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Who's the Boss? Preemption Laws Complicate LGBTQ+ Workplace Protections for Employers

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The accelerating trend of state preemption laws targeting local nondiscrimination ordinances—especially those protecting LGBTQ+ individuals—signals a pivotal shift in the legal terrain for private employers. As some states move to override or restrict local protections, employers are increasingly confronted with a fragmented regulatory environment. In jurisdictions where state-level protections are absent or rolled back, local ordinances have often filled the gap, providing explicit safeguards for LGBTQ+ employees. However, sweeping preemption statutes threaten to erase

these local advances, creating uncertainty and compliance challenges.

For employers operating across multiple jurisdictions, this patchwork of sometimes conflicting local, state, and federal laws complicates efforts to maintain consistent workplace policies. While Title VII of the Civil Rights Act of 1964, at least as interpreted by the U.S. Supreme Court in *Bostock v. Clayton County*, most notably continues to prohibit employment discrimination based on sexual orientation and gender identity, the scope and enforcement of these protections can fluctuate with changes in federal policy and agency priorities.

The risk for employers is twofold: legal exposure from failing to comply with the highest applicable standard and reputational harm if perceived as unsupportive of LGBTQ+ rights. Proactive employers should monitor legal developments at all levels, adopt robust nondiscrimination policies that meet or exceed applicable standards, and maintain supportive workplace practices, regardless of shifting legal requirements. Ultimately, as the legal landscape becomes more fractured, the burden will increasingly fall on private employers to balance competing forces, both to mitigate risk and to attract and retain qualified talent in a competitive market.

Whether many more states will go the way of Texas by broadly attacking nondiscrimination ordinances remains to be seen, but states have made steps in this direction recently.

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