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**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

Iowa - Sexual Orientation and Gender Identity Law and Documentation of Discrimination

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MEMORANDUM

From: Williams Institute
Date: September 2009
RE: **Iowa – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

Iowa amended its civil rights statute in 2007 to prohibit discrimination on the basis of sexual orientation and gender identity in employment, housing, public accommodations, education, and in obtaining credit. Proponents of the amendment had been trying to include these protections in the statute since the late-1980s. Research uncovered examples of public entities discriminating against LGBT persons in the employment context within the last 20 years.

Documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local government employers in Iowa include:

- A veteran of the Iowa National Guard who was fired by an Iowa state university in 2002 after she informed her superiors that she was a transitioning.¹ Her supervisor, a surgeon for whom she conducted research, stopped coming to the lab after she told him about her plan to transition department administrator told her that her condition was such that they didn't feel that she "could give sufficient effort to the department."² She was fired on the spot.³ Although she reported the firing to the university's affirmative action office, it did not order that she be reinstated and instead only suggested that she seek employment in a different department of the university.⁴ After her efforts to do so failed, she ultimately left Iowa altogether.⁵
- An employee of a state-operated casino in Council Bluffs whose employers did not take appropriate action to stem rumors that she was a lesbian, subjected her to harassment and emotional distress, and ultimately retaliated against her for

¹ DEBORAH J. VAGINS, *WORKING IN THE SHADOWS* 19 (2007); *see also* HEARING BEFORE THE S. COMM. ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS, 110th Cong. (2008) (statement of Shannon Miller, Legal Director for the Nat. Center for Lesbian Rights).

² Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

³ *Id.*

⁴ DEBORAH J. VAGINS, *WORKING IN THE SHADOWS* 19 (2007); *see also* HEARING BEFORE THE S. COMM. ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS, 110th Cong. (2008) (statement of Shannon Miller, Legal Director for the Nat. Center for Lesbian Rights).

⁵ *Id.*

complaining by denying her a promotion.⁶ In 2000, she was awarded \$54,493 by a federal district court jury

- A worker at a tax-supported nursing home in Davenport who was fired in 1996 because his employer wanted to “weed[] out employees who lack good moral character,” including gay men and lesbians who he said were “not part of the Bible” and “not part of society.” In an interview, the nursing home administrator commented, “When I first came here, there [were] probably at least three, excuse my French, faggots working here, and I had at least three dykes working here This isn’t the kind of atmosphere that I want to project when a client or family member comes to my nurses’ station and sees a 45-year-old-faggot that has got better skin than you and I, and is a man but presents itself more like a woman. This is no way to perceive my operation.”⁷ The state of Iowa did not take any action against the nursing home for this action.⁸

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and polices involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

⁶ *Montagne v. Iowa* (D. Iowa, Oct. 25, 2000).

⁷ PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 64-65 (1997 ed.).

⁸ See Cedar Rapids Gay & Lesbian Resource Center, <http://www.crglrc.org/aboutus.php> (last visited Sept. 4, 2009).

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

On July 1, 2007, Iowa amended its Civil Rights Act (hereinafter the “ICRA”) to prohibit the discrimination of people on the basis of sexual orientation and gender identity in employment, housing, public accommodations, education, and in obtaining credit.⁹ The statute defines “sexual orientation” as “actual or perceived heterosexuality, homosexuality, or bisexuality.”¹⁰ It defines “gender identity” as “a gender-related identity of a person, regardless of the person’s assigned sex at birth.”¹¹ The statute applies to both private and public parties.¹² However, the ICRA does have a small business exemption, housing exemption, and religious exemption.¹³ Employers are expected to protect their employees not only from harassment by supervisors and coworkers, but also from third parties such as service users and vendors.¹⁴ According to the Iowa Civil Rights Commission, examples of unlawful discrimination include malicious conduct, sexual advances, and the intentional misuse of gender specific pronouns.¹⁵

The legislative record on the 2007 amendment is limited.¹⁶ However, proponents of the 2007 amendments conducted extensive research prior to bringing the bill before the state legislature.¹⁷ State Rep. Beth Wessel-Kroeschell and former State Senator, and now Iowa Civil Rights Commissioner, Ralph Rosenberg generously shared their research with this project.

