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Houston HERO Defeat Doesn't Mean End of Discrimination Protections for LGBT

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Texas Lawyer

Jackie Ford, a partner in the Vorys Houston office and a member of the labor and employment group, authored an article for *Texas Lawyer* titled "Houston HERO Defeat Doesn't Mean End of Discrimination Protections for LGBT." In the article, Ford says that while Houston voters rejected the Houston Equal Rights Ordinance (HERO), protections based on sexual orientation or gender identity will likely continue to expand under both existing and emerging laws.

The article states:

"While the defeat of HERO eliminates one set of local rules related to employment of LGBT workers, federal statutes are increasingly being interpreted to provide similar benefits. The Houston vote notwithstanding, the clear trend appears to be one of expanding, rather than eliminating, such protections.

On its face, Title VII of the Civil Rights Act of 1964 bars employment discrimination on the basis of 'sex' but says nothing about discrimination based on 'sexual orientation.' As a result, cases alleging 'sexual orientation discrimination' under Title VII were once routinely dismissed for failure to state a claim. Yet because some of the earliest Title VII sex discrimination cases also found that discrimination based on 'sex' could include discrimination based on failure to conform to 'gender stereotypes,' some plaintiffs have argued that being discriminated against for dating or marrying someone of the same sex is a form of gender nonconformity protected under federal law. As a result, some claims of 'sexual orientation' discrimination have more recently been sustained as Title VII 'sex' discrimination claims.

The Equal Employment Opportunity Commission (EEOC) has taken that view one step further. As stated on its website, the EEOC finds that 'discrimination against lesbian, gay, and bisexual individuals based on sex-stereotypes, such as the belief

that men should only date women or that women should only marry men, is discrimination on the basis of sex under Title VII.' Applying a similar rationale, the EEOC also views discrimination against transgender individuals as prohibited under Title VII."

To read the entire article, visit the *Texas Lawyer* [website](#). (Subscription required).