
HOUSE BILL 2787

State of Washington

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By Representatives Valle, Heavey, Leonard, Wineberry, R. Meyers, Jones, Jacobsen, Pruitt, Nelson, Fraser, Basich, Prentice, Sheldon, J. Kohl, Franklin and Brekke

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1 AN ACT Relating to termination of employment; adding new sections
2 to chapter 49.44 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that a proper
5 balance must be maintained between an employer's interest in operating
6 a business efficiently and profitably, the employee's interest in
7 earning a living, and society's interest in seeing its public policies
8 carried out. The legislature recognizes that the employment-at-will
9 doctrine is undergoing considerable erosion throughout the country,
10 primarily because the basic premise that each employee has the power to
11 individually negotiate his or her workplace rights is inconsistent with
12 the modern workplace. The legislature also recognizes that fair
13 treatment of workers results in greater productivity. Most

1 industrialized nations have adopted laws that protect employees against
2 wrongful discharge.

3 The availability of employee benefits, particularly health benefits
4 and pension benefits, is a major consideration when an employee makes
5 a choice in jobs. It is not uncommon for a person to forego a job that
6 pays a higher salary for a job that has better health and pension
7 benefits. The legislature finds that many employees are terminated
8 from employment shortly before qualifying for health or pension
9 benefits as a cost-avoidance measure by some employers. The loss of
10 health or pension benefits has a devastating effect on a family,
11 particularly older workers who may have no other opportunity to
12 establish these benefits. The legislature finds that if a business
13 holds out health or pension benefits as being available to its
14 employees, then the employees have a reasonable expectation that these
15 benefits will be provided. The legislature therefore declares, as a
16 matter of public policy, that employers must show good cause to
17 terminate employees if the termination occurs shortly before the
18 employee qualifies for health or pension benefits.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
20 to read as follows:

21 (1) An employer may not terminate an employee within one year of an
22 employee vesting for a pension or qualifying to receive benefits under
23 any provision of a pension, or terminate an employee within sixty days
24 before the employee qualifies for health benefits, without good cause.

25 (2) Good cause to terminate an employee under subsection (1) of
26 this section may be established by: (a) Showing a reasonable basis for
27 termination by reviewing the employee's employment in view of relevant
28 factors and circumstances, that include the employee's duties,
29 responsibilities, conduct, job performance, and employment record, and

1 the appropriateness of termination for the conduct involved; or (b)
2 showing the termination is a good faith exercise of business judgment
3 by the employer in setting its economic goals and determining methods
4 to achieve those goals, organizing or reorganizing operations,
5 discontinuing or divesting operations or parts of operations,
6 determining the size of its work force and the nature of the positions
7 to be filled by its work force, or determining and changing standards
8 of performance for positions.

9 Good cause to terminate an employee does not exist if the avoidance
10 of paying health benefits or pension benefits was a substantial factor
11 in the employer's decision to terminate the employee.

12 (3) This section does not apply to:

13 (a) Employees who are terminated at the expiration of an express
14 oral or written agreement of employment for a specified duration
15 related to the completion of a specified task, project, or undertaking.
16 If the employment continues after the expiration of the agreement, this
17 section applies to the termination unless the parties enter into a new
18 express oral or written agreement under this subsection;

19 (b) Employees who have been employed by an employer for a total
20 period of less than one year. A layoff or break in service may not be
21 counted in determining whether an employee's period of employment
22 totals one year, but the employee is considered to be employed during
23 paid vacations and other authorized leaves. An employee's period of
24 employment with two separate legal entities may be combined if both
25 legal entities meet the definition of an employer under section 4 of
26 this act, and the subsequent employer is a successor to the previous
27 employer; or

28 (c) Employees covered by a collective bargaining agreement, unless
29 the collective bargaining agreement fails to include a provision for
30 good cause termination subject to arbitration.

1 (4) A right of an employee under this section and section 3 of this
2 act may not be waived by agreement except as provided in this section.
3 All other agreements, disclaimers, or provisions, including provisions
4 contained in employee manuals, that purport to waive employee rights
5 established in this section, or section 3 of this act, are void as
6 against public policy and given no force or effect. The right of an
7 employee to be terminated for good cause may be waived under the
8 following circumstances:

9 (a) By express written agreement, an employer and an employee may
10 mutually waive the requirement of good cause for termination, if the
11 employer agrees that upon the termination of the employee for a reason
12 other than the willful misconduct of the employee, the employer shall
13 provide severance pay in an amount equal to at least one month's pay
14 for each full year of employment, at the employee's rate of pay in
15 effect immediately before the termination. The employer may make a
16 lump-sum payment or a series of monthly installment payments, that must
17 be at least equal to one month's pay plus interest. The lump-sum
18 payment or the installment payments must begin within thirty days after
19 the employee's termination. An agreement between an employer and an
20 employee under this subsection is subject to a duty of good faith in
21 its formation, performance, and enforcement; or

22 (b) An employer and an employee may settle a dispute or claim
23 arising under this section.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.44 RCW
25 to read as follows:

26 (1) An employee who believes that he or she has been terminated
27 from employment in violation of section 2 of this act may file suit in
28 superior court. An employee shall file suit for a violation of section
29 2 of this act within one hundred eighty days after the termination

1 occurs. The one hundred eighty day time period to commence an action
2 in superior court is suspended while the employee is pursuing internal
3 remedies provided by the employer, but resort to an employer's internal
4 procedures is not a condition for filing a suit under this section.

5 (2) The court may grant one or more of the following remedies for
6 a termination in violation of section 2 of this act:

7 (a) Reinstatement to the position of employment the employee held
8 when employment was terminated, or, if that is impractical, to a
9 comparable position;

10 (b) Full or partial backpay and reimbursement for lost fringe
11 benefits with interest, reduced by interim earnings and benefits
12 received, or amounts that could have been received with reasonable
13 diligence;

14 (c) If reinstatement is not awarded, a lump-sum severance payment
15 at the employee's rate of pay in effect before the termination, for a
16 period not exceeding thirty-six months from the date of the award,
17 together with the value of fringe benefits lost during that period,
18 reduced by likely earnings and benefits from employment elsewhere, and
19 taking into account such equitable considerations as the employee's
20 length of service with the employer and the reasons for termination;
21 and

22 (d) Reasonable attorneys' fees and costs.

23 (3) If the court dismisses an employee's complaint and finds it to
24 be frivolous, the court may award reasonable attorneys' fees and costs
25 to the prevailing employer.

26 (4) Nothing in section 2 of this act or in this section displaces
27 or extinguishes rights or claims that an employee may have against an
28 employer arising under any other statute, regulation, contract,
29 collective bargaining agreement, or the common law.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44 RCW
2 to read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply to sections 2 and 3 of this act:

5 (1) "Employer" includes a person, firm, corporation, partnership,
6 business trust, legal representative, or other business entity that
7 engages in a business, industry, profession, or activity in this state
8 and employs one or more employees, and also includes the state, a state
9 institution, a state agency, a political subdivision of the state, a
10 municipal corporation, or a quasi-municipal corporation.

11 (2) "Employee" means an individual who works for hire, including an
12 individual employed in a supervisory, managerial, or confidential
13 position, but not including an independent contractor.

14 (3) "Good faith" means honesty in fact.

15 (4) "Termination" means: (a) A dismissal, including that resulting
16 from the elimination of a position, of an employee by an employer; or
17 (b) a layoff or suspension of an employee by an employer for more than
18 two consecutive months.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.