Based on an analysis of similarly situated states, proponents of the 2007 amendments estimated that the Iowa Civil Rights Commission would receive between 34 to 40 cases a year alleging unlawful discrimination based on sexual orientation and/or gender identity.¹⁸ Proponents of the 2007 amendments also planned to highlight the fact that up to 40 percent of gay and lesbian Americans reported facing hostility or harassment in their workplaces on account of their sexual orientation.¹⁹ In addition,

⁹ See, generally, Iowa Code § 216. The ICRA also prohibits discrimination in these contexts based on a person’s HIV status. See Iowa Code § 216.2(5).

¹⁰ Iowa Code § 216.2(14).

¹¹ Iowa Code § 216.2(10).

¹² Iowa Code § 216.2(12).

¹³ The statute does not apply to businesses that employ fewer than four unrelated individuals, businesses that operate in the owner’s home while the owner and his family reside at the home, to the employment of individuals to provide personal services to the employer or the employer’s family, to religious organizations to the extent application to those organizations would wrongfully infringe upon their free exercise rights, or leasing residential property in buildings of six rooms or less when the leasor lives on the premises. See Iowa Code §§ 216.6(6); 216.7(2); 216.12.

¹⁴ IOWA CIVIL RTS. COMM’N SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYER’S GUIDE BROCHURE.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ RALPH ROSENBERG, SURVEY OF STATES SUMMARY (2006).

¹⁹ FAIRNESS FOR ALL FACT SHEET (2007).

proponents also had empirical evidence that up to 10 percent of all gay and lesbian Americans have been fired on account of their sexual orientation.²⁰

The Iowa Civil Rights Commission, in its statement of 2007 priorities, supported the proposed amendment (through Iowa Act 2007 (82nd Gen. Ass.) ch. 191, S.F. 427 § 1) to Iowa Code § 216, and stated:

“We no longer wish to see our children, neighbors, co-workers, nieces, nephews, parishioners, or classmates leave Iowa so they can work, prosper, live or go out to eat. Our friends who are gay or lesbian know the fear and pain of hurtful remarks, harassment, attacks, and loss of jobs or housing simply because of their sexual orientation or gender identity.”²¹

2. Enforcement & Remedies

In order for a person to make a claim under this act, she or he must file a claim with Iowa’s Civil Rights Commission within 300 days of the alleged discriminatory act.²² If the alleged unlawful discriminatory conduct is continuous, then the day of occurrence will be considered to be any date from the time the conduct began to the date it ended.²³ From the time the Commission receives the complaint to the time when an administrative law judge working with the Commission decides whether probable cause exists to believe the alleged conduct took place, the Commission is a neutral fact-finder.²⁴ If the administrative judge does find probable cause, then the Commission becomes an advocate for the people of Iowa and attempts to negotiate a settlement between the parties with an eye towards ending and mending the harm caused by the unlawful discrimination.²⁵

Once a complaint under this statute has been filed, the complainant can request a “right-to-sue” letter from the Commission and file the claim on his/her own behalf in state district court.²⁶ If a complainant’s request is granted, then the Commission closes the complaint and will take no further action on it.²⁷ A complainant that obtains a “right-to-sue” letter from the Commission has 90 days to bring the cause of action in state court from the date the letter is issued.²⁸

²⁰ *Id.*

²¹ IOWA CIVIL RTS. COMN’N, POLICY STATEMENTS, <http://www.iowa.gov/government/crc/publications/index.html> (last visited Sept. 4, 2009).

²² Iowa Code §§ 216.15(12); 216.16(1).

²³ Iowa Admin. Code R. 161-3.3(2).

²⁴ *See* IOWA CIVIL RIGHTS COMMISSION, HOW TO FILE A COMPLAINT, http://www.iowa.gov/government/crc/file_complaint/neutral.html (last visited Sept. 4, 2009).

²⁵ *Id.*

²⁶ Iowa Code § 216.16.

²⁷ *Id.*; *see also* IOWA CIVIL RIGHTS COMMISSION, HOW TO FILE A COMPLAINT, http://www.iowa.gov/government/crc/file_complaint/neutral.html (last visited Sept. 4, 2009).

²⁸ Iowa Code § 216.16(3).

