
Commerce & Labor Committee

HB 1528

Brief Description: Prohibiting certain employer communications about political or religious matters.

Sponsors: Representatives Sells, Conway, Green, Kenney, Hasegawa, Miloscia, Morrell, Van De Wege, Cody, Appleton, Dickerson, O'Brien, Simpson, Chase, Williams, Moeller, Goodman, Ormsby, Nelson, Eddy, Hunt, Dunshee, Roberts, McCoy, Blake, Kirby, Jacks, Hurst, Wood, Takko, Ericks, Campbell, Seaquist, Kagi, Haigh, White, Flannigan, Rolfes, Wallace, Quall, Sullivan, Darneille, Orwall, Finn, Morris, Hudgins and Santos.

Brief Summary of Bill

- Prohibits an employer from requiring its employee to attend a meeting, or listen to, respond to, or participate in any other communication when a purpose of the requirement is to ensure that employees receive communications related to political or religious matters or influence the employee's beliefs, opinions, or actions about political or religious matters.

Hearing Date: 2/3/09

Staff: Alison Hellberg (786-7152)

Background:

Employers are not generally prohibited from requiring employees to attend meetings during which the employer communicates his or her positions on issues.

One exception involves certain communications about labor relations. Both the National Labor Relations Board (Board), in administering private sector collective bargaining under the National Labor Relations Act, and the Washington Public Employment Relations Commission (PERC), in administering most public sector collective bargaining in Washington, apply a doctrine generally known as the "captive audience" doctrine. This doctrine determines when an employer may be

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prohibited from requiring employees to attend employer-called meetings about unionization and when union representation election activities by labor organizations may be curtailed.

Briefly, under the Board and federal court cases, employers do not commit unfair labor practices by requiring employees to attend speeches about unionization on the employer's premises during working hours as long as the speech is not coercive. Whether speech is coercive generally depends on the content of the speech in the context of the employer-employee relationship. The courts have, for example, prohibited employer statements that threaten retaliation, while allowing the employer to make predictions about the effect of unionization based on objective facts.

The Board, however, has set additional limits for representation elections. Employers (and unions) are prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time of an election when employee attendance is mandatory. Outside this limit, and subject to the "coercive speech" prohibition, the employer is not prohibited from using captive audiences to make election speeches.

The PERC has adopted a similar rule that prohibits election speeches on the employer's time to massed assemblies of employees beginning when ballots are issued and continuing until the ballots are tallied.

Summary of Bill:

An employer may not require an employee to attend a meeting, or listen to, respond to, or participate in any other communication when a purpose of the requirement is to ensure that employees receive communications related to political or religious matters or influence the employee's beliefs, opinions, or actions about political or religious matters. "Political matters" means matters directly related to candidates, elected officials, ballot propositions, legislation, election campaigns, political parties, and political, social, community, and labor or other mutual aid organizations. "Religious matters" means all aspects of religious observance and practice, as well as belief.

Employers are further prohibited from taking an adverse employment action against an employee because the employee:

- refuses to attend a meeting, listen to, otherwise respond to, or participate in any communication that would violate, or the employee reasonably believes would violate, the prohibition;
- challenges or opposes any practice or action that would violate, or the employee reasonably believes would violate, the prohibition; or
- makes a claim, files suit, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing involving any practice or action that would violate, or the employee reasonably believes would violate, the prohibition.

An "adverse employment action" means discharge, discipline, or any adverse change in the status or the terms and conditions of the employee's employment.

This prohibition does not:

- apply to any requirement related to meetings or any other communications about religious matters by an employer that is a religious organization, corporation, association, educational institution, or society; or

- prohibit any employer from requiring its employees to attend a meeting, listen or otherwise respond to, or participate in, any other communications that are reasonably necessary to the performance of actions by the employee that are lawfully required, and related to the normal operation of the employer's business or enterprise.

An employee aggrieved by a violation of this prohibition may bring a civil action in superior court. The court must award a prevailing employee an additional 100 percent of back pay as liquidated damages to compensate for harms caused by the delay in payment, together with reasonable attorneys' fees and costs. The court may award a prevailing employee:

- injunctive relief;
- rehiring or reinstatement of the employee to the employee's former position or equivalent position;
- restoration of any other terms and conditions of employment to which the employee would otherwise have been eligible if the violation had not occurred;
- damages for any reasonably foreseeable losses sustained by the employee as a result of such a violation; and
- any other appropriate relief as deemed necessary by the court to make the employee whole and to restrain violations of this prohibition.

Employers must post a notice of employee rights under these provisions in a conspicuous place accessible to the employees at the employer's place of business.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.