

HOUSE BILL REPORT

ESSB 5739

As Passed House-Amended:

April 17, 1997

Title: An act relating to employee wearing apparel.

Brief Description: Establishing when employers are required to compensate employees for employee wearing apparel.

Sponsors: Senate Committee on Commerce & Labor (originally sponsored by Senators Horn, Haugen, Schow, Rasmussen and Wood).

Brief History:

Committee Activity:

Commerce & Labor: 4/2/97, 4/3/97 [DP].

Floor Activity:

Passed House-Amended: 4/17/97, 75-23.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 6 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; 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. Businesses have operated under an interpretation of the rule that does not require employers to furnish employees' 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.

The department engaged in formal rule-making, including public hearings, that resulted in adoption of a new rule that requires employers to furnish and maintain uniforms when the cost to the employee of obtaining or maintaining the uniform reduces the employee's wage rate below the state minimum wage in any payroll week or overtime compensation required by the state minimum wage act. The state minimum wage is \$4.90 per hour. A uniform is apparel required to be worn during the course of employment that has an employer-designated logo or an employer-designated style or color where no other color options are allowed. Under the rule, black and white are considered colors. Maintenance of a uniform includes professional laundering and repair costs.

The rule declares that employer-designated apparel required to be worn at work is not a uniform if it is usually and customarily worn outside the job and conforms to a general dress standard allowing choice of style and color. Apparel considered personal protective equipment under Washington's Industrial Safety and Health Act (WISHA) rules administered by the Department of Labor and Industries is not a uniform.

For purposes of implementing this and similar rules, the department has interpreted the term employer- to exclude public employers unless specifically included in statute.

Summary of Bill: Employers must furnish or compensate employees for apparel that an employer requires employees to wear during working hours if the apparel is a uniform. A uniform is apparel of a distinctive style and quality that, when worn outside the workplace, clearly identifies the person as an employee of a specific employer. A uniform is also apparel marked with the employer's logo, apparel representing an ethnic tradition or historical time period, or formal apparel.

If an employer requires an employee to wear apparel of a common color that conforms to a general dress code or style, the employer need not furnish or compensate the employee for the apparel. Common color is limited to specific colors or shades of colors. If an employer changes the color of required apparel more than once a calendar year, the employer must furnish or compensate the employee for the apparel.

Personal protective equipment required for employee protection under WISHA is not deemed to be employee wearing apparel.

The application of this bill applies to public employers as well as private employers. The terms, conditions or practices contained in a collective bargaining agreement in effect at

the time this bill becomes law are not altered by the provisions of this bill until the expiration date of the agreement.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill does go beyond the current rule. It is an attempt to reach a common sense position. It does protect workers. It requires employers to pay for uniforms and defines uniforms in statute. The current rule does not protect workers who are above or near the minimum wage. Employers are given the ability to have a dress standard for employees using usual and common colors where the common colors are limited to certain colors.

Testimony Against: This proposal destroys the balance of the current Department of Labor & Industries rule and puts the control in the hands of the employer. The current rule allows the employer to establish a dress code and require employees to wear dark or light clothing. This would give some choice and would allow employees to use clothing from their normal wardrobe. The bill is unfair because it could require minimum wage and other employees to purchase clothing that might not be transferable to another job if they changed employers, and could require two or three sets of work clothes to satisfy the employers requirement. Under the bill, an employer could require an employee to pay for a black shirt and white pants. As we move to a system that brings people off of welfare and into the work force, we are now asking them to pay for clothing they may be required to wear on the job in order to go to work. If an employer requires a change in colors for all employees, not just some of the employees, more than once a year, then the employer would have to pay for the clothing. This would allow the employer to change colors for some units of employees and not have to furnish the apparel.

Testified: (In Support) Senator Horn, prime sponsor; Kit Hawkins, Washington Restaurant Association; and Clif Finch, Association of Washington Business. (Oppose) Steve Whipple, United Food and Commercial Workers; Joe Daniels, United Food and Commercial Workers District Council; and Robby Stern, Washington State Labor Council. (For questions) Greg Mowat, Department of Labor and Industries.