

EEOC Part Of Increasing Focus On LGBT Issues

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We seem clearly to be in the midst of a shift towards greater employment protections for LGBT employees, evidenced both by discrimination legislation largely at a [state and local level](#) and less directly in the legal environment by developments such as greater acceptance of gay marriage including the Supreme Court's recent refusal to consider lower court decisions invalidating state statutes [prohibiting gay marriage](#). EEOC Commissioner Chai Feldblum recently released this [interesting summary](#) of the EEOC's activities and positions on LGBT issues. Highlights include:

- Title VII prohibits discrimination on the basis of sex. The EEOC interprets the law to provide protection on the basis of sexual orientation and gender identity. This has not always been the case – in the 1970s the EEOC held that discrimination on the basis of gender identity (1974) and sexual orientation (1976) were not prohibited under Title VII.
- Courts have not yet developed a clear position on this. (And for lawyer readers, there are numerous case cites that provide a useful reference.)
- The EEOC has accepted discrimination charges from LGBT individuals since January 2013 and reports that it has received and resolved hundreds of them.
- Commissioner Feldblum states that strong laws at all levels of government explicitly protecting LGBT workers are still necessary.

Anecdotally, more and more employers seem to be voluntarily extending to LGBT employees the protection they extend to employees in generally accepted protected classes. In many cases, the employer is required to do so under the laws of some places it does business, and simply implements the protection uniformly. Employers who choose not to do so voluntarily and are not yet required to do so in places where they do business should at least be thinking ahead on administering what seem like inevitable changes. As always, regardless of what classes are protected in what jurisdictions, the best defense against discrimination liability are making good business decisions and being able to [document that you have done so](#).

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