

Learning about Legislation #41 - Anti-Discrimination Laws

Courtesy of David Bria, Vice-president of Yardley Boro Council

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Editor's note - David prepared this last year for his township, and felt it would provide the perfect perspective for the introduction of H.R. 5 - the Equality Act.

THE CURRENT STATE OF ANTI-DISCRIMINATION LAWS

An estimated 276,000 LGBT adults live in Pennsylvania, and 174,000 LGBT people work in Pennsylvania. Data from the 2010 census show there are 5.28 same-sex couples in Bucks County per 1,000 households, the fourth-highest in Pennsylvania.

FEDERAL LAWS

Currently, there is no federal law that explicitly prohibits workplace discrimination based upon sexual orientation. Different circuits of the federal appellate courts disagree on whether sexual orientation is covered by Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on an individual's sex. The Second and Seventh Circuits have ruled in favor of this interpretation, while the Eleventh Circuit has ruled against this interpretation. The executive branch has issued conflicting opinions as well: In *Zarda v. Altitude Express*, the Equal Employment Opportunity Commission and the Department of Justice filed opposing amicus briefs, with the EEOC arguing in favor of Title VII covering sexual orientation and the DOJ arguing against.

STATE LAWS

Twenty (21) states plus Washington D.C. currently have laws which prohibit discrimination based on sexual orientation or gender identity. They are Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Minnesota, Iowa, Illinois, Colorado, New Mexico, Utah, Nevada, Washington, Oregon, California, and Hawaii. Additionally, New York and Michigan explicitly interpret existing prohibitions on sex discrimination to include discrimination based on sexual orientation or gender identity. Wisconsin prohibits discrimination based on sexual orientation, but not gender identity.

Pennsylvania law does not explicitly prohibit discrimination on the basis of sexual orientation and is therefore the only state in the northeastern U.S. not to do so. H.B. 1410, known as the PA Fairness Act, and its counterpart S.B. 613, seek to amend the Pennsylvania Human Relations Act (PHRA) to include discrimination in employment, housing, or public accommodation on the account of one's actual or perceived sexual orientation or gender identity. Both bills presently remain stalled in committee despite bipartisan sponsorship. The PHRA currently prohibits discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status—but not sexual orientation and gender identity.

MUNICIPAL ORDINANCES

More than 50 municipalities in the Commonwealth of Pennsylvania have anti-discrimination ordinances. These ordinances establish a local Human Relations Commission which can hear complaints pertaining to an expanded list of protected classes which includes sexual orientation and gender identity.

In Bucks County, such ordinances were adopted in the Boroughs of New Hope, Newtown, Doylestown, Bristol, and Yardley. Based upon census data, if Newtown Township were to adopt this ordinance, it would nearly double the number of individuals in Bucks County living in a municipality that prohibits LGBTQ discrimination.

PUBLIC OPINION

A 2017 survey from the non-partisan Public Religion Research Institute indicates that a large majority of Americans support anti-discrimination laws to protect the LGBT community. 70% of respondents were found to support the measure, with 72% of Independents, 79% of Democrats and 58% of Republicans showing support. Majority support held even when results were broken down by race, ethnicity, gender, religion, and age bracket.

Non-discrimination policies are increasingly popular with several major employers. According to a 2013 study by the Williams Institute, 139 companies headquartered in Pennsylvania—37 of which are Fortune 1000 companies—have policies in place that prohibit discrimination based on sexual orientation; 40 companies go further to prohibit discrimination based on gender identity. Perhaps the most high-profile case of business support for LGBTQ anti-discrimination policy comes from Amazon; the company has indicated that LGBTQ anti-discrimination laws are a requirement in its search for the site of its new headquarters, known as HQ2.

ECONOMIC IMPACT

The Williams Institute in September of 2017 released a detailed study on impacts of stigma and discrimination against LGBT people in Florida. A poll run from 2012 – 2014 found that 28% of LGBT people in Florida did not have enough money for food compared to 19% of non-LGBT adults. Additionally, the 2012 Behavioral Risk Factor Surveillance System found the following differences between the experiences of LGBT people and non-LGBT people:

	Diagnosed with a depressive disorder	Report binge drinking	Current Smoker
LGBT People	32.6%	26.5%	34.3%
Non-LGBT People	16.8%	11.8%	15.1%

The study concluded that a 25% reduction in these health disparities between LGBT people and non-LGBT people would result in \$609.4 million in annual cost savings to the state economy.

Anti-discrimination employment laws and policies are also shown to be beneficial for businesses. These policies increase the likelihood that LGBT employees are out at work, which leads to increased productivity, better psychological health, and increased job engagement and satisfaction. LGBT employees also tend to stay in their jobs longer when anti-discrimination policies are in place.

Deliberately anti-LGBTQ legislation in recent years has proven harmful to some states' economies. An analysis by the Associated Press found that the recent "Bathroom Bill" in North Carolina (HB2) would have cost the state \$3.76 billion over a ten-year period. Similarly, the Religious Freedom Restoration Act in Indiana was shown to have cost the city of Indianapolis more than \$60 million in lost revenue.

BANNING THE PRACTICE OF CONVERSION THERAPY ON MINORS

Conversion therapy, sometimes referred to as reparative therapy, can be defined as any intervention attempting to change a person's sexual orientation or gender identity. The practice is widely discredited by the medical community and considered to have no scientific merit.

Conversion therapy is considered to be harmful to LGBTQ youth. A 2009 study by San Francisco State University found that LGBTQ youth who were highly rejected by their families were 8 times more likely to have attempted suicide, 6 times more likely to experience high levels of depression, 3 times more likely to use illegal drugs and 3 times as likely to be at high risk of HIV and STI transmission than LGBTQ youth who are accepted by their families.

The following professional organizations oppose the practice of conversion therapy:

American Academy of Child Adolescent Psychiatry, American Academy of Pediatrics, American College of Physicians, American Counseling Association, American Medical Association, American Psychoanalytic Association, American Psychological Association, National Association of Social Workers, Pan American Health Organization: Regional Office of the World Health Organization, and the World Psychiatric Association .

Fourteen (14) states have banned the practice of conversion therapy on minors:

New Jersey, California, Oregon, Illinois, Vermont, New Mexico, Connecticut, Rhode Island, Nevada, Washington, Hawaii, Maryland, New Hampshire, and Delaware; a ban has also been enacted in Washington DC.

In Pennsylvania, eight (8) municipalities have banned the practice:

Reading, Allentown, Pittsburgh, Philadelphia, Doylestown Borough, State College, Yardley Borough, and Bethlehem.

In 2016, The Ninth Circuit Court of Appeals upheld California's conversion therapy ban in the case *Welch v. Brown*. In 2017, the United States Supreme Court denied hearing an appeal, thus allowing the lower court's ruling to stand.

CONCLUSION

Adopting an ordinance that prohibits employment, housing, and public accommodation discrimination against the LGBT community is smart policy. Sexual orientation and gender identity are not explicitly protected classes under current statute or case law and passing an ordinance will end that ambiguity. Such an ordinance enjoys broad support from both the general public and the business community, and in the long term can help contribute to economic growth. Anti-discrimination laws, though not in effect nation-wide, have been passed in 21 states over the past 20 years, and their positive effects are well-documented.

A ban prohibiting conversion therapy for children under 18 should also be included in the ordinance. Conversion therapy is a medically discredited practice that can harm the youth upon which it is practiced. It is disavowed by several major professional and medical associations and is banned in 14 states and Washington D.C.