

LAWS PROHIBITING DISCRIMINATION BASED ON

SEXUAL ORIENTATION AND GENDER IDENTITY

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IREM® Legislative White Paper



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Overview

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap. Federal laws do not prohibit discrimination based on a person's sexual orientation or gender identity in housing or employment. However, an increasing number of states have laws prohibiting discrimination based on sexual orientation and/or gender identity in employment, housing, and access to public accommodations.

Thirty states and Washington, D.C. have anti-discrimination laws prohibiting discrimination against individuals based on their sexual orientation or gender identity. Wisconsin was the first state to enact an anti-discrimination law in 1982. According to the American Civil Liberties Union (ACLU) as of September, 2011, sixteen states have enacted laws that prohibit discrimination based on sexual orientation and gender identity; five have laws prohibiting discrimination based on sexual orientation only; six have laws prohibiting discrimination based on sexual orientation or gender identity in public employment; and three states have enacted laws that prohibit discrimination based on sexual orientation in public employment.

Although the federal government has not added "sexual orientation" and "gender identity" to the list of protected classes under the Fair Housing Act, in 2011, the National Association of REALTORS® has revised their code of ethics to prohibit "sexual orientation" discrimination. The Institute of Real Estate Management (IREM) also added language to prohibit "sexual orientation" discrimination into their legislative statement of policy on fair housing. Studies show that gay, lesbian, and bisexual adults prefer to live in cities or states that prohibit discrimination based on sexual orientation. According to Lambda Legal, 49.97% of American gay, lesbian, and bisexual adults reside in states that have laws prohibiting discrimination based on sexual orientation or gender identity in employment, housing, and public accommodations. That percentage does not include the number of gay, lesbian, and bisexual adults that live in cities that have ordinances prohibiting sexual orientation discrimination.

States that prohibit against discrimination based on sexual orientation do not necessarily prohibit discrimination based on gender identity. Sexual orientation and gender identity are not the same. According to the Human Rights Campaign (HRC), sexual orientation, previously referred to as sexual preference, "is the preferred term used when referring to an individual's physical and/or emotional attraction to the same and/or opposite gender. "Heterosexual," "bisexual" and "homosexual" are all sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression." HRC also states the, "term "gender identity," distinct from the term "sexual orientation," refers to a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning what sex was originally listed on a person's birth certificate)." This memo states which states prohibit discrimination against both groups and which states only prohibit discrimination against sexual orientation.

Commercial real estate professionals are encouraged to review the state laws and local ordinances of the areas in which they practice.

Chart of State Laws

STATE	SEXUAL ORIENTATION DISCRIMINATION PROHIBITED	GENDER IDENTITY DISCRIMINATION PROHIBITED
Alabama	No	No
Alaska	No. However, discrimination in state employment is prohibited.	No
Arizona	Yes	No
Arkansas	No	No
California	Yes	Yes
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware	Yes	No
Florida	No	No
Georgia	No	No
Hawaii	Yes	Yes
Idaho	No	No
Illinois	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	No, but public employees are protected.	No
Maine	Yes	Yes
Maryland	Yes	No
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes
Mississippi	No	No
Missouri	Yes	No
Montana	Yes	No
Nebraska	No	No
Nevada	Yes	Yes
New Hampshire	Yes	No
New Jersey	Yes	Yes
New Mexico	Yes	Yes
New York	Yes	No
North Carolina	No	No
North Dakota	No	No
Ohio	Yes	Yes

STATE	SEXUAL ORIENTATION DISCRIMINATION PROHIBITED	GENDER IDENTITY DISCRIMINATION PROHIBITED
Oklahoma	No	No
Oregon	Yes	Yes
Pennsylvania	Yes	Yes
Rhode Island	Yes	Yes
South Carolina	No	No
South Dakota	No	No
Tennessee	No	No
Texas	No	No
Utah	No	No
Vermont	Yes	Yes
Virginia	No, executive order banning discrimination (sexual orientation) by state agencies.	No
Washington (state)	Yes	Yes
West Virginia	No	No
Wisconsin	Yes	No
Wyoming	No	No
Washington, D.C.	Yes	Yes

See the State laws section below for information on existing state laws.

State Laws

States that prohibit discrimination on the basis of sexual orientation and gender identity in employment and housing are included below.

Alaska

Alaska does not have a state law prohibiting discrimination based on sexual orientation. However, in 2002 the governor of Alaska signed an order prohibiting sexual orientation discrimination in state employment.

Arizona

Governor Janet Napolitano issued an executive order in 2003 which banned discrimination based on sexual orientation in state employment.

California

California law prohibits discrimination based on sexual orientation in housing, public and private employment, and public accommodation. In regards to gender identity, California law prohibits discrimination based on gender identity, appearance, and behavior in the areas of employment and housing. Employees are permitted by law to dress consistently with their gender identity.

Colorado

Colorado enacted a law prohibiting discrimination in employment based on sexual orientation and gender identity.

Connecticut

Connecticut state law prohibits discrimination based on sexual orientation in housing, private and public employment, and public accommodation. The Connecticut Commission on Human Rights and Opportunities ruled that transgender individuals can pursue anti-discrimination claims under the category of sex discrimination. In 2011 the state passed, "An Act Concerning Discrimination," which prohibits discrimination based on gender identity and expression of public and private employment.

