

February 9, 2006

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Sexual Orientation and Gender Identity Now Protected in Marion County

Executive Summary

The Indianapolis City-County Council recently revised the Human Rights Ordinance ("Ordinance") to include sexual orientation and gender identity to the list of classes protected from discrimination in employment. The Ordinance applies to Marion County employers with six or more employees, and contains an administrative procedure for investigating and adjudicating complaints of discrimination. With this revision to the Ordinance, Indianapolis/Marion County joins several other Indiana municipalities which already have laws prohibiting sexual orientation discrimination in employment. *Reference: Chapter 581, Human Relations, Equal Opportunity, of the Revised Code of the Consolidated City and County.*

Detailed Analysis

The recent revisions to the Indianapolis Human Rights Ordinance were signed into law by Mayor Bart Peterson on January 11, 2006. Under the previous version of the Ordinance, discrimination in employment was prohibited if based on race, color, religion, ancestry, age, national origin, handicap, sex and "disabled veteran or Vietnam era veteran status." In addition to adding sexual orientation and gender identity to this list, the revisions change the term "handicap" to "disabled" and broaden protection for United States military service veterans by replacing the phrase "disabled veterans or Vietnam era veterans" with "military service veteran status." The revisions also expand the period in which a complaint of discrimination must be filed from 90 to 180 days of the date of occurrence of the alleged discriminatory practice.

"Sexual Orientation" and "Gender Identity" Defined by Ordinance

Under the Ordinance, "sexual orientation" means "an individual's actual or perceived identity or practice as a lesbian woman, gay male, bisexual person or heterosexual person." "Gender identity" means "an individual having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior different from those characteristics traditionally associated with the individual's

assigned sex at birth."

The inclusion of these two classes in the Ordinance is significant because neither sexual orientation nor gender identity are currently protected from discrimination under the federal or Indiana state employment discrimination laws. Indianapolis/Marion County joins several other Indiana municipalities that already have laws opposing sexual orientation discrimination, including Bloomington, Fort Wayne, Lafayette, Michigan City, Terre Haute, Tippecanoe County and West Lafayette.

Who Does the Ordinance Cover?

The Ordinance covers employers within the territorial limits of Marion County with at least six employees at the time the complaint was filed. Some Marion County employers are excepted from coverage, however, including not for profit corporations or associations organized exclusively for fraternal or religious purposes, and charitable or religious institutions owned or conducted by, or affiliated with, a church or religious institution.

How is the Ordinance Enforced?

Employees who believe they have been discriminated on the basis on one of the above protected classes may file a complaint with the Indianapolis Department of Administration's Division of Equal Opportunity ("Division"). The employer will then have the opportunity to file a response. After conducting an investigation, the Division will issue a finding as to whether there is reasonable cause to believe that the employer violated the Ordinance. If reasonable cause is found, the Division will attempt to resolve the matter through conciliation. If conciliation fails, a public hearing may be held which could result in a requirement that the employer reinstate any employee who was wrongfully separated and compensate them for losses resulting from the discrimination, including back pay and the complainant's attorney's fees.

What Should Employers Do?

Marion County employers should immediately: (1) update their equal employment opportunity and workplace harassment policies to prohibit discrimination or harassment based on sexual orientation and gender identity; and (2) consider expanding orientation and training programs to ensure that all employees, particularly managers and supervisors, are aware of this change in the law and the employer's intent to comply with it.

Should you have any questions, please do not hesitate to contact your local counsel or Steve Lyman, John Ryan, Craig Williams, Jon Bumgarner, Kevin Stella, Dana Stutzman or Kevin Gfell at Hall, Render, Killian, Heath & Lyman, P.S.C., at 317/633-4884.

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