



Houston's Equal Rights Ordinance is Part of a Larger Trend Toward Local Government Action

Insights

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Citing the absence of federal action, an increasing number of states and cities are enacting statutes and ordinances providing for greater workplace protections than those afforded by federal laws such as Title VII and the FMLA. This can create heightened compliance burdens for employers, as municipal governments are creating inconsistent obligations for businesses operating in more than one city.

Occasionally, legislatures and city councils lack clear popular support for their action, leading to significant tension among elected leaders, advocacy groups, and constituents. Houston, Texas has been the epicenter of one such dispute, where the city has resisted efforts to overturn a somewhat controversial ordinance expanding employee/public protection. On February 13, 2015, a jury returned a mixed verdict in a lawsuit that seeks to force a public referendum on the ordinance. Predictably, both sides are claiming victory, the matter will head to an appellate court, and employers are left waiting to see whether they will need to update written policies and procedures, and train managers and employees, to ensure compliance with a new layer of compliance.

In May 2014 the Houston City Council passed an equal rights ordinance by an 11 to 6 vote. The ordinance extends workplace and public accommodation protections well beyond Title VII. Protected classes under the ordinance include sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, and pregnancy.

The ordinance applies to any employer in the city with 50 or more employees. After one year the ordinance will apply to employers with 25 or more employees, and after two years it will apply to employers with 15 or more employees.

Rather than create a civil cause of action, the ordinance authorizes the Houston Inspector General to investigate complaints, request the subpoena of records and witnesses, and prosecute alleged violators in municipal court. Defendants in these criminal proceedings may include a business or an individual, such as a manager or co-employee. A violation of the ordinance is a Class C misdemeanor, punishable by a fine of \$250 - \$500, but not to exceed an aggregate of \$5,000 for multiple violations arising out of the same occurrence.

Opponents claim the ordinance goes too far, criminalizing behavior considered to be discriminatory that should otherwise be the purview of civil proceedings. Others are concerned that the ordinance, as worded, will lead to potentially troubling results, such as children sharing bathrooms with adult members of the opposite sex.

Upon passage of the ordinance, opponents organized a petition to require a public referendum on the ordinance. The city contended that only 5,000 of the 54,000 signatures purportedly obtained were valid, and therefore lacked the 17,000 verified signatures necessary to require a referendum.

Ordinance opponents filed suit, claiming at least 31,000 signatures were valid and properly verified, and that the city is wrongfully refusing to proceed with a referendum. The attorneys representing the city ruffled feathers and generated negative publicity by trying to subpoena videos and texts of sermons delivered by local pastors who had spoken out against the ordinance, presumably to threaten their tax-exempt status. The attorneys backed down in the face of public outcry, and instead went to trial focused solely on the validity of the petition signatures.

Regardless of the judge's final decision, the matter is certain to be appealed. For now, employers will need to monitor this case until it is concluded. Employers everywhere, however, should take note that this case is part of a larger effort by many state and city governments to expand workplace protections.

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