

HOUSE BILL REPORT

SSB 6313

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to preserving an employee's right to publicly file a complaint or cause of action for discrimination in employment contracts and agreements.

Brief Description: Concerning an employee's right to publicly file a complaint or cause of action for discrimination in employment contracts and agreements.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Wellman, Frockt, Cleveland, Kuderer, Ranker, Conway and Saldaña).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/20/18, 2/22/18 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Provides that a provision of an employment contract or agreement is against public policy and is void and unenforceable if it requires an employee to waive the right to publicly pursue a cause of action under the Washington Law Against Discrimination or federal antidiscrimination laws or publicly file a complaint with the appropriate state or federal agency, or if it requires an employee to resolve discrimination claims in a dispute resolution process that is confidential.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Doglio, Frame and Manweller.

Staff: Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Antidiscrimination Laws.

The federal law, Title IV of the Civil Rights Act of 1964, and the Washington Law Against Discrimination (WLAD) prohibit discrimination in employment based on a person's protected status, which includes race, national origin, sex, veteran or military status, sexual orientation, and disability. The United States Equal Employment Opportunity Commission enforces federal laws prohibiting employment discrimination and the Human Rights Commission (Commission) administers and enforces the WLAD. Under the WLAD, the Commission investigates complaints alleging discriminatory unfair practices committed by employers and attempts to eliminate any unfair practice through conference, conciliation, and persuasion. If an agreement with the employer is not reached, the Commission requests the appointment of an administrative law judge who may require the employer to cease and desist and may award damages or order other action to effectuate the purposes of the law. An aggrieved person may also bring a civil cause of action based on employment discrimination.

Washington courts have held that the right to be free from discrimination is nonnegotiable and cannot be waived in contract.

Alternative Dispute Resolution.

Alternative dispute resolution (ADR) allows parties to resolve disputes using forums other than an open, public court setting. The most commonly used techniques are mediation and arbitration. Mediation is usually a confidential, voluntary, nonbinding process that uses a neutral third party to guide parties to a resolution. In arbitration, a neutral third party is chosen to hear both sides of the case, then resolves it by rendering a decision or award. Arbitration proceedings are similar to court trials, although arbitration can either be binding or nonbinding on the parties, depending on the agreement between the parties in advance.

Summary of Amended Bill:

A provision of an employment contract or agreement is against public policy and is void and unenforceable if it:

- requires an employee to waive the right to publicly pursue a cause of action under the WLAD or federal antidiscrimination laws or publicly file a complaint with the appropriate state or federal agency; or
- requires an employee to resolve claims of discrimination in a dispute resolution process that is confidential.

Amended Bill Compared to Substitute Bill:

The amended bill specifies that a provision in an employment contract or agreement is void and unenforceable if it requires an employee to resolve *claims of discrimination* in a dispute resolution process that is confidential (as opposed to any confidential dispute resolution process).

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill preserves a person's right to file a complaint for sexual harassment. The bill ensures that employers cannot require secrecy when it comes to sexual harassment situations on the job. This makes clear that an employee cannot lose his or her rights under state and federal law regarding bringing actions.

(Opposed) None.

Persons Testifying: Senator Keiser, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.