

Wilson's Surprise on Gay Job Rights

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After weeks of weighing the arguments, Governor Wilson in late September finally vetoed a bill protecting gays and lesbians from job discrimination because he said small businesses would suffer and the number of work-related lawsuits would increase.

A month later, the Wilson administration quietly authorized essentially the same protections granted in the bill by ordering the Department of Industrial Relations to handle sexual orientation job discrimination cases under state labor laws.

There is speculation now that Wilson's later action may place greater burdens on small businesses and could cost taxpayers more money.

"Wilson trapped himself. He shot himself in the foot," said Thomas F. Coleman, a Los Angeles lawyer specializing in sexual orientation and marital status issues. "He hurt the very people he said he was trying to protect in his veto message."

If AB101 had become law, nonprofit religious groups — some of which opposed the measure, claiming it would force them to hire gays — would have been exempt from its requirements. But now, under the labor code, they have no exemption.

Any employer — regardless of size — that violates the labor code faces criminal penalties. Prosecutions of AB101 violations would have been civil cases.

"AB101 was a very simple, good public policy measure,"

said Laurie McBride, who lobbied in behalf of the bill. "What we have now are the same protections but it's a more chaotic remedy."

Bill Livingstone, Wilson's press secretary, said he was unfamiliar with the procedures for investigating discrimination claims under the labor code and so could not comment.

Taking Bias Claims

After talking with members of the governor's staff, the Division of Labor Standards Enforcement within the state Department of Industrial Relations began accepting claims of hiring or employment discrimination based on sexual ori-

entation at its 27 district offices on October 30.

So far 15 complaints have been filed.

Coleman contends that the small number of complaints is due to a nonexistent outreach effort by the department.

No effort has been made to announce the new policy but a spokesman for the department said a press release will be issued soon to report on the department's progress.

In the past, the department has handled a few sexual orientation discrimination claims but only those involving "overt political activity."

A 1987 legal opinion by the then Labor Commissioner Lloyd Aubrey said there was no requirement to handle complaints from persons who were discriminated against but silent about their homosexuality.

Aubrey took the opposite position of a 1986 attorney general's opinion that Wilson cited in his veto, which said two sections of the labor code provided protection against any job discrimination based on sexual orientation.

But one month after Wilson's September 29 veto of AB101, Aubrey — now the director of the Department of Industrial Relations — ordered his staff to accept all job discrimination claims filed by gays and lesbians.

The move came just days after a state appellate court in San Francisco agreed with the attorney general's opinion and said state law covers all types of discrimination involving sexual orientation.

Minimal Cost Impact

If AB101 were law, the duty of investigating such complaints would have been given to the Department of Fair Employment and Housing, which already handles complaints of housing discrimination based on sexual orientation.

"To add one new class of complaint to their current responsibilities would have been minimal in cost," said Coleman.

Only 10 percent of the labor division's investigations involve discrimination issues, said Victoria Bradshaw, the new labor commissioner. Investigators are now being trained to handle discrimination complaints based on sexual orientation.

"We're trying very hard to make sure we handle these cases appropriately and we are giving them the special attention that at this point they warrant," she said.

Bradshaw said there are now six investigators and two hearing officers being trained to handle sexual orientation complaints. "As the caseload increases," she said, "those numbers will increase." Handling discrimination cases under labor laws instead of under fair employment laws is a double-edged sword for both violators and victims.

Fair employment laws, except in cases of harassment, do not apply to businesses of under five employees. Labor laws do.

"Obviously, if (AB101) wouldn't have applied to employers of less than five employees then the answer is this system is more burdensome (to them)," said Bradshaw, adding that most of the complaints received since October 30 involve businesses with more than five employees.

Nonprofit religious groups also enjoy no exemptions in the labor code.

Violations of fair employment laws carry only civil penalties. Violations of the labor code sections being used to protect gays and lesbians from discrimination carry criminal penalties of \$1,000 for individuals and \$5,000 for a corporation.

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