

LGBT RIGHTS IN THE WORKPLACE

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Everywhere you look these days, LGBT rights are “trending” – in social media, the local news, national journals, cable news networks, and everywhere in between. The U.S. Supreme Court’s recent decision legalizing same sex marriage is just the latest in a string of legal events supporting legal rights of

LGBT individuals, which largely gained stride a few years back when the U.S. Supreme Court struck down the 1996 Defense of Marriage Act (DOMA), a law that blocked federal recognition of gay marriages.

Outside of the same sex marriage arena, however, wholesale recognition of LGBT rights is not as prevalent, particularly in the workplace context. For instance, in Ohio, there are no state laws prohibiting discrimination in the workplace on the basis of sexual orientation. Likewise, despite the U.S. Supreme Court’s decision on gay marriage, federal law currently does not prohibit discrimination in private workplace based on sexual orientation.

Between the strong trend recognizing LGBT rights in the marriage context and the lack of state or federal prohibition against discrimination based on LGBT status in the workplace, many Ohio employers are left wondering what rules they must or should play by in regulating their workplace and managing their employees.

The answer to that question lies in knowing what laws do apply to your workplace. For instance, though there is no state or federal law that prohibits discrimination on the basis of sexual orientation in private employment, many municipalities in Ohio – both urban and rural – protect LGBT rights in the workplace to some degree. Such local laws exist in Athens, Cleveland, Columbus, Cincinnati, Bowling Green, and Yellow Springs, among others, and the City of Lakewood is poised to vote on broad-based LGBT legislation later this month. If a workplace is located within one of the municipalities that prohibit discrimination based on LGBT status, it’s important for an employer to know the parameters of the regulation and ensure its policies and procedures, on paper and in practice, comply.

State and federal law cannot wholly be discounted, either. Ohio courts have recognized same-sex sexual harassment claims, and despite the lack of specific law prohibiting discrimination on the basis of LGBT status, federal courts have recognized claims filed by employees who allege discrimination based on their failure to adhere to gender expectations or discrimination based on “sex-stereotyping.”

In the last few years, the EEOC has made LGBT rights a key focus of the agency. This means more aggressive investigations, more aggressive enforcement, and more aggressive attempts to fit discrimination based on sexual orientation or gender identity into a sex discrimination/sex stereotyping claim under Title VII. Also, the federal Family Medical Leave Act entitles same sex spouses to benefits under the Act, and the Affordable Care Act requires that same sex spouses be afforded health coverage. In addition, by Executive Order signed by President


Obama in 2014, federal contractors cannot discriminate on the basis of sexual orientation or gender identity.

Whether or not you agree with the Supreme Court’s position, it is likely that increased regulation protecting LGBT rights in the workplace will be an eventual reality on a state or federal level, or both. Employers of all sizes can prepare for such changes by reviewing their policies and identifying revisions to bring them more in line with current trends and popular thinking, while

still meeting the operational and personnel needs of the workplace. When doing so, it is imperative to adequately train managers and supervisors on the revised policies and to enforce them consistently. Beyond the written policy, decisions based on objective and valid operational and business needs best situate an employer in the event of a legal challenge.


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