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Phoenix City Council Votes in Favor of Expansion of Anti-Discrimination Ordinance to Include Gay, Lesbian, Bisexual, and Transgendered Residents

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On February 26, 2013, by a vote of 5 to 3, the Phoenix City Council approved a proposal to expand the Phoenix City Code's anti-discrimination ordinance to more broadly prohibit discrimination against gay, lesbian, bisexual, and transgendered residents. The amendments to Chapter 18 of the Code add the terms "sexual orientation" and "gender identity or expression" to the Code sections currently prohibiting discrimination in employment, public accommodations, housing, and certain contracts with the City. The prohibition against employment discrimination applies to all employers conducting business within the City of Phoenix with one or more employees for each working day in each of 20 calendar weeks in the current or preceding calendar year. The Code exempts certain organizations including religious organizations, small private landlords, senior housing, and private clubs. Failure to comply with the Code sections may result in a Class 1 misdemeanor and a \$2,500 fine.

With the amendment, Phoenix joins at least 180 other counties, towns, and cities, including the City of Tucson, which have passed ordinances prohibiting discrimination against gay, lesbian, bisexual, and transgendered individuals. While federal employment anti-discrimination laws currently do not protect against discrimination based on real or perceived sexual orientation or gender identity or expression, this has become an evolving area of law for employers. In fact, the Equal Employment Opportunity Commission has recently provided as one of its targeted areas coverage of gay, lesbian, bisexual, and transgendered individuals under Title VII of the Civil Rights Act's provisions regarding the prohibition of sex discrimination.

Additionally, federal legislation has been proposed in the U.S. Congress on this issue, such as the Employment Non-Discrimination Act (ENDA), which would prohibit discrimination against an employee or applicant on the basis of the person's sexual orientation or transgender status. It is expected that ENDA will be proposed again in the 113th Congress.

Twenty-one states (and the District of Columbia) have enacted laws prohibiting discrimination based on sexual orientation; and 16 states (and the District of Columbia) have enacted laws prohibiting discrimination based on gender identity. Currently, there is no Arizona state statute prohibiting discrimination by private employers on the basis of sexual orientation or gender identity or expression.

In light of the amendment and the growing focus on this area of law, employers should consider amending their equal employment opportunity and anti-harassment policies to add sexual orientation and gender identity/expression as protected classes. Employers should also consider initiating training to address transgender and sexual orientation discrimination to better educate and inform employees and to help management identify potential discrimination.

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