

HOUSE BILL REPORT

ESSB 5778

As Passed House:

February 29, 2024

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: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Lovick, Conway, Trudeau, Stanford, Randall, Shewmake, Dhingra, Van De Wege, Nguyen, Valdez, Kauffman, Hasegawa, Lovelett, Liias, Frame, Hunt, Cleveland, Kuderer, Nobles, Salomon and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/16/24, 2/20/24 [DP].

Floor Activity:

Passed House: 2/29/24, 55-41.

Brief Summary of Engrossed 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: Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

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: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; 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 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.

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.

Staff Summary of Public Testimony:

(In support) This is a simple bill that allows workers to opt out of meetings involving political or religious speech, and instead continue with their regular job duties. Employers should not be allowed to require workers to attend campaign rallies or other political meetings, and workers should not lose their jobs for refusing to do so. Some workers have been required to attend mandatory meetings where employers express their opinions on labor unions. Employers often use these meetings and targeted communications to intimidate labor organizers with deranged and incorrect stories about unions. Employers do not care about workers. These meetings are not friendly conversations, but instead involve a serious power imbalance between employers and workers. The bill will protect workers from having to attend these illegal meetings.

(Opposed) This bill is unnecessary because there are already protections in place. The National Labor Relations Act (NLRA) and federal and state antidiscrimination laws already protect workers from aggressive and coercive behaviors described by the bill's proponents. Courts are likely to find the bill to be unconstitutional, as it is preempted by the NLRA and infringes upon the free speech rights of employers. Similar laws adopted in Connecticut and other states are already being challenged. While Oregon adopted this law, it has never been implemented due to constitutional concerns.

The bill is overly broad and vague, and it will prevent employers from having important conversations with workers. There may be times where proposals to change laws or rules could effect business operations. For example, a city council may propose changing regulations or zoning requirements that could close a factory or business. There may be instances where a state or local government is proposing a change to licensing or professional regulations, which may be critically important for an employer to share with its employees. The bill would likely prohibit an employer from communicating this important information about the proposal or other current events affecting its business. The bill may also prohibit an employer from discussing the implications of an impending merger with its employees if it involves combining businesses with union-represented staff and unrepresented staff.

The bill could pose significant challenges for the hospitality industry, where some workers provide services at campaign events or religious celebrations. Employers need to be able to require employees to participate in training and other relevant meetings for those events. Employers are also concerned with the bill placing limits on cultural sensitivity and other forms of diversity, equity, and inclusion training.

(Other) There is generally agreement around employers not being able to force their workers to listen to personal political or religious communications. However, the bill does not distinguish between the personal and the professional. Employers need to be able to

communicate with their workforce on pending legislation that may affect their profession or business. For example, law enforcement professionals are regulated by state law in multiple ways, and it is important for employers to share information with their workers on changes to those regulations affecting their day-to-day work. This would be critical for any profession or industry regulated by the state.

Persons Testifying: (In support) Senator Karen Keiser, prime sponsor; Kati Durkin, Washington Federation of State Employees; and Rachel Ybarra, Starbucks Workers United.

(Opposed) Tom Kwieciak, Building Industry Association of Washington; Katie Beeson, Washington Food Industry Association; Robert Battles, Association of Washington Business; Melissa Mitton, American Hotel and Lodging Association; and Montana Miranda, Washington Hospitality Association.

(Other) Taylor Gardner, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.