

A LOOK AT SEATTLE'S "OTHER" PROTECTED CLASSES

Protection based on political ideology, sexual orientation and gender identity found in few jurisdictions

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One of Seattle's less familiar laws made the news earlier this year. Last March both the Seattle P-I and Seattle Times ran front-page stories alleging that protesters had been forced to leave Westlake Mall because of the anti-war signs they carried. The news articles highlighted Seattle's listing of "political ideology" as a protected class—not just in public accommodations, but also in housing, employment and contracting.

The City of Seattle and King County both list several protected classes beyond those covered under state and federal law. Political ideology and sexual orientation were added to the City's housing ordinance in 1975, more than a quarter-century ago. Gender identity joined the list in 1999.

Disparate treatment is at the heart of most cases of illegal discrimination, no matter which protected class is invoked. Property managers and other business owners have the right to establish their own reasonable policies, as long as they do not have the effect of discriminating against people based on protected classes. It's consistency that counts – a landlord who allows a Union Jack to flap from one Seattle tenant's balcony must also allow a neighbor's French tricolor.

The last time that the Seattle Office for Civil Rights (SOCR) saw a housing case involving political ideology was in 2001, when a local landlord ordered a tenant to remove a "rainbow" flag from his balcony. The Charging Party eventually withdrew his charge, after it became clear that the landlord simply was enforcing the apartment complex's blanket ban on hanging anything from a balcony.

Sexual orientation and gender identity

Gay, lesbian, bisexual, and transgendered people face pervasive discrimination in the workplace, as well as in housing and public accommodations. For this reason, many states have extended anti-discrimination protection in employment to cover sexual orientation. Some states also have extended protection to housing and public accommodations.

For many gays, lesbians, bisexuals and transgendered people, sexual orientation and gender expression can be interwoven. For some people, being lesbian or gay not only is about having a sexual preference for the same sex, but also incorporates a certain dress, manner or style—a different way of expressing gender than someone who is heterosexual.

From a legal standpoint, however, sexual orientation and gender identity are unrelated. It is possible that an employee protected against discrimination based on sexual orientation still could be discriminated against for gender nonconformity. We should not assume that gender identity (including transgenderism) is protected merely because a jurisdiction prohibits sexual orientation bias.

Across the United States, more jurisdictions are adding sexual orientation to their lists of protected classes, but only three states-Minnesota, New Mexico, and Rhode Island-have statutes that explicitly prohibit discrimination based on gender identity. Courts and administrative agencies in the District of Columbia and five additional states-Connecticut, Hawaii, Massachusetts, New Jersey and New York-have interpreted either their sex or disability protected classes to prohibit certain forms of discrimination against transgendered people.

For the first time this year, Washington State's House of Representatives passed a measure to protect sexual orientation in housing and employment, though the State Senate refused to take up the measure.

Transgendered employees can present unique workplace challenges. Transitioning employees-those who are moving outside the socially accepted standards of dress, physiology and/or behavior of their birth gender-often cannot avoid challenging community standards about gender-appropriate appearance or expression. Little legal protection exists for gender non-conformity in the workplace, because few jurisdictions specifically protect gender identity, though some have filed charges involving gender identity on the grounds of gender or disability.

In SOCR's experience, gender identity rarely has played a role in housing discrimination cases. (It is more likely to appear as a protected class in employment cases.) Sexual orientation, on the other hand, forms the basis of 2-3 housing discrimination charges per year.

Two years ago, SOCR investigated housing discrimination charges filed by a pair of lesbians against a local faith-based housing corporation. The settlement called for the corporation to remove language from the lease agreement that had the effect of discriminating against them based on their sexual orientation.

The case illustrates a broader point in fair housing law: religious organizations that operate commercial housing programs must obey fair housing laws, even if their sponsoring churches espouse a different belief. Religious organizations do enjoy a broad exemption from most anti-discrimination regulations when the program is an integral part of the church itself. A church, for example, may choose its own participants for a monastery or other cloistered housing program, but it must follow local and national fair housing laws for any housing program open to the general public.

By embracing laws that treat people equally regardless of gender identity, sexual orientation or political ideology, Seattle has become one of the finest places to live in the U.S. Welcome to the future!

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