Delaware

A Delaware executive order protects state and executive branch employees from sexual orientation and gender identity and expression discrimination.

Hawaii

Hawaii law prohibits discrimination based on sexual orientation in employment, public accommodation, and housing. State law also prohibits against gender identity in public accommodation and housing. In 2011, the state enacted legislation that prohibits discrimination in public and private employment based on gender identity or expression.

Illinois

Illinois law prohibits discrimination based on sexual orientation in employment, real-estate transactions, access to financial credit, and public accommodation. Illinois also prohibits discrimination on the basis of gender identity. The Illinois Human Rights Commission ruled that transsexual individuals are included in the state's disability discrimination law.

Indiana

A Governor's policy statement released in 2004 protects state employees from discrimination based on sexual orientation and gender identity and expression.

Iowa

Iowa enacted a law that prohibit discrimination in employment, public accommodations, housing, education, and credit practices based on sexual orientation and gender identity.

Kansas

In 2007, Governor Kathleen Sebelius issued an executive order which banned employment discrimination for all state employees on the basis of sexual orientation or gender identity

Louisiana

An executive order prohibits discrimination against public employees based on sexual orientation. In 2008, Governor Bobby Jindal rescinded the order from 2004, which then ended the protection.

Maine

The Maine Human Rights Act prohibits discrimination in employment, housing, credit, public accommodation, and education opportunity based on sexual orientation and gender identity.

Maryland

Maryland state law prohibits discrimination based on sexual orientation in public accommodation, housing, and public and private employment.

Massachusetts

Massachusetts explicitly prohibits discrimination based on sexual orientation in public accommodation, housing, public and private employment, education, and credit and union practices.

In 2011, the state legislature enacted a law, "An Act Relative to Gender Identity" which prohibits discrimination in the workplace based on gender identity. This also applies to housing, credit, and under the state's hate crimes law.

Michigan

In 2007, an executive order was issued to prohibit employment discrimination based on sexual orientation and/or gender identity or expression. This applies only to state employees.

Minnesota

Minnesota law prohibits discrimination based on sexual orientation, including transgender individuals, in employment, housing, public accommodation, public service, education, credit, and business.

Missouri

An executive order issued in 2010, prohibits the branch of the state government from discriminating against employees based on sexual orientation.

Montana

Montana state law prohibits sexual orientation discrimination in public employment.

Nevada

Nevada law prohibits discrimination in employment based on sexual orientation. It also prohibits discrimination in employment based on gender identity or expression. T

New Hampshire

New Hampshire law prohibits discrimination based on sexual orientation in public accommodation, housing, and private and public employment.

New Jersey

New Jersey law prohibits discrimination based on sexual orientation and gender identity or expression in private and public employment, public accommodation, housing and credit, and public works contracts.

New Mexico

New Mexico state law prohibits discrimination based on sexual orientation and gender identity in employment, housing, credit, public accommodation, and union membership. In addition, sexual orientation discrimination in public employment is prohibited by executive order.

New York

New York law prohibits discrimination on the basis of sexual orientation in public and private employment, public accommodations, housing, education and credit. In regards to gender identity, courts have ruled that transsexual individuals can pursue anti-discrimination claims under the category of sex.

Ohio

In an executive order issued in 2007, discrimination in public employment based on sexual orientation and/or gender identity is prohibited.

Oregon

Oregon enacted a law prohibiting discrimination in employment, housing, public accommodation, public education, and foster parenting based on sexual orientation and gender identity.

Pennsylvania

An executive order is in place that protects state employees from discrimination based on sexual orientation and gender identity and expression.

Rhode Island

Rhode Island law prohibits discrimination based on sexual orientation and gender identity in employment, credit, housing, and public accommodation.

Vermont

The Vermont Human Rights Law prohibits discrimination based on sexual orientation in employment, public accommodation, education, housing, credit, and insurance and union practices. The state law was amended to prohibit discrimination based on gender identity and that change went into effect on July 1, 2007.

Washington

Washington law prohibits discrimination based on sexual orientation and gender identity in the areas of employment, real property transactions, credit and insurance and public accommodations.

Wisconsin

Wisconsin law prohibits discrimination based on sexual orientation in employment, housing, public education, credit and public accommodations.

Washington, D.C.

Washington, D.C. law prohibits discrimination based on sexual orientation and gender identity and expression in the areas of employment, schools, housing, and public accommodations.

Resources

IREM public policy resources:

IREM Legislative Staff

Call IREM Legislative Staff at (800) 837-0706, extension 6021, with questions on related state and federal laws.

IREM State Legislative Database

The IREM State Legislative Database is a member exclusive service. Search legislative proposals in your state. Access through:

http://www.irem.org//my_account/login_and_registration?ReturnUrl=/public-policy/legislation_lookup

Civil rights groups:

Human Rights Campaign

www.hrc.org

Lambda Legal

www.lambdalegal.org/

Federal government:

U.S. Equal Employment Opportunity Commission

<http://www.eeoc.gov/>

U.S. Fair Housing and Equal Opportunity

<http://www.hud.gov/offices/fheo/FHLaws/>