

## **BACKGROUND ON THE EMPLOYMENT NON-DISCRIMINATION ACT**

**The Employment Non-discrimination Act (“ENDA”) (H.R. 3685) makes it illegal to fire, refuse to hire, or otherwise discriminate against employees simply based on their actual or perceived sexual orientation. ENDA will extend basic civil rights protections to millions of gay, lesbian, and bisexual (GLB) Americans.**

- **WHY ENDA IS NEEDED.** It is fundamental to equal opportunity that employment decisions should be based on a person’s qualifications and job performance, not who they are. While many employers agree – 90% of Fortune 500 companies now include sexual orientation in their nondiscrimination policies – anti-gay discrimination persists. Currently, it is legal in 30 states to fire someone simply because of his or her sexual orientation. A 2007 study found that 16 percent of lesbians and gay men reported being fired or denied a job because of sexual orientation. A 2005 survey found that a quarter of GLB people disagreed with a statement that most employers in their areas would hire openly GLB people even if they are qualified for the job.
- **WHERE ENDA APPLIES.** Like other civil rights laws, ENDA applies to private sector employers with 15 or more employees, employment agencies, labor organizations, and joint labor-management committees. ENDA also applies to Congress and the federal government, as well as state and local governments.
- **WHERE ENDA DOES NOT APPLY.** ENDA does not apply to members of the armed forces. ENDA also excludes private membership clubs and religious organizations, such as religious corporations, associations, and schools. ENDA uses Title VII’s definition of a religious organization, such that if an organization is exempt from Title VII’s religious discrimination prohibitions, it will be exempt from ENDA’s prohibitions.
- **HOW ENDA WORKS.** ENDA authorizes the same enforcement powers, procedures and remedies that exist under current federal employment discrimination laws such as Title VII and the Americans with Disabilities Act. All individual relief that is available under Title VII is available under ENDA. However, unlike Title VII protections, ENDA does not allow an individual to bring a "disparate impact" claim -- that is, a claim that a facially neutral practice of the employer has a disproportionate adverse effect on persons of a particular sexual orientation. In addition, ENDA does not allow for affirmative action or quotas based on sexual orientation.