

**Carolyn B. Lamm**  
President

**AMERICAN BAR ASSOCIATION**

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November 4, 2009

The Honorable Tom Harkin  
Chair  
Committee on Health, Education, Labor & Pensions  
United States Senate  
Washington, DC 20510

The Honorable Michael B. Enzi  
Ranking Member  
Committee on Health, Education, Labor & Pensions  
United States Senate  
Washington, DC 20510

Dear Chairman Harkin and Senator Enzi:

On behalf of the American Bar Association (ABA), I write to emphasize the ABA's long tradition of actively opposing discrimination. Whenever any of our basic civil rights are diminished or marginalized unjustifiably on the basis of personal characteristics, all of our basic civil rights are diminished and jeopardized. Neither our Constitution nor our Congress should tolerate such discrimination. Specifically, in 1989, the ABA adopted a policy calling upon local, state, and federal lawmakers to prohibit discrimination on the basis of sexual orientation.

I write you to urge your support for the Employment Non Discrimination Act of 2009 (ENDA), S. 1584. This legislation is urgently needed to protect lesbian, gay, bisexual and transgender (LGBT) employees from workplace discrimination. Despite the prevalence of discrimination against LGBT people, in 29 states it remains legal to fire someone because of his or her sexual orientation, and it is legal to fire someone on the basis of gender identity in 38 states. The ABA condemns such discrimination based on the Association's underlying commitment to the ideal of equal opportunity—that no person should be denied basic civil rights because of membership in a minority group. Employment, housing, and public accommodations decisions should be made only on the basis of individualized facts, not on the basis of presumptions arising from mere status.

While progress has been made since that time, lesbian, gay, and bisexual people continue to face discrimination in the workplace. For example, according to a 2007 report produced by the Williams Institute at UCLA, since the mid-1990s, studies have found that as many as 43% of lesbian, gay, and bisexual employees experienced discrimination in the workplace. (Badgett, Lau, Sears and Ho. The Williams Institute, UCLA. *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination.*)

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In August 2006, the ABA House of Delegates adopted a policy urging the enactment of legislation prohibiting discrimination on the basis of real or perceived gender identity and expression in the areas of employment, housing, and public accommodations.

Studies indicate that transgender and other gender nonconforming people face severe discrimination in all public aspects of their lives, particularly employment. For example, a study of transgender people in San Francisco in 2002 found that 50% of respondents had experienced employment discrimination on the basis of gender identity. (Minter and Daley. Transgender Law Center. *Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities.*) Further, prohibiting discrimination on the basis of gender identity and expression protects not only transgender people, but also helps to fully protect lesbian, gay, and bisexual people. Many lesbian, gay, and bisexual people who are discriminated against are targeted because their dress or behavior does not match that stereotypically associated with their gender. Protection for gender identity or expression would protect them from this type of discrimination.

Every year in this country, qualified, hardworking individuals are denied employment opportunities because of their sexual orientation and gender identity, resulting in a significant loss of human potential. We urge you to support this important legislation so that no worker has to fear losing his or her job due to discrimination based on sexual orientation or gender identity.

Should you have any additional questions, please contact Tom Susman, Director of the ABA Governmental Affairs Office, at 202-662-1765 or [susmant@staff.abanet.org](mailto:susmant@staff.abanet.org).

Sincerely,

A handwritten signature in black ink that reads "Carolyn B. Lamm". The signature is written in a cursive, flowing style.

Carolyn B. Lamm

cc: Members, Senate Committee on Health, Education, Labor & Pensions