



Argentina's Winds of Change May Reach Its Employment Discrimination Law

Insights

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With the Catholic Cardinals' election of their fellow Cardinal Jorge Mario Bergoglio to Pope (Francis I), a spotlight has been cast in recent days upon his native Argentina. The white smoke announcing the Cardinals' decision had barely begun to dissipate, when news media outlets began publishing stories and articles not only lauding the "revolutionary" selection of the first Latin American and Jesuit Pope, but also profiling the new Pope's relationship to his homeland, including its citizens and political leaders. Some of these reports related to the public back and forth between then Cardinal Bergoglio and Argentina's former president Nestor Kirchner and his wife and successor, current Argentine President Cristina Fernandez de Kirchner, over the country's hot-button social issues, including Argentina's passage of two pieces of legislation that are revolutionary in their own right: Argentina's Same-Sex Marriage Law and its Gender Identity Law, passed in 2010 and 2012, respectively.

The 2010 Same-Sex Marriage Law (the first of its kind in Latin America) grants full marriage rights to same-sex couples, along with the right for gay and lesbian couples to adopt children. The Gender Identity Law, passed mere months ago, allows individuals to choose their official gender identity, without the need for surgery, the diagnosis of a doctor or psychiatrist, or any regard to the biology of the individual. Besides their historical magnitude, these two laws should be particularly noteworthy to employers in Argentina, as the laws present a variety of new legal issues which employers should be cognizant of, especially as they relate to workplace discrimination.

Employees in Argentina are afforded an assortment of protections against many forms of discrimination. These protections are derived from various sources, including provisions in the Argentine Constitution, ratified international treaties (such as the Universal Declaration of Human Rights, which has parity with provisions of Argentina's Constitution pursuant to the Constitution's 1994 amendments), and several pieces of passed legislation such as the Employment Contract Act of 1976, the Human Rights Act of 1988 and the Trade Unions Act of 1988.

These laws collectively protect employees from discrimination based upon a multitude of categories, including race, religion, gender, union political affiliation, marriage status, and pregnancy, among others. Additionally, they grant benefits such as both maternity leave and "marriage" leave, which is available to both male and female employees.

Although not technically employment discrimination statutes, the passage of Argentina's Same-Sex Marriage Law and Gender Identity Law places employers in new and unfamiliar territory relative to avoiding discriminatory conduct in the work place. For example, an employer, while not expressly prohibited from discriminating based upon sexual orientation under current Argentine law, could potentially find itself facing a discrimination suit from its gay and lesbian employees based upon their marital status, as marriage is now available to same-sex couples and a "protected class" under Argentina's anti-discrimination laws. Similarly, while discrimination based upon gender is prohibited, Argentina's Gender Identity Law allows for individuals to officially change their gender if and when they choose, which could present an issue of an employee bringing a claim of gender discrimination even though the employee is a different gender than he and/or she was at the time the alleged discriminatory actions took place.

Employers should proceed with caution in Argentina's new legal landscape and recognize that as Argentina's society has experienced great recent change with its native son's election to Pope, and its passage of the Same-Sex Marriage Law and Gender Identity Law, so too may its employment discrimination law be revolutionized.