

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

## Congress Contemplates Changes To Workplace Protections For Sexual Orientation And Gender Identity

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On July 10, 2013, the United States Senate Committee on Health, Education, Labor and Pensions approved and sent to the Senate for consideration a bill containing the first federal workplace protections for sexual orientation and gender identity since 2002. The Employer Non-Discrimination Act (ENDA) is expected to be considered by the full Senate this fall.

Should ENDA end up becoming law, the federal government will join the twenty-one states and the District of Columbia which have enacted laws prohibiting workplace discrimination on the basis of sexual orientation. Sixteen of these states' laws include provisions prohibiting discrimination on the basis of gender identity as well. While North Carolina is not included among these states, it would be subject to the protections provided by ENDA in the same way that Title VII now provides such protections to other protected classes.

### Significant elements of ENDA include:

- Protections would apply to all employers, employer agencies and labor unions with 15 or more employees. It would not apply to religious organizations, the military, unpaid volunteers, or various protected federal employer classes.
- It will be illegal for employers to refuse to hire, fire, or discriminate against an individual with regard to his or her compensation, terms, conditions, or privileges of employment on the basis of such individual's actual or perceived sexual orientation or gender identity.
- Existing federal employment discrimination protections applicable to race, religion, gender, national origin, age and disability would now be extended to sexual orientation and gender identity. Therefore, ENDA contains no requirement to affirmatively hire or retain a specific percentage of LGBT employees. It also does not require that employers grant preferential treatment to any individual or group on the basis of their actual or perceived sexual orientation or gender identity.

■ ENDA does not permit disparate impact claims but only disparate treatment claims on the basis of sexual orientation or gender identity.

■ While the bill contains protections for transgendered employees, it nevertheless preserves employers' rights to enforce a workplace dress code for the employee's chosen identity and during any transitional period that may take place. The bill does not require employers to create new facilities for transgendered employees.

Gender identity and sexual orientation are similarly defined under ENDA in that both are considered a reflection of an individual's self-conception. They differ in that sexual orientation also includes a behavioral component and is therefore a more observable trait.

If you have questions or concerns about this pending legislation or other legal issues, please feel free to contact Connie Carrigan at [ccarrigan@smithdebnamlaw.com](mailto:ccarrigan@smithdebnamlaw.com).

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