
SUBSTITUTE HOUSE BILL 1154

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Morrell, Conway, Grant, Sells, Blake, Moeller, Eickmeyer, Appleton, Kenney, Flannigan, Hudgins, Williams, Ormsby and Simpson)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to employment decisions based on consumption of
2 lawful products; adding a new section to chapter 49.44 RCW; and
3 prescribing penalties.

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

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

7 (1) Except as provided in subsection (2) of this section, it is
8 unlawful for an employer to require an employee or prospective employee
9 to disclose verbally or in writing whether he or she consumed lawful
10 tobacco products at any time before or during employment with the
11 employer or to require an employee or prospective employee to agree
12 verbally or in writing not to consume lawful tobacco products off the
13 premises of the employer during nonworking hours.

14 (2) An employer may require an applicant or prospective employee to
15 disclose consumption of or agree not to consume lawful tobacco
16 products, or both:

17 (a) Under the terms of an employer's legitimate conflict of
18 interest policy reasonably designed to protect the employer's trade
19 secrets, proprietary information, or other proprietary interests;

1 (b) To meet a bona fide occupational qualification or requirement,
2 including qualifications or requirements implemented by the employer to
3 screen for respiratory diseases in occupations where the individual
4 will be exposed to smoke and noxious fumes;

5 (c) Under the terms of the employer's drug and alcohol free
6 workplace program, including those adopted in response to federal
7 requirements;

8 (d) Under the terms of an employer's insurance policy or wellness
9 program, as otherwise permitted by law; or

10 (e) If the employer is a religious or health organization whose
11 tenets prohibit the use of an otherwise lawful tobacco product or a
12 company or nonprofit organization whose primary business purpose is the
13 prevention of cancer or heart and lung disease.

14 (3) Nothing in this section shall be applied to any matter that is
15 also subject to collective bargaining between the employer and the
16 affected employee.

17 (4) Nothing in this section precludes an employer from adopting
18 policies prohibiting the consumption of lawful tobacco products on the
19 employer's premises or during working hours, or both.

20 (5) For purposes of this section, "employer" means any person,
21 firm, corporation, or the state of Washington, its political
22 subdivisions, or municipal corporations.

23 (6) Any person violating this section is guilty of a misdemeanor.

24 (7) In a civil action alleging a violation of this section, the
25 court may:

26 (a) Award a penalty in the amount of five hundred dollars to a
27 prevailing employee or prospective employee in addition to any award of
28 actual damages;

29 (b) Award reasonable attorneys' fees and costs to the prevailing
30 employee or prospective employee; and

31 (c) Pursuant to RCW 4.84.185, award any prevailing party against
32 whom an action has been brought for a violation of this section
33 reasonable expenses and attorneys' fees upon final judgment and written
34 findings by the trial judge that the action was frivolous and advanced
35 without reasonable cause.

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