



Why Businesses Should **Oppose** the Federal Employment Non-Discrimination Act (ENDA) H.R. 2015

Businesses are already prohibited from hiring, firing or making employment decisions based a person's race, color, sex, national origin, religion, age or disability. Now Congress wants to add yet another category to this class, entitled "actual or perceived sexual orientation." Sexual orientation includes homosexuality, heterosexuality or "bisexuality." ENDA advocates ask, "How could adding one more category of protection hurt businesses?" Here's how:

ENDA is Bad for the Bottom Line.

ENDA is a litigation minefield. It opens yet another avenue by which disgruntled employees or potential employees may sue. Employers are already required to protect their employees' religious freedom in the workplace, and many religious faiths oppose the practice or endorsement of homosexuality. Thus, protecting religious freedom and "actual or perceived sexual orientation" makes for inevitable workplace litigation.

- In 2004, AT&T in Denver paid \$150,000 in damages to an employee who was fired for refusing, on religious grounds, to sign a company policy of toleration of homosexuality in the workplace.

ENDA will increase compliance costs. ENDA will force employers to upgrade their employment manuals, policies and procedures and train human resource staff to understand and comply with this new employment discrimination category.

ENDA is Bad for Employees. It will inevitably create workplace conflict for employees.

- What will happen when homosexual or bisexual employees object to: religious articles on employees' desks; watercooler discussions about biblical morality; Bible verses taped to cubicle walls; fliers on company bulletin boards advertising discussions concerning traditional marriage? This is already happening in states and municipalities with ENDA-type laws in place, and many of these cases are in litigation.
- If employers forbid religious expression in the workplace in order to appease complaints from homosexual or "bisexual" people, won't this discriminate against employees who adhere to certain religious faiths?

- What will ENDA mean for employee morale?
- Do employers want to spend valuable time and company resources resolving these disputes?

ENDA is a Slippery Slope. Advocates of ENDA originally included language in the bill that included “actual or perceived gender identity.” It is only a matter of time before advocates push once again to expand the protected categories to include “gender identity.” This additional language” will create scenarios like the following:

- A daycare center could not refuse to hire a transgender teacher because of his or her “gender identity.”
- If a female news anchor wanted to transition to a male, she could not be fired for the change in “gender identity” even though the change would potentially affect viewership and ratings.
- A Wall Street firm would be banned from firing a male executive who began coming to work dressed as a woman and using the women’s restroom.
- If a male Disneyland employee notifies Disneyland that he is transitioning to become a female and now wants the job of Snow White at the park, he cannot be denied the position on the basis that he is biologically male.

ENDA is Bad for Business. Corporate identity depends upon an employer’s freedom to make employment decisions that further its business needs and goals. Employee selection and other employment decisions are tailored uniquely to further the success of business. Congress already regulates business in seven categories of nondiscrimination.