

PUBLICATION

Houston Joins Sexual Orientation and Gender Identity Discrimination Ban

June 12, 2014

Houston, Texas now prohibits employers from discriminating on the basis of sexual orientation or gender identity. Houston is the last major city in Texas to pass such an ordinance. The Houston City Council passed Ordinance No. 2014-530 on May 14, 2014, finding that "all persons . . . working in . . . the City are entitled to be treated with equal dignity and respect and have the right to be free from discriminatory and unequal treatment." The ordinance specifically applies to private employers, although it exempts religious institutions. The ordinance will go into effect on June 27, 2014.

Houston employers¹ may not discriminate in employment based on the protected characteristics of sexual orientation, gender identity, familial status and marital status (among other protected characteristics, including sex, race, color, ethnicity, national origin, age, military status, disability, genetic information and pregnancy).

Sexual Orientation is defined as the actual or perceived status of a person with respect to his or her sexuality. **Gender Identity** is defined as an individual's innate identification, appearance, expression or behavior as either male or female, although the same may not correspond to the individual's body or gender assigned at birth. **Familial Status** is defined as the status of a person resulting from being domiciled with an individual younger than 18 years of age in regard to whom the person: (a) is the parent or legal custodian; (b) has the written permission of the parent or legal custodian to live with the individual; or (c) is in the process of obtaining legal custody. Finally, **Marital Status** is not defined, but it would presumably mean whether an individual is married, single or divorced.

"Discrimination" may include intentional acts or demonstrations of preference or antipathy in making decisions regarding employment (hiring, pay, status, position, assignments, discipline, termination, etc.). Retaliation against an employee who files a complaint under the ordinance is also prohibited.

Employees who believe the law has been violated will file a complaint with the inspector general within 180 days. If the complaint states a claim that is governed by federal or state law, then the complaint will be referred to the appropriate agency for further action (i.e., the EEOC). Otherwise, the inspector general will conduct confidential investigations within one year of the date of the complaint. If the inspector general finds a violation, he will attempt to conciliate the parties. If an agreement cannot be reached, the complaint will be referred to the city attorney for enforcement. The law bars an employee from filing a complaint in bad faith.

There are criminal penalties for violations of the ordinance. The criminal offense is a Class C misdemeanor, and violations include a maximum aggregate fine of \$5,000 in municipal court. There is not a civil enforcement mechanism. The law is unlikely, therefore, to increase litigation for Houston employers.

¹Currently, an employer is "a person who has 50 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person's agent." The definition does not include contractors and vendors. In 2015, the number of employees threshold will be lowered to 25, and in 2016, the threshold will again lower to 15 employees.

