How Effective Is AB2601?

By Chuck Stewart
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The signing of AB2601 by Governor Pete Wilson in September 25, 1992 was heralded as a significant piece of legislation for the protection of employees on the basis of sexual orientation. The bill codified the decisions in *Gay Law Students vs. Pacific Telephone (1979)* and *Soroko vs. Dayton Hudson (1991)* by extending Labor Department protection explicitly on sexual orientation. The new Labor Code 1102.1 included broader definitions of employment than the previous cases but it did exempt certain classes of employers— small businesses (4 or less), religious associations and non-profit organizations—and is overall a more comprehensive law than the previous patchwork of legal decisions.

Before all the media hoopla surrounding the *Soroko* case and the subsequent directive by the State Attorney General (October 1991) to the Department of Labor Standards Enforcement (DLSE) to start accepting complaints against private employers, very few complaints were filed. Immediately after *Soroko* and up to the enactment of AB2601 on January 1, 1993, an avalanche of complaints was filed.

A total of 464 sexual orientation discrimination complaints were filed during the first three years of the law's passage. Of the total complaints filed, 102 were still open and pending. This is contrary to the goals of AB2601 for expeditious investigations and settlements so as to protect the livelihood of lesbians and gays. When the agency was asked the average length of time required to finish a complaint or the average length of time for the still pending cases, they did not know.

Of the 362 cases disposed within the first three years, 143 (40%) were dismissed, 98 (27%) were abandoned, 97 (24%) were withdrawn and 34 (9%) were settled in favor for the complainant.

I tried to obtain more information about these cases from DLSE. I wanted to know why 91% of the complaints were either abandoned, dismissed, or withdrawn. Of the people I spoke to at DLSE, none of them had answers nor did they plan on reviewing the cases or follow-up to determine if there is a pattern to these unsuccessful complaints. I directly asked if there is a quality control process in place to assure the highest level of legal enforcement. This seemed to perplex the directors with whom I spoke. With great pride, they emphasized that there are now 6 full-time investigators on the staff of DLSE which cover <u>all</u> labor law disputes in California, not just sexual orientation discrimination complaints.

What about the 34 complainants who prevailed? Did they keep their jobs? Did they get back pay? Did they win damages? DLSE had no answers for me, but said the files are available for inspection in San Francisco.

Are you shocked by these numbers— by the low number of complaints that are successful? It takes a very gutsy or very angry lesbian or gay to file a complaint against her/his employer in the first place; and yet, only 9% were found to be valid! I find this to be incredible. Of equal importance is how AB2601 is being interpreted? As with any legislation, litigation helps to define what the law actually means. Both the successful and unsuccessful complaints help clarify AB2601. I asked DLSE about recent interpretations of AB2601— such as what does it mean to be "openly " gay as specified in the Attorney General's opinion about the labor codes— but they had no answers.

AB2601 is turning out to be what many legal analyst predicted; a bone to placate the gay community's call for equal protection, yet toothless when faced with actually protecting our rights. Governor Wilson was crafty in signing AB2601 into law. It cooled the violent protest following his veto of AB101, and handed the enforcement of the law into an ineffective agency.