

OUR INSIGHTS

Louisiana Executive Order Extending Protections to LGBT Employees of State Contractors Enjoined

Authors: Andrew P. Burnside (New Orleans), Hal D. Ungar (New Orleans)

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In June, we reported that in April 2016, [Louisiana Governor John Bel Edwards \(D\)](#) signed [Executive Order JBE 2016 – 11](#), which sought to protect lesbian, bisexual, gay, and transgender individuals, among other protected classes, from discrimination practiced by state contractors. After its issuance, the order was challenged by Louisiana Attorney General Jeff Landry (R) and others in a lawsuit filed in East Baton Rouge Parish. Landry sought a permanent injunction on the adoption and enforcement of the executive order, as well as a declaratory judgment that the executive order was null and void as an ultra vires act in violation of state law. Landry argued that Edwards’s conduct conflicted with existing law, violated the separation of powers established by the Louisiana Constitution, created a newly protected class of persons not recognized by law, and violated the U.S. Constitution. Edwards denied these assertions, arguing that the executive order was a lawfully issued policy directive relating to state contracts and the employees of state contractors.

On December 14, 2016, Judge Todd Hernandez of the 19th Judicial District Court, located in Baton Rouge, agreed in part with Landry and issued an order permanently enjoining the executive order and declaring it illegal as a matter of law. The court specifically held that the executive order “is a violation of the Louisiana Constitution’s separation of powers doctrine and an unlawful usurp of the constitutional authority vested only in the legislative branch of government.” The court explained that the “Executive Order . . . constitutes an unlawful ultra-vires act because, regardless of [the governor’s] intent, the effect of its adoption and implementation,

creates new and/or expands upon existing Louisiana Law as opposed to directing the faithful execution of the existing laws of this state pursuant to the authority granted unto the office of the Governor to issue executive orders.”

Edwards has declared his intent to appeal the December 14, 2016 order. However, pending appeal, Edwards stated that his office will not seek enforcement of the executive order. This will result in the removal of the order’s protections for LGBT employees of state contractors in the state of Louisiana.

This ruling creates regulatory uncertainty for state contractors while the appellate process runs its course. But, for now, the order is without effect.

Andrew P. Burnside (New Orleans)



Drew Burnside represents employers in federal and state courts, as well as federal and state administrative agencies, in employment law matters. Drew is admitted in Louisiana and Texas. Drew has received an “AV” Preeminent Peer Review Rating by Martindale-Hubbell and was on the editorial board of Tulane Maritime Law Journal at Tulane University. He is a chapter editor of and contributing author to The Family and Medical Leave Act treatise, published by BNA. Drew also was contributing...

Hal D. Ungar (New Orleans)



Hal D. Ungar brings eight years of practical experience to his diverse practice, which includes the fields of labor and employment, construction, admiralty, personal injury and insurance law. His vast litigation experience includes employment and labor matters, construction related disputes involving breach of contract and other contractor related issues, class action defense, MDL, and personal injury. Mr. Ungar has previously served as lead counsel on numerous labor and employment,...
