



FAQ ABOUT HERO:

HOUSTON EQUAL RIGHTS ORDINANCE



1. What types of discrimination are covered under the new Houston Equal Rights Ordinance (HERO)?

The new ordinance prohibits intentional discrimination based on sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy.

2. Are there other cities in Texas that already have a similar local ordinance?

Yes; Austin, Dallas, El Paso and Fort Worth.

3. Does this create new legal protections for sexual orientation and transgender discrimination?

Technically, yes; because sexual orientation and gender identity are now specifically defined and covered under the new ordinance. That said, many courts have held that discrimination against transgendered employees is covered under federal and state law as discrimination “based on sex.” The Equal Employment Opportunity Commission (EEOC) issued an opinion, in April 2012, holding that “intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination based on sex.” Further, federal courts have also recognized that discrimination based on sexual stereotypes is unlawful (i.e., a man not being “manly” enough). See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)(holding that a female accountant denied partnership because she was too “macho” and needed to act more “feminine” stated a claim of sex discrimination). Texas law appears to be following the same trend as federal courts post-*Price Waterhouse*. See *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F. Supp. 2d 653,660 (S.D. Tex. 2008)(explaining that Title VII and *Price Waterhouse* do not make any distinction between a transgendered litigant who fails to conform to the traditional gender stereotypes and an “effeminate” male or “macho” female who, while not necessarily believing himself or herself to be of the opposite gender, nonetheless is perceived by others to be in nonconformity with traditional gender stereotypes.)

4. Should I update my employee handbook?

Yes. Houston employers need to update their handbooks and train managers on these new classifications protected under the new city ordinance.

5. Does it apply to private employers or only those companies who do business with the city?

Both. The ordinance applies to employees of the city and/or in city services, as well as employers with city contracts, housing contracts, public accommodations and private employment including restaurants, bars, entertainment venues and places of public amusement, hotels and motels, and public conveyances.

Notably, the amendment plans to expand the definition of “employer” over time so that more businesses are affected by the ordinance as time passes. An employer is currently defined as a “person who has 50 or more employees.” However, on the first anniversary of the effective date of the amendment, May 28, 2015, employer will be defined as “a person who has 25 or more employees.” It will further expand, effective on the second anniversary of the effective date, to include persons “with 15 or more employees.”

6. Are there any exclusions?

Yes. The ordinance does not apply to bona fide private clubs (i.e., clubs that require membership) and employers of religious organizations.

7. What are the penalties for a violation?

Violation by employee or official of the city – An employee or official found in violation shall be subject to disciplinary action up to and including indefinite suspension/termination or removal from office;

Violation by employer in performance of a city contract – If a contractor is found to have violated the ordinance in connection with any city contract, the Inspector General shall refer the matter to the City Attorney for appropriate action to serve the best interest of the city, including the use of remedies provided by the city's contract with the contractor.

Public Accommodations and Private Employment – If the Inspector General finds that a violation has occurred, the Inspector General shall refer the matter to the City Attorney for appropriate action. A violator is entitled to a trial by jury in municipal court. A person who violates the ordinance commits a criminal offense, a Class C misdemeanor – punishable in municipal court by a fine of not less than \$250.00 nor more than \$500.00. **A person is guilty of a separate criminal offense for each day or part of a day during which a violation is committed, continued or permitted. In no event shall the aggregate of all fines relating to the same complaint filed by a complainant exceed \$5000.00. **The city can hold liable the employer's "agent," thus managers arguably risk prosecution in their individual capacities.

8. How is the law enforced?

See above. Complaints are investigated by the City of Houston's Inspector General. The Inspector General may take statements and inspect relevant records. If an employer refuses to voluntarily comply with the investigation, the City Attorney (in consultation with the Inspector General) may request the City Council to issue a subpoena or subpoena *duces tecum* to compel the attendance of witnesses or production of relevant documents.

Upon completion of investigation, if the Inspector General finds a violation of the ordinance, criminal penalties can be issued, in the form of fines, for each violation as outlined above.

9. Can the employee of a private employer sue under this ordinance?

No, but other federal and state law claims may be available.

10. Does this law allow an employee to use the restroom of his or her choice (i.e., gender)?

No. The provision that prohibited a business open to the public from denying a transgendered person entry to the restroom consistent with his or her gender identity was removed from the final draft of the ordinance after much debate and controversy. As written, however, a transgendered person barred from a restroom can still file a discrimination complaint with the Inspector General because the ordinance broadly protects against discrimination.



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