



# THE NEXT FOUR YEARS

*The LGBT community and the new normal*

BY SUSAN K. EGGUM

Following the reelection of President Obama, the Equal Employment Opportunity Commission (EEOC) formally approved a Strategic Enforcement Plan (SEP) for the next four years that will rock the world of employers that have class-wide practices that discriminate against protected workers. In addition to publicly encouraging protected workers to initiate a claim with the EEOC, the agency will also search for and initiate investigations of employers across the nation.

election, the Senate Judiciary Committee voted 10-8 in favor of advancing the Respect for Marriage (RFMA) bill to the Senate floor. RFMA proposes the repeal of federal law that defines marriage as a union between one man and one woman. On January 21, 2013, President Obama stated: "Our journey is not complete until our gay brothers and sisters are treated like anyone else under the law." If RFMA is passed by the 113th Congress, then the federal law will require the provision to same-sex couples of the full range of ben-

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Among other issues, the EEOC plans to target employers with employment practices or policies that display a bias based on sexual orientation. The agency plans to follow recent federal circuit court interpretations of the scope of Title VII in search of employers that overtly or covertly discriminate in any unlawful way against lesbian, gay, bisexual and transgender (LGBT) employees. The EEOC's scope will include individual managers and the entity for which the manager works.

In December 2008, just a few months before President Obama selected EEOC Chief Jacquelin Berrien, the *Newsweek*/Princeton Research survey was published, reporting that more than seven in 10 Americans believe that same-sex couples should have inheritance rights, Social Security benefits, insurance benefits and hospital visitation rights. President Obama stated that Jacquelin Berrien "has spent her entire career fighting to give voice to underrepresented communities and protect our most basic rights." The year following Chair Berrien's tenure (in March 2011), the HRC/Greenberg Quinlan Rosner Research survey was published, reporting that a majority of Americans supported repeal of the Defense of Marriage Act (DOMA), which defines marriage as a legal union only between a man and a woman.

Then, on November 10, 2012, following President Obama's re-

election, the Senate Judiciary Committee voted 10-8 in favor of advancing the Respect for Marriage (RFMA) bill to the Senate floor. RFMA proposes the repeal of federal law that defines marriage as a union between one man and one woman. On January 21, 2013, President Obama stated: "Our journey is not complete until our gay brothers and sisters are treated like anyone else under the law." If RFMA is passed by the 113th Congress, then the federal law will require the provision to same-sex couples of the full range of ben-

efits offered opposite-sex couples, including benefits under the Employee Retirement Income Security Act, the Internal Revenue Code and Title II of the Social Security Act. In 2004 Oregon's constitution was amended by popular vote to provide in Article XV, Section 5a, that "only a marriage between one man and one woman shall be valid or legally recognized as a marriage." Nevertheless, in response to national and state governmental and legislative changes intended to be inclusive of the LGBT community, thousands of Oregon employers have adopted personnel policy and employee benefit packages that provide employees with same-sex partners the same benefits historically offered to employees whose partners are of the opposite sex. Such employers are less likely to be the subject of an EEOC local district enforcement inquiry under the SEP, and if selected for investigation, those employers will be a step ahead in credibility and in controlling EEOC litigation risk and costs. **OB**

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