

114TH CONGRESS

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H.R. 1269

IN THE HOUSE OF REPRESENTATIVES

November 1, 2016

Referred to the Committee on Education and the Workforce, and in addition to the Committees on House Administration, Oversight and Government Reform, and the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To prohibit employment discrimination on the basis of sexual orientation or gender identity/expression.

1. Short title

This Act may be cited as the Fair and Responsible Employment Equality (FREE) Act of 2016.

2. Purposes

The purposes of this Act are—

- (1) to address the history and persistent, widespread pattern of discrimination on the bases of sexual orientation and gender identity by private sector employers and local, State, and Federal Government employers;
- (2) to provide an explicit, comprehensive Federal prohibition against employment discrimination on the bases of sexual orientation, gender identity, and gender expression, including meaningful and effective remedies for any such discrimination.

Definitions

(a)

In general

In this Act:

(1) Commission

The term *Commission* means the Equal Employment Opportunity Commission.

(2) Covered entity

The term *covered entity* means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Demonstrates

The term *demonstrates* means meets the burdens of production and persuasion.

(4) Employee:

(A)

In general

The term *employee* means—

(i)

an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii)

a State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) applies;

(iii)

a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv)

an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B)

Exception

The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(5)

Employer

The term *employer* means—

(A)

a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (4)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B)

an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C)

an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

(D)

an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(6) Employment agency

The term *employment agency* has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(7) Gender identity

The term *gender identity* means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(8) Labor organization

The term *labor organization* has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(9) Person

The term *person* has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(10) Sexual orientation

The term *sexual orientation* means homosexuality, heterosexuality, or bisexuality.

(11) State

The term *State* has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)). (b)

4. Employment discrimination prohibited

(a)

Employer practices

It shall be an unlawful employment practice for an employer—

(1)

to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or

(2)

to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b)

Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c)

Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1)

to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2)

to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3)

to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d)

Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e)

Association

An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

(f)

No preferential treatment or Quotas

5.

Retaliation prohibited

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—

(1)

opposed any practice made an unlawful employment practice by this Act; or

(2)

made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Regulations

(a)

In general

Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b)

Librarian of Congress

The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees and applicants for employment of the Library of Congress.

(c)

Board

The Board referred to in section 10(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(d)

President

The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 411(c) of title 3, United States Code, and applicants for employment as such employees.

6.

Effective date

This Act shall take effect on the date that is 6 months after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.