

EMPLOYMENT LAW BASICS FOR LGBT EMPLOYEES



FREQUENTLY ASKED QUESTIONS

1. Can I really be fired just for being gay/lesbian/bisexual/transgender, since that has nothing to do with my job performance?

A. In Michigan, most non-union employers can fire an employee “at will”, which means, at any time for any reason, even if that reason has nothing to do with your job performance. There are laws, however, that protect employees from being fired based on being a member of a “protected class.” For example, a federal law (Title VII of the 1964 Civil Rights Act) protects employees from being fired or otherwise discriminated against based on their race, color, religion, sex, or national origin. Similar federal laws protect employees from discrimination based on age, handicap and veteran status. Michigan’s civil rights law (the Elliott-Larsen Civil Rights Act) adds protection for employees from discrimination based on height, weight or marital status. At present, in Michigan there are no state or federal laws that protect an employee from discrimination based on sexual orientation or gender identity/expression. As a result, a lawsuit involving discrimination against an LGBT person must rely on the protection against sex discrimination, which has been interpreted to protect employees who fail to conform to sex stereotypes. This is a difficult claim to pursue, however, and will not be successful without appropriate facts and creative lawyering.

2. There are some city laws, such as in Ann Arbor, Detroit and Lansing, that prohibit discrimination based on sexual orientation or gender identity/expression; don’t those protect me if I work in one of those cities?

A. Yes and no. While your employer would be in violation of the city’s non-discrimination ordinance if it fired you for being LGBT, that would only cause your employer to incur whatever penalty the city imposes for a violation. You may be able to complain to the city’s administration, but you cannot sue your employer in court for violating a city ordinance, since the state court only has jurisdiction over employment cases involving state law, not local ordinances.

3. *What if I am being harassed because I am gay or lesbian? That can't be legal!*

A. Federal and state civil rights laws prohibit harassment of employees based on their membership in a protected class. Because sex is a protected class, sexual harassment is specifically prohibited; sexual harassment is defined as unwelcome and offensive words and/or actions of a sexual nature that have the effect of creating a hostile work environment and substantially interfering with the employee's ability to do her/his job. There have been numerous cases involving harassment based in part on sexual orientation, and it can be unlawful in some circumstances. There are new cases being filed all the time, and the law in this area is changing, so consult a lawyer about your specific circumstances.

4. *My employee handbook says that my employer won't discriminate against an employee based on sexual orientation; can't I sue based on that?*

A. The law is not at all clear about that. One major obstacle to this type of case is that almost all handbooks say that the handbook is not intended to create a contract. Because this area of the law is still developing, you should consult a lawyer familiar with these issues so that you know what claims you might be able to pursue.

5. *I have heard about a new federal law, the Employment Non-Discrimination Act (ENDA). Won't that protect LGBT employees from discrimination?*

A. Last fall, the U.S. House of Representatives passed ENDA, a bill that – if it became law – would add sexual orientation to the list of protected classes under Title VII, with some exceptions. However, the bill did not provide any protection from discrimination based on an employee's gender identity or expression. [There was a valiant effort by Tammy Baldwin, a lesbian congresswoman from Wisconsin, to amend the bill to add protection for gender identity and expression, but she was unable to get the amendment to a vote.] The bill then moved to the U.S. Senate, where it sits in committee, and it will not be voted on this session. President Bush has indicated he would veto such a bill. ENDA might be revived in the fall (after the election), and if a Democratic candidate is elected, there is a much greater likelihood that such a bill would become law.

6. *What about discrimination against LGBT people in circumstances other than employment, like restaurants, housing and medical facilities?*

A. There is no law in effect or being proposed at the federal level that would extend the protections of the civil rights act to LGBT people in "places of public accommodation." That includes all the businesses and public buildings you enter. So don't expect to be able to sue if you are treated badly by some homophobic bar owner or store clerk. Hopefully, someday that will be illegal, but not today.