

One Minute Memo®



The Houston Equal Rights Ordinance: Will Employers Give The New Law A “HERO’s” Welcome?

By Clark Smith, Steve Shardonofsky and Dennis A. Clifford

Last week, the Houston City Council passed the Houston Equal Rights Ordinance (“HERO”), affording municipal legal protections for the first time to gay and transgendered citizens and visitors. HERO prohibits private employers from discriminating against persons based on sexual orientation and gender identity, among other traits and statuses. And though the law’s bark is bigger than its bite, employers should take heed, and take steps to ensure compliance.

What the Ordinance Does

HERO provides new protections against discrimination in both public and private employment, municipal contracting, public accommodation, and housing by expanding existing protections to include gay and transgendered people. The law has an immediate effect on employers with at least 50 employees. That threshold reduces to 25 employees in May 2015, and shrinks to 15 in May 2016. Importantly, these numbers pertain to an employer’s *total* number of employees, not just those employed *in Houston*. HERO does not affect religious organizations or private clubs, which are exempted from its reach.

Aggrieved persons may now file a complaint with the Houston Office of Inspector General within 180 days of the perceived violation. If the complaint alleges discrimination already covered by state or federal law (e.g., race, age, disability, etc.), the city will refer the complaint to the Texas Workforce Commission or the federal Equal Employment Opportunity Commission. But if the alleged discrimination is not otherwise protected under state or federal law (e.g., sexual orientation and gender identity), the Inspector General will investigate the complaint to determine whether a violation has occurred. If the investigation points to a violation, the Inspector General must engage in conciliation with the employer. If that fails, the City Attorney may choose to prosecute the claim via jury trial in municipal court. If found guilty, the employer faces a fine of up to \$5,000 for a violation of the ordinance.

What the Ordinance Does Not Do

In contrast to state and federal laws, HERO does not explicitly provide a private cause of action allowing individuals to file their own lawsuits. HERO only provides for criminal misdemeanor fines not to exceed \$5000—aggrieved persons cannot recover damages. HERO does not require companies to provide separate bathroom facilities for transgendered customers or employees. But, by the same token, businesses cannot discriminate against covered individuals in the provision of such accommodations (an issue that engendered some highly emotional debate by citizens before the City Council). And don’t worry, seniors, HERO specifically permits businesses to provide discounts based on age and military status.

What's the Upshot?

HERO's passage puts Houston businesses and employers on notice that gay, lesbian, and transgendered persons and employees enjoy the same legal protection as other individuals. Best business practices have long preached that employers treat LGBT employees equally; now, employers are legally bound to do so in the Bayou City.

Employers covered by the ordinance should review their equal opportunity, anti-harassment, and non-discrimination pronouncements in employee handbooks, policies, and notices and revise them accordingly. Employers should also train their employees on the requirements of the new law, and be diligent in documenting, investigating, and promptly remedying complaints of discrimination. Although HERO does not provide for remedies commensurate with state and federal antidiscrimination laws, it is a historic milestone for the City of Houston.

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Seyfarth Shaw LLP One Minute Memo® | June 3, 2014

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