

Employment Practice Update

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Florida Legislature Reluctant to Address Sexual Orientation Discrimination

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For the sixth consecutive year, legislation that would prohibit discrimination on the basis of sexual orientation or gender identity will likely not pass in the Florida Legislature. [House Bill 653](#) (Saunders - D) and [Senate Bill 710](#) (Abruzzo - D), which would have created the “Competitive Workforce Act,” were designed to amend the Florida Civil Rights Act of 1992 (“FCRA”) and provide homosexual and transgender individuals protections from discrimination on a statewide level. While the Florida Legislature seems reluctant to pass the Competitive Workforce Act, employers may still face liability for sexual orientation or gender identity discrimination.

In the absence of a statewide policy, local governments are taking steps to expand employment protections for Florida’s workers. In the past three years, three Florida counties—Leon, Volusia, and Orange—have passed human rights ordinances prohibiting discrimination on the basis of sexual orientation or gender identity. These counties are not the first of their kind: Palm Beach, Broward, Miami-Dade, Monroe, Sarasota, and Pinellas County provide some level of protection to employees, either prohibiting sexual orientation discrimination, gender identity discrimination, or both. Additionally, numerous municipalities, such as Gainesville, Tampa, and Gulfport, have enacted similar ordinances. In sum, about fifty-five percent (55%) of Floridians live in areas that provide protection from employment discrimination based on sexual orientation or gender identity, according to a statewide advocacy group called Equality Florida.

While some local governments have yet to consider enacting employment protections in ordinances, others have affirmatively rejected them. For example, on August

15, 2012, in a 10-9 vote, the Jacksonville City Council narrowly rejected a bill that would have expanded Jacksonville’s human rights ordinance to prohibit discrimination on the basis of sexual orientation. While some opponents of the bill generally view its defeat as a victory for business, the Jacksonville Chamber of Commerce, which supported the bill, cautioned that its defeat would tarnish Jacksonville’s appeal and hamper the city’s ability to attract new business.

In addition to local ordinances, employers should note that some regulators construe the existing federal statutes to prohibit employment discrimination on the basis of sexual orientation or gender identity discrimination. Last year, the Equal Employment Opportunity Commission (“EEOC”) [published its view](#) that discrimination on the basis of gender identity is prohibited by Title VII of the Civil Rights Act of 1964 (“Title VII”). In support of its opinion, the EEOC noted that Title VII prohibits discrimination on the basis of sex, “not just discrimination on the basis of biological sex.” Similarly, the EEOC has opined that discrimination on the basis of sexual orientation violates Title VII. In sum, the topic of sexual orientation discrimination, as well as gender identity discrimination, has received much attention on the federal, state, and local levels.

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Florida employers should be cognizant of the changing landscape on this issue and, in particular, the county and municipal ordinances that reach beyond the traditional topics of zoning and land use. Florida local governments are passing laws which prohibit employment discrimination on the basis of sexual orientation or gender identity and create new claims against employers that do business in those locations. If you have questions about your area, please contact our office at (850) 425-6654.

This article is meant to provide a brief overview and points of discussion regarding employment and labor law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.