

HOUSE BILL REPORT

EHB 2847

As Amended by the Senate

Title: An act relating to prohibiting the department of labor and industries from requiring employers to compensate employees for usual and customary wearing apparel.

Brief Description: Prohibiting the department of labor and industries from requiring employers to compensate employees for usual and customary wearing apparel.

Sponsors: Representatives Horn, Kessler, Buck, Silver, D. Sommers and Mitchell.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/96, 1/30/96 [DP].

Floor Activity:

Passed House: 2/8/96, 79-18.

Senate Amended.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Pam Madson (786-7166).

Background: The Department of Labor and Industries is authorized by statute to adopt rules establishing employment standards for the protection of the safety, health, and welfare of employees and ensuring that wages satisfy the minimum wage prescribed by state law.

In 1976, the department adopted a rule that requires the employer to furnish clothing when the employer requires employees to wear uniforms or other articles of clothing of a specific style and color. However, an employer need not furnish required clothing that is usual and customary and that conforms to a general dress standard.

Historically, businesses have operated under an interpretation of the rule that does not require employers to furnish employee's clothing when the required clothing is white shirts or blouses and black slacks or skirts.

In 1992, the department issued a guideline for interpreting this regulation that considered white shirts to be usual and customary clothing that need not be furnished by the employer. However, the guideline would have interpreted black slacks or skirts to be clothing of a specific color which must be furnished by the employer. Reference to "dark" or "light" clothing was not considered to be a specific color, and such clothing was the responsibility of the employee. This guideline was challenged before the Joint Administrative Rules Review Committee and the department was strongly encouraged to take this deviation from a long-standing interpretation through the agency's formal rule-making process.

Recently, the department indicated that it would proceed with rule-making. The department proposes that employers who require employees to furnish uniforms or clothing of a specific style or color will be responsible for reimbursing employees when the cost of the clothing reduces the employee's wage rate below the state minimum wage in any payroll week. The state minimum wage is \$4.90 per hour. The department has indicated it will also seek language to clarify that black and white are considered colors, and when required by an employer, may result in reimbursement to the employee if the employee's wage rate falls below the state minimum wage.

Summary of Bill: Though an employer may be required to compensate an employee for the cost of a uniform, the employer may not be required to compensate an employee for wearing apparel that must be worn at work when the apparel is of a usual and customary style that conforms to a general dress standard and when the exact color of the apparel, other than black or white, is not specified.

EFFECT OF SENATE AMENDMENT(S): An employer who requires an employee to wear a uniform or other apparel of a specific style or color must furnish such clothing to the employee. Usual and customary clothing need not be provided by the employer. However, an employer who requires an employee to wear clothing that is black or white, as long as the clothing is not of a specific style, is not required to furnish the clothing. If the Director of L&I finds that an employer has violated these provisions, the director may require the employer to reimburse the employee for the cost of the clothing and may assess a penalty against the employer of up to \$200 per violation. The department may adopt rules to implement this section. These provisions apply to public and private employers. These provisions take effect immediately.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is to ensure that the interpretation of a rule that the department has used for over 20 years continues to be used. This rule is susceptible to two different interpretations. This historic interpretation is the preferred one and works well. For some industries like the restaurant industry, linking reimbursement to the minimum wage also involves the issue of allowing tips to be included as wages. If employers are required to reimburse employees for the requirement to wear black and white clothing, the cost to employers will reduce the number of jobs available, particularly in areas where jobs are needed. Employees could still choose their own style.

Testimony Against: The issue is whether the employer pays or the employees pay. The unions' position is that if the clothing is a specific color, the employer pays. Clothing that isn't worn anywhere else but for work is a uniform. The bill designates clothing that is black or white as usual and customary clothing without any limitation for style. Requiring dark or light clothing is OK, but requiring white shirts or black pants is putting the burden on employees who are not well paid.

Testified: (in favor) Representative Lynn Kessler; Kit Hawkins, Washington Restaurant Association; Jeff Cox, Washington Retail Association; Clif Finch, Association of Washington Businesses; (opposed) Jeff Johnson, Washington State Labor Council, AFL-CIO; and Robby Stern, Washington State Labor Council.