

SENATE BILL REPORT

ESSB 5778

As Passed Senate, February 7, 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, Lias, Frame, Hunt, Cleveland, Kuderer, Nobles, Salomon and Wilson, C.).

Brief History:

Committee Activity: Labor & Commerce: 1/11/24, 1/16/24 [DPS, DNP].

Floor Activity: Passed Senate: 2/7/24, 28-20.

Brief Summary of Engrossed First Substitute Bill

- Prohibits an employer from disciplining or discharging, threatening to discipline or discharge, penalizing, or taking any adverse employment action against an employee for refusal to attend an employer-sponsored meeting, listen to speech, or view communications, when the primary purpose of which is to communicate the employer's opinion concerning religious or political matters.
- Prohibits an employer from disciplining or discharging, threatening to discipline or discharge, penalizing, or taking any adverse employment action against an employee 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 makes a good faith report of a violation, or suspected violation, of the bill.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5778 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and MacEwen.

Staff: Jarrett Sacks (786-7448)

Background: In general, employers are not prohibited from requiring employees to attend meetings where the employer communicates its positions on issues. One exception involves certain labor relations communications. Under National Labor Relations Board (NLRB) and federal court precedent, an employer does not commit an unfair labor practice by requiring employees to attend speeches about unionization on the employer's premises during work hours as long as the speech is not coercive. There are limitations around representation elections, where election speeches on company time to a massed assembly of employees within 24 hours of an election is prohibited.

For public employees, the Public Employment Relations Commission has a similar rule around elections, prohibiting election speeches on the employer's time to massed assemblies of employees during:

- the period polls are open in an on-site or electronic election; or
- the period beginning on the scheduled date for a mail-ballot election and continuing through the deadline for mail ballots.

In April of 2022, the general council for the NLRB issued a memorandum stating that requiring employees to listen to employer speech under the threat of discipline violates the National Labor Relations Act. The memorandum also stated that the general counsel will ask the NLRB to reconsider current precedent on mandatory meetings.

Summary of Engrossed First Substitute Bill: An employer may not discipline or discharge, threaten to discipline or discharge, 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 makes a good faith report of a violation or a suspected

violation of the bill.

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

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

The bill does not:

- prohibit an employer from communicating to its employees any information 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 from communicating to its employees any information, or requiring employee attendance at a meeting or other event, necessary for the employees to perform their lawfully required job duties; or
- prohibit an employer from requiring its employees to attend any training intended to reduce and prevent workplace harassment or discrimination. .

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

"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.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on First Substitute: PRO: Employers use meetings

to change minds of employees about unionizing, which creates fear and confusion. The bill protects workers from anti-union hostility. There is a power imbalance between employers and workers and that can be used to put pressure on employees in the meetings. The bill does not ban the meetings, it makes them voluntary.

CON: The legislation is vague and unworkable about what is included in political and religious matters. The bill may prohibit meetings about cultural inclusion. The bill is preempted by federal law and violates the First Amendment. There are already strong laws against coercing employees. While Oregon has a similar law, it has never been enforced.

OTHER: The language in the substitute bill that exempts required job duties is important. Government work has many things that can be interpreted as political speech.

Persons Testifying: PRO: John Traynor, Washington State Labor Council, AFL-CIO; Nicole Dettore, Starbucks worker; Helen Stukenborg, WFSE; Memo Mogollan, Teamsters 117.

CON: Montana Miranda, Washington Hospitality Association; Bob Battles, Association of Washington Business.

OTHER: Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.