



The ENDA Litigation Nightmare

The “Employment Non-Discrimination Act” (ENDA – S. 815 and H.R. 1755) would add “sexual orientation” and “gender identity” as new protected categories in federal civil rights law regarding employment. This amounts to giving homosexuals and “transgenderers” a license to sue their employers whenever they feel aggrieved.

We can see evidence of this from the application of similar non-discrimination laws at the state and local level. Family Research Council did research on news reports regarding such suits. Few suits against private employers have been publicized, likely for a simple reason – businesses settle such suits out of court, paying out settlements rather than endure the expense and publicity of a trial.

However, an additional concern is the impact of ENDA on public employers. The bill’s attempt to dictate not only to private employers but to states and local governments as well (in circumvention of the Constitution’s guarantee of state sovereignty) is one of several serious concerns about this bill.

Below are some examples of how such laws impose a new burden on employers and cost upon taxpayers.

City employee who was suspended for committing sexual harassment wins settlement

For example, in 2004, the City Council of Portland, Oregon approved a \$150,000 payoff to a lesbian former housing supervisor, Loraine Fischer, who had alleged “discrimination and a hostile work environment.” The settlement came despite the fact that Fischer had twice before been suspended after female co-workers had filed formal complaints of harassment and unwanted sexual advances against her.¹

Deputy police chief wins “discrimination” suit – despite being successfully sued for stalking colleague

In 2005, a lesbian former deputy police chief, Penny Phelps, sued the city of Bay City, Michigan seeking compensation for “financial loss, mental anguish, humiliation, fright, shock and lifestyle disruption.” She had previously been in a “dating relationship” with a female officer, Elizabeth Kangas. After the relationship ended, Kangas filed a complaint accusing Phelps of stalking, harassment and assault.² Her lawsuit against Phelps, the police department, and the city was settled out of court in 2003 for \$225,000. Phelps resigned from the department, but three years later decided to sue for “harassment” and a “hostile work environment.” In 2006, Phelps’ lesbian partner Diane Lipinski also filed suit. Phelps eventually settled for \$170,000 (plus an increased pension contribution), which was less than the woman who accused her of stalking received.³

Police officer claims “discrimination” for defending bisexual car thief

In 2007, a homosexual police sergeant in Pacific Grove, California, Darren Smolinski, sued alleging “discrimination” based on his “sexual orientation.” However, he had never claimed that he was harassed for being homosexual. Instead, he argued that he was targeted because he testified on behalf of a fellow officer, Rhonda Ramey, who complained that she was inadequately protected from harassment for being bisexual. Ramey, however, was fired for stealing cars that had been towed from city streets. When Ramey sued charging “retaliation,” she lost in a jury trial, and she ended up paying a civil judgment to settle the auto theft case.⁴

Prison guard awarded \$850,000 because colleague offended her; award slashed because allegations of harm unsubstantiated

In New York in 2007, a lesbian prison guard was awarded \$850,000 by the New York Human Rights Commissioner after complaining about another officer’s language and conduct.⁵ A year later the award was slashed to \$200,000 by a court, which noted that although the guard claimed to have suffered “physical, mental and emotional ailments,” she had taken no leave, was prescribed no medicine, and attended only four counseling sessions.⁶

Local media reports “weak-minded jury” awarded \$1 million to police officer and his lawyer over “anti-gay remarks.”

In another California case, the *Santa Barbara Independent* reported the outcome concisely:

The City Council voted behind closed doors to settle a long-simmering legal dispute with gay ex-cop Ruben Lino for almost \$1 million and a positive job reference, rather than appeal the awards already granted to both Lino and his attorney Janean Acevedo Daniels. A jury awarded Lino \$451,000, saying he'd been the victim of retaliation - though not discrimination, as Lino also charged - after he complained to Chief Cam Sanchez about anti-gay remarks made by fellow officers. Daniels was awarded \$660,000 in attorney's fees. Around City Hall, Lino's victory was widely regarded as the result of a weak-minded jury, and City Attorney Steve Wiley argued City Hall stood a good chance of prevailing upon appeal. Apparently, enough councilmembers felt otherwise, or Wiley changed his mind.⁷

Like the Smolinski case above, Lino’s complaint began with a charge of retaliation after he testified in support of another employee who sued the city (unsuccessfully) for discrimination.⁸

What can we conclude about the consequences of “sexual orientation non-discrimination” laws, from looking at these cases that have been reported in the media? First, such cases can be very costly to employers – including to public employers, who must pay these settlements with taxpayer dollars. But they can be very lucrative for lawyers. In several of the cases, large settlements were paid despite evident weaknesses in the cases brought. Two of the homosexual plaintiffs had actually themselves been credibly accused of sexual harassment by co-workers – yet still presented themselves as the aggrieved parties.

It would be unwise for Congress to invite more such suits by adopting the “Employment Non-Discrimination Act.”

This has been adapted from testimony submitted to a previous Congress by Tony Perkins, President of the Family Research Council; online at:

<http://www.frc.org/testimony/testimony-in-opposition-to-hr-3017-employment-non-discrimination-act>

¹ Henry Stern, “City settles discrimination suit by lesbian supervisor,” *The Oregonian* [Portland, OR], December 23, 2004, p. B02. Nexis; also, AP version online at: <http://www.gaylesbiantimes.com/?id=4152>

² Crystal Harmon, “Penny Phelps, former deputy chief of police, sues Bay City,” *Bay City [MI] Times*, February 25, 2005, p. A1. Nexis.

³ Patti Brandt, “Former police officer files harassment suit against Bay City,” *Bay City Times*, January 12, 2006, p. A3. Nexis.

⁴ Kevin Howe, “Officer alleges discrimination,” *Monterey County Herald* [CA], November 7, 2007. Nexis.

⁵ Associated Press, “Guard wins \$850,000 in harassment case,” *The Times Union* [Albany, NY], October 13, 2007, p. A3. Nexis.

⁶ Jodi Sokolowski, “Court lowers corrections’ officer award,” *Buffalo Business First* [NY], July 11, 2008. Nexis.

⁷ Drew Mackie, et al., “News Briefs,” *Santa Barbara Independent* [CA], Vol. 21, No. 53, (January 18-25, 2007), p. 18.

⁸ Nick Welsh, “Gay Discrimination Trial Starts,” *Santa Barbara Independent*, Vol. 20, No. 12, (April 6-13, 2006), p. 19.