Claims made under the ICRA follow the *McDonnell-Douglas* burden-shifting scheme whereby: (1) a plaintiff must establish a prima facie case that the plaintiff was discriminated against by the defendant because of a real or perceived characteristic of the plaintiff's that is protected by under the Iowa Civil Rights Act; (2) if a plaintiff makes this showing, the burden shifts onto the defendant to put forward a legitimate, nondiscriminatory reason for the defendant's action(s) vis-à-vis the plaintiff; and (3) if the defendant makes this showing, then the plaintiff must prove by a preponderance of the evidence that the defendant's articulated nondiscriminatory reason is just a pretext.²⁹

If the plaintiff wins a claim under the ICRA, s/he may be entitled to: (1) being hired, reinstated, or promoted with or without pay; (2) admitted or reinstated in a labor organization or work-training program; (3) admitted into a public accommodation or an educational institution; (4) the sale, exchange, lease, rental, assignment, or sublease of real property; and (5) damages caused by the unlawful discrimination, including court costs and reasonable attorney fees.³⁰ With respect to damages, a plaintiff can obtain damages for emotional distress, but punitive damages are not allowed under the Iowa Civil Rights Act.³¹

B. Attempts to Enact State Legislation

Proponents of including sexual orientation and gender identity in the ICRA started their efforts in the late 1980s.³² However, according to Rep. Beth Wessel-Kroeschell, these efforts failed due to a lack of bipartisan support.³³

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

1. Executive Orders

On September 14, 1999, then Governor Tom Vilsack signed Executive Order No. 7, which explicitly prohibited the discrimination of people on the basis of their sexual orientation or gender identity in state employment.³⁴ Immediately after the Executive Order was issued, conservative law-makers began a campaign to have the order rescinded. Senate Majority Leader Stewart Iverson said, "Iowa should be on the cutting edge of educating our children, not the cutting edge of extending civil rights to transsexuals."³⁵ He dismissed the need for employment protections, saying, "I have friends who are homosexual, but they do their job and that isn't the issue. When you talk

²⁹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); see also *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 618 (8th Cir. 1997) (stating that the ICRA uses the *McDonnell-Douglas* burden-shifting framework).

³⁰ Iowa Code § 216.15(8)(a).

³¹ *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536-37 (Iowa 1996).

³² Clara Hogan, *Iowa Bill Extending Rights in Effect*, DAILY IOWAN, July 3, 2007.

³³ Telephone Interview by Latham & Watkins LLP with Rep. Beth Wessel-Kroeschell (Dec. 8, 2008).

³⁴ See Lambda Legal Iowa, <http://www.lambdalegal.org/our-work/states/iowa.html> (last visited Sept. 4, 2009).

³⁵ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 184-185 (2000 ed.).

about gender identity and transsexuals, that is unbelievable...how far do you go in setting up special classes of people?"³⁶ Approximately one year after its issue, Gov. Vilsack was forced to rescind the Executive Order after a state judge ruled it constituted unconstitutional law-making in light of the fact that the ICRA did not at that time prohibit discrimination based on a person's sexual orientation or gender identity.³⁷

2. **State Government Personnel Regulations**

As noted above, Iowa's Civil Rights Act extends to public entities as well as private entities.³⁸

3. **Attorney General Opinions**

A comprehensive database of Attorney General Opinions is expected to be posted on the Columbia Law School Sexuality and Gender Clinic website. At this time, however, the database has not been posted.

D. **Local Legislation**

In addition to the ICRA, several cities and local political entities in Iowa have ordinances that protect against discrimination based on a person's sexual orientation or gender identity.³⁹

1. **City of Ames**

Ames has a local ordinance that explicitly mentions sexual orientation, enacted on May 28, 2001.

2. **City of Bettendorf**

Bettendorf has a local ordinance that explicitly mentions sexual orientation, enacted on April 5, 2005.

3. **City of Cedar Falls**

Cedar Falls has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted on July 7, 2008.

4. **City of Cedar Rapids**

Cedar Rapids has a local ordinance that explicitly mentions sexual orientation, enacted in 1999. Twenty-two complaints have been filed under this ordinance.

³⁶ *Id.*

³⁷ Darwin Danielson, *Judge Shoots Down Governor's Executive Order on Gays*, RADIO IOWA, Dec. 8, 2000.

³⁸ *See, supra*, Sec. II.A.1.

