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Fair Employment Mark, The

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For a decade now, Congress has declined to pass the Employment Nondiscrimination Act (ENDA), which would make it illegal for companies to fire or demote on the basis of sexual orientation. And yet some of the nation's biggest companies, including AT&T, I.B.M. and General Mills, say they'd be happy to abide by the legislation. The Yale Law School professor Ian Ayres and his wife, the Quinnipiac University School of Law professor Jennifer Gerarda Brown, wonder: Why wait for Congress to pass a law when you can, in effect, do it yourself?

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In their book "Straightforward: How to Mobilize Heterosexual Support for Gay Rights," Ayres and Brown present a plan for partly enacting ENDA without Congress's help. Their Fair Employment mark is a seal of approval - think of the Orthodox Union's imprimatur that a product is kosher - mated to a novel legal scheme that would effectively privatize this area of antidiscrimination law.

Under the plan, companies can acquire a license committing them to abide by a recent version of ENDA (specifically, one introduced by Senator [Edward Kennedy](#) in 2003) and to open themselves to lawsuits by employees or job applicants if they violate it. In return, the companies can display a mark on their products advertising their commitment to nondiscrimination. The mark itself, a simple "FE" (not unlike the Underwriters Laboratories' "UL," which signals that an electronic product has passed safety tests), is intentionally prosaic - designed not to inflame the minority of consumers who might boycott a company that protected homosexuals, while potentially appealing to the more than 80 percent of consumers who oppose workplace discrimination against gays.

Ayres says he hopes that if the FE mark catches on, and there is no subsequent explosion in lawsuits, legislators will then give ENDA another look. But while he has personally pitched corporations including Microsoft and Goldman Sachs, so far no major company bears the mark.