

HOUSE BILL REPORT

HB 1940

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to protecting the rights of workers exercising their right to refrain from attending meetings or listening to their employer's speech on political or religious matters.

Brief Description: Protecting the rights of workers to refrain from attending meetings or listening to their employer's speech on political or religious matters.

Sponsors: Representatives Fosse, Berry, Ramel, Cortes, Reed, Simmons, Ormsby, Peterson, Ortiz-Self, Bronoske, Street, Chapman, Doglio, Ryu, Chopp, Goodman, Wylie, Alvarado, Stonier, Reeves, Bateman, Nance, Riccelli, Hackney, Macri and Pollet.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/10/24, 1/24/24 [DPS].

Brief Summary of Substitute Bill

- Prohibits an employer from taking adverse action against an employee for refusal to attend or participate in an employer-sponsored meeting or refusal to listen to speech, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 1 member: Representative Schmidt, Ranking Minority Member.

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

Minority Report: Without recommendation. Signed by 2 members: Representatives Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

Background:

An employer is generally permitted to require employees to attend meetings during which the employer communicates its positions on political or religious issues, with some exceptions.

The National Labor Relations Act, which governs collective bargaining between labor organizations and private employers, has been interpreted by courts and the National Labor Relations Board (NLRB) to allow these types of meetings in the context of collective bargaining. An employer can hold a "captive audience" meeting where it requires its employees to attend meetings in which it expresses views on labor organizing, provided that the content of the employer's speech is not coercive in nature. The NLRB has established a limited exception, prohibiting these meetings in the final 24 hours prior to a union election. The Public Employment Relations Commission, which administers state law on public sector labor relations, has adopted a similar restriction for public sector employers.

Federal and state laws governing other aspects of public or private sector employment relationships may affect employer speech in mandatory meetings, depending on the nature of the speech and the context in which it is conveyed. For instance, federal and state antidiscrimination laws may apply if the speech is of a discriminatory nature. Public sector employers may also be limited by certain constitutional restrictions, including, for example, the constitutional restriction against government-sponsored religion.

Summary of Substitute Bill:

Restrictions on Certain Mandatory Meetings and Communications.

A private or public employer may not subject or threaten to subject any employee to discipline or discharge, or otherwise penalize or take any adverse employment action against an employee:

- on account of the employee's refusal to attend or participate in an employer-sponsored meeting, or listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters;
- as a means of requiring an employee to attend a meeting or participate in communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters; or
- because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, of a violation or a suspected violation of the bill.

"Political matters" means matters relating to elections for political office, political parties, proposals to change legislation, proposals to change regulations, and the decision to join or support any political party or political, civic, community, fraternal, or labor association or organization.

"Religious matters" means matters relating to religious affiliation and practice, and the decision to join or support any religious organization or association.

Civil Action.

An aggrieved employee may bring a civil action within 90 days of the alleged violation. The court may award a prevailing employee all appropriate relief, including injunctive relief, reinstatement, back pay and reestablishment of benefits, and any other appropriate relief considered necessary by the court.

Notices.

An employer must post a notice of employee rights described in the bill in a place normally reserved for employment-related notices and in a place commonly frequented by employees.

Exceptions.

The bill does not apply to any religious entity exempt from the requirements of Title VII of the Civil Rights Act of 1964, with respect to speech on religious matters to employees who perform work connected with the activities undertaken by the religious entity.

The bill does not:

- prohibit an employer from communicating to its employees any information that the employer is required by law to communicate, but only to the extent of the legal requirement;
- limit the rights of an employer to offer meetings, forums, or other communications about religious or political matters for which attendance or participation is strictly voluntary;
- limit the rights of an employer or its agent, representative, or designee from communicating to its employees any information, or requiring employee attendance at a meeting or other event, that is necessary for the employees to perform their lawfully required job duties; or
- prohibit an employer or its agent, representative, or designee from requiring its employees to attend any training intended to reduce and prevent workplace harassment or discrimination.

Substitute Bill Compared to Original Bill:

The substitute bill adds exemptions, providing that the substitute bill does not:

- limit the rights of an employer or its agent, representative, or designee from

- communicating to its employees any information, or requiring employee attendance at a meeting or other event, that is necessary for the employees to perform their lawfully required job duties; or
- prohibit an employer or its agent, representative, or designee from requiring its employees to attend any training intended to reduce and prevent workplace harassment or discrimination.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) The bill prohibits employers from subjecting their employees to mandatory meetings or conversations involving personal political opinions or religious proselytizing. It also addresses situations where employers attempt to target labor organizers who are lawfully exercising their rights. The bill does not ban employers from having these meetings, and it does not limit the employer's free speech rights. It simply allows workers to opt out of attending these meetings. They can return to their actual work without reprisal.

There have been many instances where workers have been targeted or pestered by employers over efforts to organize unions. An employer can require workers to attend a meeting, often disguising it as safety-related meeting, only for workers to then discover its a meeting designed to make them afraid of the union. These dynamics cause tension and hostility in the workplace. Employers should not be allowed to do this.

(Opposed) The bill is unconstitutional in multiple ways. It infringes upon employers' free speech rights, it is preempted by federal law, and it is vague and unworkable. The bill may also prohibit employers from providing cultural and religious education to employees, like diversity training, aimed at reducing discrimination in the workplace.

(Other) The bill is overly broad. As written, an employer would be unable to require an employee to participate in meetings or listen to speech that would ordinarily be a part of the employee's job. This would include any instance in which an employee was hired to support elected officials or other persons working on developing laws, ordinances, or rules, including employees working for city councils. The bill should be amended to exempt meetings or speech that is necessary for employees to perform their job duties.

Persons Testifying: (In support) Representative Mary Fosse, prime sponsor; John Traynor,

Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Nicole Dettore, Starbucks; and Maria Torres, Teamsters 117.

(Opposed) Montana Miranda, Washington Hospitality Association.

(Other) Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.