
HOUSE BILL 1023

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Valle and J. Kohl

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Commerce & Labor.

1 AN ACT Relating to termination of employment; adding new sections
2 to chapter 49.44 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that a proper balance
5 must be maintained between an employer's interest in operating a
6 business efficiently and profitably, the employee's interest in earning
7 a living, and society's interest in seeing its public policies carried
8 out. The legislature recognizes that the employment-at-will doctrine
9 is undergoing considerable erosion throughout the country, primarily
10 because the basic premise that each employee has the power to
11 individually negotiate his or her workplace rights is inconsistent with
12 the modern workplace. The legislature also recognizes that fair
13 treatment of workers results in greater productivity. Most
14 industrialized nations have adopted laws that protect employees against
15 wrongful discharge.

16 The legislature has previously recognized that many older employees
17 who are terminated from employment experience great difficulty in
18 securing new employment. Those older employees who do find new
19 employment must often settle for wages lower than their prelayoff

1 earnings. In addition, the loss of health or pension benefits has a
2 devastating effect on a family, particularly older workers who may have
3 no other opportunity to establish these benefits. The legislature
4 therefore declares, as a matter of public policy, that employers must
5 show good cause to terminate older employees.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
7 to read as follows:

8 (1) An employer may not terminate without good cause an employee
9 who is at least fifty years of age.

10 (2) Good cause to terminate an employee under subsection (1) of
11 this section may be established by: (a) Showing a reasonable basis for
12 termination by reviewing the employee's employment in view of relevant
13 factors and circumstances, that include the employee's duties,
14 responsibilities, conduct, job performance, and employment record, and
15 the appropriateness of termination for the conduct involved; or (b)
16 showing the termination is a good faith exercise of business judgment
17 by the employer in setting its economic goals and determining methods
18 to achieve those goals, organizing or reorganizing operations,
19 discontinuing or divesting operations or parts of operations,
20 determining the size of its work force and the nature of the positions
21 to be filled by its work force, or determining and changing standards
22 of performance for positions.

23 Good cause to terminate an employee does not exist if the avoidance
24 of paying health benefits or pension benefits was a substantial factor
25 in the employer's decision to terminate the employee.

26 (3) This section does not apply to:

27 (a) Employees who are terminated at the expiration of an express
28 oral or written agreement of employment for a specified duration
29 related to the completion of a specified task, project, or undertaking.
30 If the employment continues after the expiration of the agreement, this
31 section applies to the termination unless the parties enter into a new
32 express oral or written agreement under this subsection;

33 (b) Employees who have been employed by an employer for a total
34 period of less than one year. A layoff or break in service may not be
35 counted in determining whether an employee's period of employment
36 totals one year, but the employee is considered to be employed during
37 paid vacations and other authorized leaves. An employee's period of
38 employment with two separate legal entities may be combined if both

1 legal entities meet the definition of an employer under section 4 of
2 this act, and the subsequent employer is a successor to the previous
3 employer; or

4 (c) Employees covered by a collective bargaining agreement, unless
5 the collective bargaining agreement fails to include a provision for
6 good cause termination subject to arbitration.

7 (4) A right of an employee under this section and section 3 of this
8 act may not be waived by agreement except as provided in this section.
9 All other agreements, disclaimers, or provisions, including provisions
10 contained in employee manuals, that purport to waive employee rights
11 established in this section, or section 3 of this act, are void as
12 against public policy and given no force or effect. The right of an
13 employee to be terminated for good cause may be waived under the
14 following circumstances:

15 (a) By express written agreement, an employer and an employee may
16 mutually waive the requirement of good cause for termination, if the
17 employer agrees that upon the termination of the employee for a reason
18 other than the willful misconduct of the employee, the employer shall
19 provide severance pay in an amount equal to at least one month's pay
20 for each full year of employment, at the employee's rate of pay in
21 effect immediately before the termination. The employer may make a
22 lump-sum payment or a series of monthly installment payments, that must
23 be at least equal to one month's pay plus interest. The lump-sum
24 payment or the installment payments must begin within thirty days after
25 the employee's termination. An agreement between an employer and an
26 employee under this subsection is subject to a duty of good faith in
27 its formation, performance, and enforcement; or

28 (b) An employer and an employee may settle a dispute or claim
29 arising under this section.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.44 RCW
31 to read as follows:

32 (1) An employee who believes that he or she has been terminated
33 from employment in violation of section 2 of this act may file suit in
34 superior court. An employee shall file suit for a violation of section
35 2 of this act within one hundred eighty days after the termination
36 occurs. The one hundred eighty day time period to commence an action
37 in superior court is suspended while the employee is pursuing internal

1 remedies provided by the employer, but resort to an employer's internal
2 procedures is not a condition for filing a suit under this section.

3 (2) The court may grant one or more of the following remedies for
4 a termination in violation of section 2 of this act:

5 (a) Reinstatement to the position of employment the employee held
6 when employment was terminated, or, if that is impractical, to a
7 comparable position;

8 (b) Full or partial backpay and reimbursement for lost fringe
9 benefits with interest, reduced by interim earnings and benefits
10 received, or amounts that could have been received with reasonable
11 diligence;

12 (c) If reinstatement is not awarded, a lump-sum severance payment
13 at the employee's rate of pay in effect before the termination, for a
14 period not exceeding thirty-six months from the date of the award,
15 together with the value of fringe benefits lost during that period,
16 reduced by likely earnings and benefits from employment elsewhere, and
17 taking into account such equitable considerations as the employee's
18 length of service with the employer and the reasons for termination;
19 and

20 (d) Reasonable attorneys' fees and costs.

21 (3) If the court dismisses an employee's complaint and finds it to
22 be frivolous, the court may award reasonable attorneys' fees and costs
23 to the prevailing employer.

24 (4) Nothing in section 2 of this act or in this section displaces
25 or extinguishes rights or claims that an employee may have against an
26 employer arising under any other statute, regulation, contract,
27 collective bargaining agreement, or the common law.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44 RCW
29 to read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply to sections 2 and 3 of this act:

32 (1) "Employer" includes a person, firm, corporation, partnership,
33 business trust, legal representative, or other business entity that
34 engages in a business, industry, profession, or activity in this state
35 and employs one or more employees, and also includes the state, a state
36 institution, a state agency, a political subdivision of the state, a
37 municipal corporation, or a quasi-municipal corporation.

1 (2) "Employee" means an individual who works for hire, including an
2 individual employed in a supervisory, managerial, or confidential
3 position, but not including an independent contractor.

4 (3) "Good faith" means honesty in fact.

5 (4) "Termination" means: (a) A dismissal, including that resulting
6 from the elimination of a position, of an employee by an employer; or
7 (b) a layoff or suspension of an employee by an employer for more than
8 two consecutive months.

9 NEW SECTION. **Sec. 5.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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