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LGBT advocates shift focus to anti-bias law

By **LYLE MORAN**

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In the aftermath of the Supreme Court legalizing same-sex marriage, the focus of LGBT advocates has shifted to seeking passage of a law providing greater non-discrimination protections nationwide.

Federal lawmakers recently introduced the Equality Act, which would ban discrimination based on an individual's sexual orientation or gender identity in a variety of matters, including employment.

Jennifer Rubin, a partner at **Mintz Levin Cohn Ferris Glovsky and Popeo PC** in San Diego, said the attention of lesbian, gay, bisexual and transgender supporters has turned to federal non-discrimination safeguards because more than half the states in the country lack statutes providing them.

Other states provide protections from discrimination on the basis of sexual orientation or gender identity to state and local government employees, but not employees in private industry.

The Equality Act already has garnered the support of such corporate giants as **Google** (Nasdaq: GOOG), **Apple** (Nasdaq: AAPL) and **General Electric** (NYSE: GE).

Likely voters nationwide also support workplace non-discrimination protections by a 78 percent to 16 percent margin, according to the Human Rights Campaign, an LGBT advocacy group.

While it remains to be seen how the Equality Act will fare in Congress, Rubin said there was a positive development this summer from the Equal Employment Opportunity Commission.

In mid-June, the EEOC ruled for the first time that discrimination based on sexual orientation is prohibited under Title VII of the Civil Rights Act, even though the law does not explicitly say so.

In doing so, the commission reversed a previous ruling to dismiss the case filed by an air-traffic controller against the Federal Aviation Administration. The man had alleged he was denied a promotion because he was gay.

The decision, while not binding on federal courts, will be binding on other EEOC proceedings and should preclude employers from arguing that Title VII permits discrimination on the basis of sexual orientation, said Rubin.

"It was a very significant decision," she said. "Any time an agency of the federal government responsible for rulemaking in a certain arena says something or reaches a certain decision, that becomes highly persuasive to the courts."

Rubin, who has a bicoastal practice that includes a focus on different areas of employment law, cautioned that Title VII applies only to employers with 15 or more employees, so work-

ers at smaller companies are not affected by the decision.

But at a recent seminar held at Mintz Levin's San Diego office focused on the legal landscape for the LGBT community after the Supreme Court's gay marriage ruling, Rubin said employers are allowed to provide their employees with greater safeguards than state and federal law require.

"As an employer, you can always option into doing more, especially if it reflects your corporate culture," she said.

One company that has been a leader in that regard is **Thermo Fisher Scientific** (NYSE: TMO).

Peter Kim, vice president and chief employment counsel at Thermo Fisher, said the company has an equal employment opportunities policy that says it does not discriminate based on any type of protected category, including gender identity and sexual orientation.

The policy is applied whether or not a state or country recognizes the categories as protected, including in nations where homosexuality is illegal, he said.

But in places with weaker anti-discrimination laws, Kim said there are still obstacles to ensuring employees of various backgrounds feel their rights will be honored.

"I think it provides some level of assurance for our employees that we apply our corporate policy, but if you are in a state like Texas ... you might be very scared," Kim said during the event at Mintz Levin.

"Our challenge is how do we convince our employees that we mean what we say, which is that we don't discriminate, when the state in which they live doesn't protect against discrimination. That is our next battle."

Another goal of Thermo Fisher's is to encourage more LGBT employees to come out of the closet, he said.

The recent Supreme Court ruling should certainly help, Kim said.

"There are still a lot of people within our company who are in the closet because they don't know how the company might respond, how their supervisors and managers might react and whether they might be isolated or retaliated against or harassed or discriminated against," he said.

"That is only going to change if we have more people come out, so that people get accustomed and realize we are not different than anybody else."

Rubin said the Supreme Court's decision should also prompt employers to review the language in their employee benefit plans to make sure it doesn't solely reference male-female marriages, but includes gay couples.

"I think just using that language sends a message," she said.

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