



Protect gay workers against bias

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Gay Americans, and national attitudes toward them, have come a remarkable distance in the past several years.

The military dropped the destructive “don’t ask, don’t tell” policy that led to thousands of highly qualified service members being discharged.

Popular TV shows feature openly gay hosts and characters.

Politicians — most recently Democratic Rep. Mike Michaud of Maine, who is running for governor — announce they are gay, and voters yawn.

Gay marriage is legal in 14 states, and a Gallup poll in May found that Americans now support same-sex marriage 53 percent to 45 percent, with 70 percent of people younger than 30 backing it.

Even as prejudice increasingly gives way to routine acceptance, there’s at least one area where, in too many states, it’s still entirely permissible to discriminate against gay men and lesbians: the workplace.

Federal law bars discrimination on the basis of race, religion, gender, age or disability, but despite decades of uphill fighting in Congress, employers in more than half the states can still fire, or refuse to hire, people merely because of their sexual orientation.

On Monday, the Senate took a long-overdue step toward changing that by voting 61-30 to advance legislation — the Employment Non-Discrimination Act — that would prohibit employers with 15 or more workers from making decisions about hiring, firing, promotion or pay based on sexual orientation or gender identity.

The Senate is poised to pass the bill by the end of the week, but even if that happens, it’s just half the battle. The legislation’s prospects in the Republican-dominated House are poor. Speaker John Boehner, R-Ohio, opposes the bill because it would “increase frivolous litigation and cost American jobs, especially small-business jobs,” a spokesman reaffirmed Monday.

Boehner's objections might be more convincing if "jobs" weren't the same all-purpose complaint House Republicans aimed at anything they didn't like. In fact, even some of the bill's opponents admit the bill is unlikely to touch off the sort of lawsuits Boehner implies will cause employers to be fearful of hiring.

At least 21 states and numerous cities, along with most Fortune 500 companies, already have bans against gay discrimination in the workplace, and "statistics ... indicate that they do not serve in practice as a basis for litigation as often as one might expect," says Cato Institute senior fellow Walter Olson, who is against the bill.

Conservative religious groups oppose the measure on the grounds that it would violate teachings that homosexuality is sinful. But the legislation anticipates this by including an exemption for churches or closely related religious organizations, such as schools or charities.

The bill does not allow a secular business to demand an exemption on the grounds of its owner's religious belief, and that's entirely appropriate. Courts have long established that in the balancing test between a business owner's convictions and statutes that apply equally to all businesses, owners should not be able to pick and choose which particular laws they'll obey.

Just as with earlier efforts to bar discrimination against women and minorities, the push to ban discrimination based on sexual orientation will someday seem like an obvious step toward ensuring that every American has a right to life, liberty and the pursuit of happiness.

The rate at which national attitudes toward gay Americans are changing suggests that time is already here.