Progressive Legislation: Employment Non-Discrimination Act and Uniting American Families Act

Single mother **Jacinda Meyer** worked as a licensed insurance agent in Southern California. During her first nine months on the job, the company gave her positive feedback about her performance and a raise. But soon after her boss learned that she was a lesbian, she was fired. She later applied for a job with a “sister company” and after several interviews and personality and placement testing, they made her a verbal offer. The next day, she received a call rescinding the offer.

Before transitioning from male to female, **Diane Schroer** was a decorated U.S. Army Special Forces officer who completed 450 parachute jumps into some of the world’s most dangerous places during her 25 years of service. She was handpicked to head up a classified national security operation and briefed Vice President Cheney. After retiring from the military, she wanted to capitalize on her experience fighting terrorism and applied for a job with a large federal agency library in Washington, D.C., as a senior terrorism research analyst. She received an offer shortly after the interview and accepted the position. Prior to starting work, Schroer invited her new boss to lunch to explain that she was transgender and would like to begin the job as a woman. The next day, the director called Schroer and rescinded the offer because she wasn’t a "good fit."

**Thomas Bryant** worked for a temporary staffing agency in Indiana where he was viewed as a good employee and was responsible for training 50 new workers. Bryant, who was honest about the fact that he was gay when asked, had a co-worker who repeatedly made comments about “fags” in front of him. After complaints to his supervisor were ignored, Bryant complained to human resources. After a meeting with HR and the other employee, Bryant thought the problem was resolved. The next day, Bryant was fired.

The above stories are three of many that are documented in the American Civil Liberties Union report entitled “Working in the Shadows.” The report concludes that there is widespread discrimination in the workplace directed at members of the LGBT community. The discrimination ranges from workplace harassment, to being denied job opportunity, to being denied promotion, to being fired. The LGBT community is not protected from workplace discrimination by federal statue. LGBT workers can be legally fired or denied employment in 30 states, and transgender workers can be legally fired or denied employment in 39 states. Legislation has again been introduced in Congress that would guarantee the same rights to LGBT workers that are guaranteed for all other workers. This legislation is called the Employment Non-discrimination Act (ENDA).\* According to the Human Rights Campaign, ENDA “would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity.  ENDA simply affords to all Americans basic employment protection from discrimination based on irrational prejudice.  The bill is closely modeled on existing civil rights laws, including Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act.”

ENDA was first introduced in 1994 and has been introduced subsequently in almost every session of Congress. The Congressman who introduced it most recently in the current session of Congress (2011), Barney Frank (D-MA), admits that it has little or no chance of passing now that the Republican party has the majority in the House of Representatives. He says

It's an organizing tool. Obviously, with the Republicans in power, you're not going to get the bill even considered. But, we have work still to do and we have overwhelming – over 90 percent – support on the Democratic side for ENDA based on sexual orientation and we had, in the last Congress, about 30 Republicans that way. Unfortunately, there's a drop-off from that number to transgender, and this is a chance to work hard to sway those who are committed to ENDA to support the full transgender inclusion as well.

The legislation was introduced in the last session of Congress when the Democratic Party had control of both houses of Congress. However, as Equality Matters reports, it “was never brought to the floor.” Obama had his best opportunity to fulfill his commitment to the LGBT community in this earlier session. He used neither his “bully pulpit,” the power of his office, nor the leadership he promised to get the bill brought to the floor. In fact Obama and his administration are behind even corporations and quite a few of the states in demanding the rights for the GLBT workers. The Human Rights Campaign notes that companies have already begun to protect LGBT workers by establishing their own anti-discrimination policies. As they say, “As of March 2011, 433 (87 percent) of the Fortune 500 companies had implemented non-discrimination policies that include sexual orientation, and 229 (46 percent) had policies that include gender identity.” States have also begun to pass anti-LBGT discrimination legislation. As many as twenty-one states have passed legislation which protects workers from discrimination based on sexual orientation, and thirteen states have passed legislation which protects workers from discrimination based on gender identity.

Obama’s commitment to support the strengthening of the Uniting American Families Act is even more tenuous. The Obama administration, despite its reversal on the Defense of Marriage Act, continues to enforce the Defense of Marriage Act in immigration cases. The Uniting American Families Act allows U.S. citizens and legal residents to bring their spouses to the United States through specific immigration procedures. However, DOMA’s definition of marriage and spouse excludes gays and lesbians from being able to use the same means to bring their partners, married or ciivil union. Many believed that with the Administration’s determination that the DOMA was unconstitutional the Administration’s immigration policy would change. Citizenship and Immigration Services spokesman Christopher Bentley said the CIS “has not implemented any change in policy and intends to follow the president’s directive to continue enforcing the law.” And he continued, “the agency would continue to deny immigration status to foreigners based on those marriages.”\*