³⁹ *See* Spreadsheet of Local Commission Complaints Received (rev. Feb. 12, 2007) <http://www.state.ia.us/government/crc/statutes/index.html> (last visited Sept. 4, 2009).

5. **City of Coralville**

Coralville has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted November 13, 2007.

6. **City of Council Bluffs**

Council Bluffs has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted March 24, 2008.

7. **City of Davenport**

Davenport has local ordinances that explicitly prohibit discrimination on the basis of both sexual orientation and gender identity, protecting sexual orientation as of March 1, 2000, and gender identity as of September 23, 2008. Forty-nine complaints have been filed under these ordinances.

8. **City of Decorah**

Decorah has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted November 17, 2005.

9. **City of Des Moines**

Des Moines has a local ordinance that explicitly mentions sexual orientation, enacted July 9, 2001.

10. **City of Dubuque**

Dubuque has a local ordinance that explicitly mentions both sexual orientation and gender identity, protecting sexual orientation as of February 10, 2006, and gender identity as of December 8, 2007.

11. **City of Fort Dodge**

Fort Dodge has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted July 20, 2007.

12. **City of Grinnell**

Grinnell has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted October 15, 2007.

13. **Iowa City**

Iowa City has local ordinances that explicitly prohibit discrimination on the bases of both sexual orientation and gender identity. Sexual orientation has been protected since 1977, and gender identity has been protected since 1995. Thirty-five complaints have been filed under these ordinances.

14. **Johnson County**

Johnson County has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted December 28, 2006.

15. **Ottumwa City**

Ottumwa City has a local ordinance that explicitly mentions sexual orientation, enacted April 15, 2008.

16. **Urbandale City**

Urbandale City has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted March 25, 2008.

17. **City of Waterloo**

Waterloo has a local ordinance that explicitly mentions both sexual orientation and gender identity, enacted November 13, 2007.

E. **Occupational Licensing Requirements**

Iowa has licensing requirements for 39 different professions.⁴⁰ The licensing requirements and the regulations allowing for sanction of professionals within these professions did not explicitly raise issues of sexual orientation or gender identity discrimination.

⁴⁰ See Iowa Dep't of Pub. Health, Bureau of Prof'l Licensure, <http://www.idph.state.ia.us/licensure> (last visited Sept. 4, 2009).

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees
2. Private Employers

B. Administrative Complaints

As noted above, in order for a party to bring a claim under the ICRA, s/he must first file it with the Iowa Civil Rights Commission. *See, supra*, Sec. II.A. Since the ICRA went into effect in July 1, 2007 to Oct. 1, 2008, eighteen sexual orientation and six gender identity cases have been filed with the Iowa Civil Rights Commission.⁴¹

The Commission has not taken any of these cases to a public hearing at this time.⁴² Moreover, the Commission refused to provide any details of these cases beyond what is provided in the sources on the Commission's website.⁴³ However, in the event the Commission does take such a case to a public hearing, the details of that case will become publicly available.⁴⁴

The number of cases filed is in line with what Commissioner Rosenberg estimated would be prior to the 2007 amendment.⁴⁵ Mr. Rosenberg stated that based on analysis comparing similarly situated states with similar civil rights statutes, that about 1 to 3 percent of the Iowa Civil Rights Commission's caseload would involve claims of unlawful sexual orientation or gender identity discrimination.⁴⁶ As such, because the commission receives approximately 2,000 cases a year, Mr. Rosenberg estimated that the commission could expect between 20 to 60 cases annually.⁴⁷ In addition, although Mr. Rosenberg stated he did not have exact numbers, he estimated that up to 20 percent of the commission's caseload involves complaints against public entities, and that he thought claims alleging unlawful sexual orientation or gender identity discrimination would have a similar percentage brought against public entities.⁴⁸

⁴¹ IOWA CIVIL RTS. COMM'N ANNUAL REP. 5-6 (2008).

⁴² Telephone Interview by Latham & Watkins LLP with Admin. L. Judge Mary Cowdrey, (Dec. 12, 2008).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Telephone Interview by Latham & Watkins LLP with Civil Rights Comm'r Ralph Rosenberg, (Dec. 12, 2008).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* This opinion was based on the fact that all of the protected classes in the ICRA tend to have roughly the same ratio of cases brought against private and public entities.

