

Obama to Sign LGBT Workplace Discrimination Order

By James Hammerschmidt

It remains legal in many states to discriminate against employees because of their sexual orientation or gender identity – something that President Obama hopes to change. On June 16th, the White House announced that Obama will issue an executive order aimed at stopping employers from discriminating against such workers on the basis of their sexual orientation or gender identity. Specifically, this order will prohibit workplace discrimination against lesbian, gay, bisexual, and transgender (LGBT) employees of federal contractors.

This is not the first time Obama has recognized the problems stemming from the lack of a federal law adequately protecting LGBT workers from employment discrimination. Obama addressed this during his 2008 presidential campaign and, since then, the Obama administration has waited for Congress to pass the Employment Non-Discrimination Act (ENDA), which would serve as a more extensive and permanent piece of legislation making it illegal for employers nationwide, federal contractors as well as other private companies, to fire or harass employees based on their sexual orientation or gender identity. However, after ENDA stalled in the GOP-controlled House, Obama decided to issue an executive order, not requiring legislative approval.

Although many states and cities have enacted legislation against LGBT workplace discrimination, employers in 29 states are still free to hire or fire on the basis of sexual orientation. Likewise, employers in 32 states are still free to hire or fire on the basis of gender identity. Although Obama's executive order would be limited to federal contractors, it would nonetheless cover more than twenty percent of the American workforce, including an estimated 400,000 to 600,000 LGBT employees. It would do so by requiring companies holding contracts with the federal government worth more than a certain monetary amount to advance a policy against LGBT discrimination. This order would build off of existing protections generally prohibiting federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, national origin, veteran status, or disability.

In some ways private companies are already ahead of the government. For example, of *Fortune Magazine's* 500 largest publicly-traded companies, 91 percent already prohibit discrimination on the basis of sexual orientation, 61 percent prohibit discrimination based on gender identity, and 62 percent provide domestic partner health insurance benefits to their employees.

In light of the executive order, federal contractors that do not already prohibit workplace discrimination should take some specific actions, including (1) reviewing and revising their employee handbooks and anti-discrimination/anti-harassment policies, (2) reviewing and revising their EEO policies, (3) reviewing and revising employee training modules related to discrimination and harassment, and (4) reissuing policies, procedures and protocols for workplace harassment and discrimination to their work force.

* Prepared with the assistance of Julia Cosans, Law Clerk.