

EMPLOYMENT AND THE LGBT COMMUNITY: WHERE WE ARE

FEDERAL LAW

There is still no federal law that consistently and explicitly protects LGBT individuals from employment discrimination. Twenty nine states lack laws that explicitly prohibit discrimination based on sexual orientation; and 32 states have no non-discrimination protections based on gender identity.

Currently, federal law under Title VII of the Civil Rights Act of 1964 prohibits public and private employers from discriminating against employees because of their race, color, religion, sex, national origin. The Americans with Disabilities Act provides employment protections based on disability, and the Age Discrimination in Employment Act provides employment protections to employees over the age of 40. However, there are limited explicit protections for LGBT people at the federal level.¹

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

On July 16 2015, the Equal Employment Opportunity Commission (EEOC) ruled that it considers employment discrimination based on sexual orientation to be prohibited under the sex discrimination provisions of Title VII of the Civil Rights Act of 1964.

In a 2012 decision in *Macy v. Holder*, the EEOC determined that discrimination based on an individual's gender identity is sex discrimination and thus constitutes a violation of the Civil Rights Act.

While important steps, these rulings highlight the need for a comprehensive federal law permanently, clearly codifying protections for LGBT people from discrimination in employment and beyond into all areas of American life. Businesses should always explicitly include “sexual orientation” and “gender identity” in their equal employment opportunity policies as a best business practice, affirming a commitment to diversity and inclusion, and equipping leaders and supervisors with the proper vocabulary to advocate for all employees.

Fortune 500	2002	2008	2013	2014	2015
Sexual Orientation in Non-Discrimination Policy	61%	88%	88%	91%	89%
Gender Identity in Non-Discrimination Policy	3%	25%	57%	61%	66%

EEOC rulings are not binding on federal courts, however they are persuasive. The July 16 decision continues an important trend in the development of case law. The Supreme Court has not yet ruled on this issue. HRC continues to advocate for permanent and explicit, legislated non-discrimination protections at all levels of government for LGBT people.

¹ Jody Feder and Cynthia Brougher, Sexual Orientation and Gender Identity Discrimination in Employment: A Legal Analysis of the Employment Non-Discrimination Act (ENDA) (Washington, D.C.: Congressional Research Service, November 26, 2013), <http://fas.org/sgp/crs/misc/R40934.pdf>.