C. Other Documented Examples of Discrimination

An Iowa State University

In 2002, a state university fired Kathleen Culhane, a veteran of the Iowa National Guard, after she informed her superiors that she was a transsexual and was transitioning from male to female.⁴⁹ Kathleen reported the firing to the university's affirmative action office, but the office did not order the department she had been working in to reinstate her and instead only suggested that Kathleen seek employment in a different department within the university.⁵⁰ After Kathleen's efforts to find employment in a different department failed, she ultimately left the state of Iowa altogether.⁵¹

State-Operated Casino

In 2000, a federal district court jury in Iowa awarded \$54,493 in damages to Jacqueline M. Montagne, an employee at the state-operated Ameristar Casino in Council Bluffs, who sued the state on a claim that state officials had failed to take appropriate action to stem rumors that Montagne was a lesbian. Montagne claimed harassment and infliction of emotional distress, and included a claim that employers had retaliated against her for complaining, thereby losing Montagne a promotion.⁵²

Tax-Supported Nursing Home

A tax-supported nursing home in Davenport fired a gay worker in 1996 for the stated purpose of "weeding out employees who lack good moral character," including gay men and lesbians who he said were "not part of the Bible" and "not part of society." In an interview, the administrator commented, "When I first came here, there [were] probably at least three, excuse my French, faggots working here, and I had at least three dykes working here This isn't the kind of atmosphere that I want to project when a client or family member comes to my nurses' station and sees a 45-year-old-faggot that has got better skin than you and I, and is a man but presents itself more like a woman. This is no way to perceive my operation."⁵³ The state of Iowa did not take any action against the nursing home for this action.⁵⁴

⁴⁹ DEBORAH J. VAGINS, *WORKING IN THE SHADOWS* 19 (2007); *see also* HEARING BEFORE THE S. COMM. ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS, 110th Cong. (2008) (statement of Shannon Miller, Legal Director for the Nat. Center for Lesbian Rights).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Montagne v. Iowa (D. Iowa, Oct. 25, 2000)*.

⁵³ PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 64-65 (1997 ed.).

⁵⁴ *See* Cedar Rapids Gay & Lesbian Resource Center, <http://www.crglrc.org/aboutus.php> (last visited Sept. 4, 2009).

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Housing & Public Accommodations Discrimination

As noted above, the ICRA also prohibits the discrimination of people on the basis of sexual orientation and gender identity in housing, public accommodations and in obtaining credit.⁵⁵

B. Education

As noted above, the ICRA also prohibits the discrimination of people on the basis of sexual orientation and gender identity in education.⁵⁶

In 2004, an unnamed high school student sued his school district, the district's superintendent, his high school principal and vice-principal, a police officer assigned to his high school, and his hometown city of Perry in the hope that he could enjoin these parties from taking adverse action against him in his plans to protest the discrimination and threats he had suffered on account of his perceived homosexuality.⁵⁷ The student brought this action after alleged rampant and severe verbal and physical harassment during his time as a student at the high school, as well as numerous alleged incidents of vandalism against his personal property.⁵⁸ The student sought the injunction under the First Amendment, the Equal Protection clause, and Title IX.⁵⁹ The district court rejected plaintiff's request because it found plaintiff did not establish the requisite likelihood of success on the merits.⁶⁰ Aside from the district court's order denying the preliminary injunction, the action did not have any other relevant case history.

C. Parenting

Family courts in Iowa generally do not find a person's sexual orientation a material factor in family law cases.⁶¹

⁵⁵ See, generally, Iowa Code § 216.

⁵⁶ See, generally, Iowa Code § 216.

⁵⁷ See *Doe v. Perry Cmty. Sch. Dist.*, 316 F. Supp. 2d 809 (S.D. Iowa 2004).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See, e.g., *In re Marriage of Walsh*, 451 N.W.2d 492 (Iowa 1990) (Iowa Supreme Court held that a father's visitation rights to see his children should not be limited in anyway because he is gay); *In re Marriage of Cupples*, 531 N.W.2d (Iowa App. 1995) (finding that the "district court properly saw Kelly's sexual orientation as a nonissue" in its custody decision).

D. Recognition of Same-Sex Couples

The Supreme Court of Iowa ruled that the exclusion of same-sex couples from marriage was unconstitutional under the state's constitution. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).