

## **New Washington Law Prohibits Employers From Discriminating On The Basis Of *Sexual Orientation* and *Gender Expression or Identity***

In a ceremony today in Olympia, Governor Gregoire signed into law *Engrossed Substitute House Bill 2661*, which adds *sexual orientation* and *gender expression or identity* to Washington's Law Against Discrimination. Washington becomes only the 8th state to protect individuals from employment and housing discrimination based on both sexual orientation and gender expression or identity (9 states protect individuals on the basis of sexual orientation alone). The passage of House Bill 2661 follows many years of unsuccessful attempts by supporters to enact the protections into law. Last year, the Washington State Senate defeated a similar bill by a vote of 25-24. This year, the State Senate passed the bill 25-23. The law formally takes effect 90 days after the 2006 Legislative session ends. This year's session currently is scheduled to end on March 6, 2006; thus, the law should become effective in June 2006.

### **What Does This Law Do?**

As many employers know, Washington's Law Against Discrimination defines certain housing and employment practices as being unfair and unlawful. For example, it already is an unfair employment practice to fire or refuse to hire a person based on their sex, race, religion, age, marital status, national origin or disability.

The newly amended Law Against Discrimination will expand the list of employment actions that are considered to be unlawful in Washington:

- On and after June 5, 2006, Washington employers are prohibited from taking any employment action because of an individual's *sexual orientation*. *Sexual orientation* is defined as homosexuality, heterosexuality, bisexuality or gender expression or identity.
- The statute's definition of sexual orientation makes it unlawful to discriminate on the basis of an employee's *gender expression or identity*. The amended Law Against Discrimination defines *gender expression or identity* as "having or being perceived as having a gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth."

The law also expands the jurisdiction of the Washington State Human Rights Commission to permit that agency to investigate claims of discrimination based on sexual orientation and gender expression or identity.

Washington's Law Against Discrimination applies to all employers with 8 or more employees. It exempts some religious organizations from coverage.

In what was perhaps an effort to appease some opponents of the law, the new statutory language provides that the law “shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.” (In other words, employees are not required to establish affirmative action programs based on these characteristics.) Elsewhere, the new law adds that it shall not be construed to “endorse any specific belief, practice, behavior, or orientation.” While both of these additions may have been designed to placate opponents, they would seem to have little impact on the core protections of the law.

### How Much Remains Unsettled?

The new protection based on an employee’s *sexual orientation* is fairly straightforward. Many Washington employers (including all with employees in the City of Seattle) have already been complying with this requirement. We do not expect that this aspect of the new law will have any significant impact for most Washington employers.

However, the new protection for an employee’s *gender expression and identity* could prove to be more problematic for employers. This is because the statutory provisions are written so broadly as to suggest that certain appearance and grooming standards might be in conflict with the new law. We believe the Washington Human Rights Commission may issue more guidance in the coming months, and we will provide you with an update if and when such advice is issued.

### What Happens Next?

Employers should take the following steps to comply with this new law:

1. Add *sexual orientation* and *gender expression and identity* to non-discrimination and anti-harassment policies in employee handbooks and company policy manuals.
2. Conduct training and educate managers and supervisors on the impact of these changes to Washington’s Law Against Discrimination.
3. Review all appearance, dress code and similar policies to ensure compliance with new gender identity and expression protections.

Please call on any one of us if we can be of any assistance.

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