



Legislative Update: Senate Moves to Approve the Employment Non-Discrimination Act

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On November 4, the United States Senate in a 61-30 vote moved to continue debate on the passage of the Employment Non-Discrimination Act ("ENDA" or the "Act"). The ENDA seeks to ban workplace bias against individuals based on their sexual orientation or gender identity. The Act also provides an exception for smaller businesses that contain 15 or fewer employees, religious institutions and the armed forces.

Following the debate, the procedural vote was held on November 7th at the 113th Congress. There, in a 64-32 vote, the Senate passed the bill. The passage of the bill marks the first time in the institution's history that a bill has been passed to include lesbian, gay, bisexual and transgendered ("LGBT") people into the country's non-discrimination law.

Although many reports indicated that Republicans were wary about passing the bill, 10 of the 64 members who voted to approve the bill were Republican. Despite the bill's success in the Senate, there has been reported opposition to the bill reaching a floor vote at the House of Representatives.

In realizing this possibility, President Barack Obama stated, "One party in one house of Congress should not stand in the way of millions of Americans who want to go to work each day and simply be judged by the job they do. Now is the time to end this kind of discrimination in the workplace, not enable it."

Senator Harry Reid, a proponent and majority leader for the bill, urged that "the time has come for Congress to pass a federal law that ensures all citizens, regardless of where they live, can go to work not afraid of who they are." Subsequently, the Senator noted that many Americans are already under the assumption that the workplace discrimination laws protect the LGBT community. Thus, the passage of the bill would simply be a solidification of "what the American people think already exists."

In order to garner Republican support, the bill does contain a number of protections for religious institutions. One such provision prevents federal and state agencies that receive public funds from denying religious institutions that are not in compliance with the Act federal and state benefits (such as tax-exemption status, grant money, or licenses and certifications).

The opponents of the bill find that these limited exemptions do not extend far enough. Senator Dan Coats stated that the bill places constitutional guarantees, such as religious freedom, at risk.

“We can’t pick and choose when to adhere to the Constitution, and when to cast it aside,” Mr. Coats said. “The so-called protections from religious liberty in this bill are vaguely defined and do not extend to all organizations that wish to adhere to their moral or religious beliefs in their hiring practices.”

If you or your company would like more information on employment law, contact James G. Ryan at jryan@cullenanddykman.com or via his direct line at 516-357-3750.

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