressional rule. Moreover, in contrast to President George W. Bush, who stated that he would veto ENDA, President Obama vocally supports ENDA’s passage. Overall, ENDA seems much more likely to pass the House and become law today, given Democratic gains in Congress, than during the previous period of Republican control. However, House Republicans are actively attempting to stall voting on ENDA. Notably, Speaker of the House John Boehner (R-OH) has refused to allow voting on ENDA because, as he stated, “I am opposed to discrimination of any kind in the workplace or anyplace else, but I think this legislation...is unnecessary and would provide a basis for frivolous lawsuits.”³

III. Limitations and Opponents of ENDA

Although ENDA has generally been well received by the American public, there remains considerable debate and controversy over the terms of the bill, even among its proponents.

Pro-ENDA groups’ support for the bill is not unconditional. One of the bill’s primary limitations, according to groups like the HRC and ACLU, is that it does not apply to religious organizations. The ACLU stated, “While passage of ENDA is critical for LGBT people across

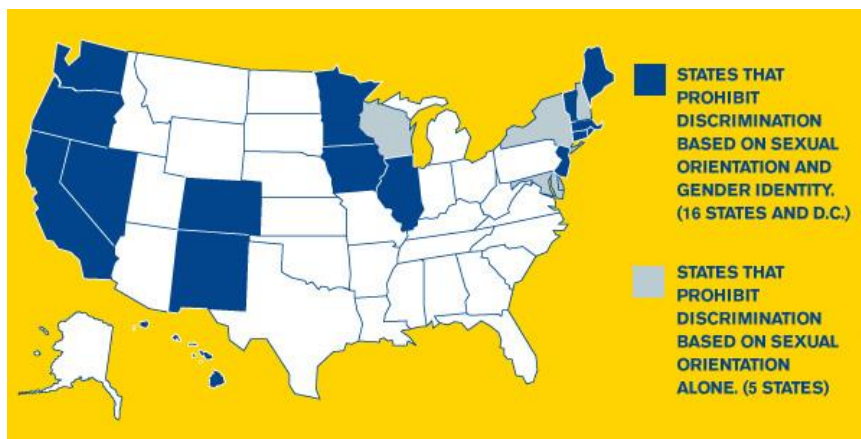
¹ <http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act>

² <http://www.msnbc.com/rachel-maddow-show/poll-shows-confusion-over-discrimination-law>

³ https://www.aclu.org/hiv-aids_lgbt-rights/employment-non-discrimination-act

the country, the legislation's current, sweeping religious exemption must be narrowed. ENDA's religious exemption could provide religiously affiliated organizations –far beyond houses of worship – with a blank check to engage in employment discrimination against LGBT people.”⁴

Conservative Christian groups, such as the American Family Association and the Traditional Values Coalition, are some of the most vocal opponents of LGBT anti-discrimination laws. In addition to their religious beliefs against homosexuality, one of the main factors behind these groups' opposition is their concern over the extent to which the ENDA would provide exemption to religious institutions and organizations.⁵ Overall, although the traditionally slow process of passing civil rights legislation has delayed ENDA's implementation, ENDA represents the possibility of significant governmental change to create progress in the fight to ensure equal civil rights for LGBT Americans by effectively addressing the pervasive phenomenon of workplace discrimination.

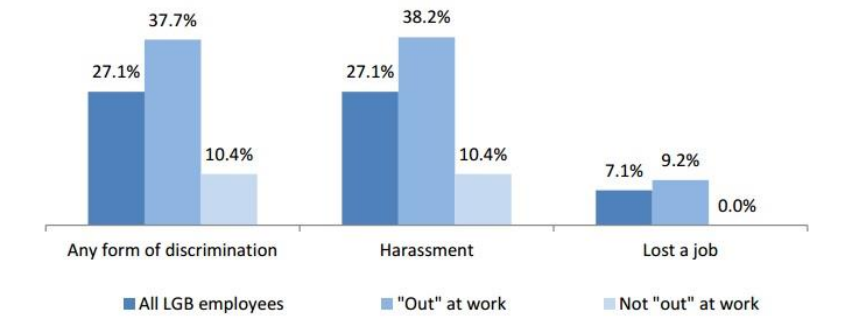


<http://www.alt-bmt.com/wp-content/uploads/2013/02/Workplace_WorkplaceEqualityExecutiveOrder_AntiDiscriminationMap.jpg>

⁴ https://www.aclu.org/hiv-aids_lgbt-rights/employment-non-discrimination-act

⁵ <http://www.afajournal.org/2007/september/0907ENDA.asp>

Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008



<<http://cloudfront.equalitymatters.org/static/equality/images/home/2013/07/williamsinst.jpg>>



<<http://i2.cdn.turner.com/cnn/dam/assets/131105081113-sutter-enda-story-top.jpg>>

Works Cited / References:

Benen, Steve. "Poll points to confusion over discrimination laws." *The Rachel Maddow Show*. MSNBC. Web. 18 Apr. 2014 <<http://www.msnbc.com/rachel-maddow-show/poll-shows-confusion-over-discrimination-law>>.

Benen, Steve. "South Carolina town helps make the case for ENDA." *The Rachel Maddow Show*. MSNBC. Web. 18 Apr. 2014 <<http://www.msnbc.com/rachel-maddow-show/south-carolina-town-helps-make-the-case>>.

“Employment Non-Discrimination Act.” American Civil Liberties Union. Web. 1 Mar.

2014

<https://www.aclu.org/hiv-aids_lgbt-rights/employment-non-discrimination-act>.

“Employment Non-Discrimination Act.” Human Rights Campaign. Web. 1 Mar. 2014

<<http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act>>.

Pizer, Jennifer, B. Sears, and C. Mallory. “Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits.” *Loyola of Los Angeles Law Review* 715. 2012

<<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Pizer-Mallory-Sears-Hunter-ENDA-LLR-2012.pdf>>.

Tilcsik, András. “Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States.” *American Journal of Sociology* , Vol. 117, No. 2 (September 2011) , pp. 586-626.

<<http://www.jstor.org/stable/10.1086/661653>>.

“Working in the Shadows: Ending Employment Discrimination for LGBT Americans.”

American Civil Liberties Union, Sep. 2007. Web. 1 Mar. 2014

<https://www.aclu.org/files/pdfs/lgbt/enda_20070917.pdf>.