

Entrepreneur

Why ENDA Is Actually Bad for Business

BY [Ray Hennessey](#)

November 6, 2013

For companies set on doing the right thing, no good deed goes unpunished.

Congress is [once again considering the Employment Non-Discrimination Act, or ENDA](#), a bill meant to ban workplace discrimination over sexual orientation or gender identity. If ENDA sounds familiar, it is because the bill has been kicking around for decades, though it only recently added the transgendered to the list of protected classes.

On the surface, ENDA seems to meet meritorious goals. After all, discrimination of any kind is simply wrong. If there is discrimination against LGBTs in [hiring](#), it should be addressed.

But, that is the rub in this law: There has been a strong, efficient move against discrimination against gays and lesbians in the corporate world already, driven not by force of law but by the market. It has been effective and fair. And, ENDA would perversely add costs and complications to businesses that have already shown they are far more enlightened than the government trying to impose new fiats on them.

It is simply a question of numbers. According to the Human Rights Campaign, which is backing ENDA, 88 percent of companies in the Fortune 500 already have corporate policies that ban LGBT discrimination at work. That is an overwhelming majority, so big in fact that one has to assume the other 60 companies aren't too far behind in writing their own policies.

These are easy policies for corporate human-resources departments to write: Discrimination is not only morally wrong, it also doesn't make good business sense. When you refuse to hire a homosexual – or a Latino, a woman, or even a Whig for that matter – simply because of a bias, you are running the risk of not employing the most qualified person for the job. Particularly with smaller businesses and startups, every employee counts. Smart business owners don't care with whom their employees share a bed. They only care that they themselves will sleep soundly on a big pile of money.

Also, employees who face discrimination at a particular employer can simply take their talents elsewhere. And they apparently do. There have been very few lawsuits brought for LGBT discrimination in states that have passed their own laws. [As Walter Olson, senior fellow at the Cato Institute, notes](#), “most employees with other options prefer to move on rather than sue when an employment relationship turns unsatisfactory.”

“The forbidden group categories that tend more to drive HR managers crazy are things like age, disability, and criminal record consideration, where the law regularly tries to forbid behavior that in fact is perfectly rational for employers to engage in,” Olson said.

An argument for ENDA, of course, can be made by simply saying that since LGBT protections are so widespread in work environments around the country that it wouldn't have any impact, so jump on board. Trouble is, laws have a way of adding cost and complexity to businesses. Take lawsuits. While companies will now have to expend billable hours fighting lawsuits, most people don't consider the added costs involved in avoiding lawsuits. That means additional training, additional layers in human-resource functions. For smaller businesses, that uses resources often not readily available (though ENDA does exempt companies with fewer than 15 employees). And ENDA will be trickier than other anti-discrimination laws. Right now, the biggest objection cited by opponents is how it actually infringes on religious liberties. While there are some exemptions for religious organizations, opponents worry the bill opens up faith groups to lawsuits.

One other wrinkle is the nature of sexual identity in the workplace. A black employee doesn't have to declare his race. It is there for all to see. Sexual orientation requires identification and discovery, and often these happen in the types of workplace conversations about personal relationships that drive HR managers to drink already. As a result, there are more potential landmines for businesses with LGBT discrimination than with race, gender, age and disability.

Discrimination is bad policy, bad karma and bad business. But the markets know that already. That's why, for years, corporations extended benefits for domestic partners, irrespective of gender, even though the government did not. There is not just a little irony that the federal government, which only recently decided gays could serve in its military and get tax breaks for being married, is deciding it needs to take a hard line on businesses.

Businesses knew better and did the right thing. Why punish them for their enlightenment?

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