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# City's Gay Rights Ordinance Faces Test in Court Case

■ **Justice:** Fate of similar laws could depend on bisexual man's appeal of his firing. Superior Court judge said the Los Angeles statute was preempted by state act.

By SCOTT HARRIS  
TIMES STAFF WRITER

When furor raged over Gov. Pete Wilson's veto of a major gay rights bill this fall, Los Angeles City Councilman Joel Wachs and City Atty. James K. Hahn declared that the city would tighten enforcement of its own stringent ordinance protecting gays from job bias.

What wasn't widely known was that the 12-year-old Los Angeles law had been called into question when Superior Court Judge Diane Wayne in August declared the law invalid. Because the ordinance had not been heard in an appellate court, its fate remains unclear.

That could change soon. The Los Angeles ordinance—as well as similar codes in several other California cities—will be tested in an appeal that is expected to be filed today by lawyers for a bisexual man who contends that he was subjected to extreme sexual harassment in the workplace.

Jim Delaney's first attempt to sue his former employer, Superior Fast Freight, was dismissed when Wayne ruled that the Los Angeles ordinance was preempted by the state Fair Employment and Housing Act, which does not ban bias on the basis of sexual orientation.

The appeal of Wayne's ruling represents the latest development in a legal campaign to shore up gay rights in the aftermath of Wilson's veto of AB 101—legislation that would have outlawed job bias based on a person's sexual orientation. Proponents argued that AB 101 would have been preferable to the incomplete patchwork of local ordinances,

case law and government policies that concern gay rights.

"We're at a very scary place right now in terms of what protections exist," said Thomas F. Coleman, an attorney for Delaney. "Are the ordinances there or are they not?"

A victory, gay rights advocates say, would help bring order to a complicated and seemingly contradictory matrix of policies and legal rulings governing the rights of homosexuals and employers.

A defeat in Delaney's appeal would not only mean that Los Angeles' anti-bias ordinance protecting gays is invalid, but also similar laws in San Diego, San Francisco, Oakland, Sacramento, Long Beach, Santa Monica, West Hollywood and Laguna Beach, Coleman said.

Los Angeles, other cities and various interest groups are expected to file friend-of-the-court briefs in support of the city law. John Emerson, Los Angeles' chief deputy city attorney, said the ordinance has never been tested on an appellate court level.

Wilson, in issuing his veto in September, contended that existing case law and legal opinions were sufficient to protect gays in the workplace. But it was not until a 1st District Court of Appeal ruling Oct. 29 of a case involving Target Stores that the state Department of Industrial Relations began to accept complaints based on sexual orientation.

State Labor Commissioner Victoria Bradshaw said 20 such complaints have been filed with the agency since the new policy was enacted. Previously, the only complaints heard by the state agency regarding gays concerned political activities in the workplace.

Although state policy protecting gays have been bolstered, Coleman said it was important that local ordinances be upheld as well. The ruling in the Target case is subject to review by the California Supreme Court, Coleman said.

Delaney, who worked at Superior Fast Freight for 17 years before he was fired in September, 1989, claims continual "outrageous, egregious, lewd" sexual remarks and innuendoes by both male and female co-workers and supervisors at the firm led to an emotional breakdown that cost him his job.

Lawyers for the Superior Fast Freight say Delaney's suit is without merit.

In his complaint, Delaney alleged the harassment began in 1980. "Several male co-workers would often suggest that the plaintiff perform sexual favors for them, including oral copulation." Some co-workers made comments insinuating that he was a prostitute, according to the complaint. Items such as condoms, false eyelashes and false fingernails were placed on his desk, he alleges.

Delaney said he continually objected to harassment from co-workers. In February, 1989, he said, he asked supervisors to address the problem, but the firm failed to take action.

Delaney became so distraught, Coleman said, that "he called into a radio talk show and said he was going to come into work and shoot somebody." Delaney later placed a similar threatening call to his employer, his lawyer said.

Delaney was reprimanded and later fired, Coleman said.

Some of Delaney's former co-workers corroborated many of his claims in sworn depositions, Coleman said.

"Let the jury decide the facts," Coleman said. "But give the guy his jury trial."