

# Treating American Workers Fairly

## *The Employment Non-Discrimination Act of 2007*

Today there is no federal law that prohibits discrimination against workers on the basis of sexual orientation, and 30 states also lack such prohibitions. As a result, in those 30 states, it is actually legal to fire, refuse to hire, demote, refuse to promote, or otherwise retaliate against workers *solely on the basis of their sexual orientation*. The Employment Non-Discrimination Act of 2007 would prohibit employers from discriminating against workers on the basis of sexual orientation. It preserves state and local laws that already provide protection from discrimination.

### **Broad support for prohibitions against discrimination**

Americans do not believe that workers should face retaliation because of their sexual orientation. A May 2007 Gallup poll found that 89 percent of Americans supported equal treatment for gays and lesbians when it comes to employment opportunities. In addition, many leading employers have already adopted non-discrimination policies. Nearly 9-in-10 Fortune 500 companies have policies prohibiting discrimination on the basis of sexual orientation.

### **Who's covered under ENDA?**

The Employment Non-Discrimination Act defines sexual orientation as “homosexuality, heterosexuality, or bisexuality.” It would protect private sector workers at companies with 15 or more employees as well as state, local, and federal government workers. It protects workers on the basis of both actual and perceived sexual orientation. In other words, an employer could not fire a heterosexual worker it mistakenly thought was gay simply for that reason.

The legislation does not apply to religious organizations (including non-denominational religious schools) as defined by Title VII of the 1964 Civil Rights Act. It does not apply to volunteers or private membership clubs. It does not apply to uniformed members of the Armed Forces, nor does it affect current law on gays, lesbians, and bisexuals in the military.

The legislation authorizes the same enforcement powers, procedures, and remedies that already exist in federal employment law. In general, relief available to individuals under Title VII of the 1964 Civil Rights Act would also be available under ENDA.

### **What the legislation does *not* do**

The Employment Non-Discrimination Act would *not* establish preferential treatment for people on the basis of sexual orientation. Unlike the 1964 Civil Rights Act, the legislation does not require employers to justify neutral employment practices that may have a disproportionate negative effect on workers of a specific sexual orientation, so long as employers do not try to use such policies as a pretext for discriminating against workers on the basis of sexual orientation.

The legislation also does not require employers to offer the same employment benefits, such as health insurance, to unmarried couples (whether they are same-sex or opposite-sex) that they offer to married couples. It does not in any way affect the federal definition of marriage as codified in the legislation known as the “Defense of Marriage Act.” The legislation prohibits hiring quotas.