SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 399 (Wahab)
Version: February 9, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Employer communications: intimidation

DIGEST

This bill creates the California Worker Freedom from Employer Intimidation Act.[1]

EXECUTIVE SUMMARY

Supporters of this bill explain that employees can easily feel compelled to sit through unwelcomed meetings about the religious or political opinions of their employers that are counter to the employee's core beliefs simply because they are afraid of losing their job. This bill prohibits employers from subjecting an employee or threatening to subject an employee to an adverse employment action if the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters.

Opponents contend that this bill limits an employer's right to speak and provide a forum for discussion, debate, and expressing employer opinions regarding matters of public concern, in violation of the First Amendment. The bill does not, in fact, prohibit employers from providing such a forum; it merely prevents employers from punishing employees who decline to participate in such a forum. Opposition asserts that the bill violates the First Amendment of the United States Constitution and is preempted by the National Labor Relations Act (NLRA). Supporters disagree and note that a similar law has remained in effect for over a decade in Oregon notwithstanding assertions by employers that the law violates the First Amendment and is preempted by the NRLA.

The bill is sponsored by the California Labor Federation and the California State Council of Teamsters, and is supported by numerous worker organizations. The bill is

[1] This bill is analyzed as proposed to be amended. A mock-up of the bill with amendments is provided at the end of the analysis. The amendments are subject to any nonsubstantive changes the Office of Legislative Counsel may make.

opposed by the California Chamber of Commerce and numerous employer and business organizations. The bill passed the Labor, Public Employment and Retirement Committee on a 4 to 1 vote.

PROPOSED CHANGES TO THE LAW

Existing law[2]:

1) Provides, through the National Labor Relations Act (NLRA), that it is the policy of the United States to encourage collective bargaining by protecting workers' full freedom of association. The NLRA provides employees at private-sector workplaces the right to seek better working conditions and designation of representation without fear of retaliation. (29 U.S.C. §§ 151-169.)

2) Establishes the National Labor Relations Board (NLRB) as an independent federal agency vested with the power to safeguard employees' rights to organize, engage with one another to seek better working conditions, choose whether or not to have a collective bargaining representative negotiate on their behalf with their employer, or refrain from doing so. The NLRB also acts to prevent and remedy unfair labor practices committed by private sector employers and unions, as well as conducts secret-ballot elections regarding union representation. (29 U.S.C. § 153.)

3) Provides that it is the policy of the state to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives, self-organization, or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. (Labor Code §§1140-1166.3.)

4) Provides the Labor Commissioner with authority to take assignment of claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises. (Labor Code § 96.)

5) Prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy: forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office; or controlling or directing, or tending to control or direct the political activities or affiliations of employees. (Labor Code § 1101.)

[2] This existing law section reflects the bill as proposed to be amended in the mock-up at the end of the analysis.

6) Prohibits an employer from coercing, influencing, or attempting to coerce or influence their employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity. (Labor Code § 1102.)

7) Affirms the individual right to speak freely and prohibits the state and federal governments from restricting expression, with certain exceptions. (U.S. Const., 1st amend.; Cal. Const., art. I, § 1.)

This bill:

1) Enacts the California Worker Freedom from Employer Intimidation Act.

2) Defines "political matters" as matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization.

3) Defines "religious matters" as matters relating to religious affiliation and practice and the decision to join or support any religious organization or association.

4) Defines "employee" as any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

5) Defines "employer" as any individual, partnership, association, corporation, or any agent, representative, designee or person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and shall include all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

6) Provides that an employer shall not subject, or threaten to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters.

7) Specifies that the Division of Labor Standards Enforcement (DLSE) shall enforce this Act upon the filing of a complaint by an employee.

8) Specifies that as an alternative to pursuing enforcement of the Act through the DLSE, an employee who the employer has subjected, or threatened to subject, to discharge, discrimination, retaliation, or any other adverse action on account of the employee's refusal to attend an employer-sponsored meeting, may bring a civil

action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages.

9) Provides that in a civil action brought pursuant to (8) above, an employee or their exclusive representative may petition the superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary or preliminary injunctive relief.

10) Specifies that the Act does not apply to any of the following: (a) a political organization or party requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's political tenets or purposes; (b) an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework at the institution; and (c) a religious corporation, entity, association, educational institution, or society, as specified, with respect to speech on religious matters to employees who perform work connected with the activities undertaken by that religious corporation, entity, association, educational institution, or society.

11) Specifies that the bill does not prohibit any of the following: (a) an employer from communicating to its employees any information that the employer is required by law to communicate, but only to the extent of that legal requirement; (b)an employer from communicating to its employees any information that is necessary for those employees to perform their job duties; or (c) an institution of higher education, or any agent, representative, or designee of that institution, from meeting with or participating in any communications with its employees that are part of coursework, any symposia, or an academic program at that institution.

12) Contains a severability clause.

COMMENTS

1. Stated need for the bill

According to the author:

> We live in highly polarized times where political discussions occur all too frequently in the workplace. No worker should be subject to forced indoctrination by their employer on politics, religion, or for exercising their protected rights on the job.
>
> It is important that workers of all religions and political perspectives are free to go to work without feeling coerced or enduring a hostile work environment.
>
> SB 399 prohibits employers from engaging in coercive conduct that requires workers to attend meetings on their views on political matters, religious

> matters, or constitutionally protected rights. This bill does not infringe on free speech rights and employers are still free to discuss their religious, political, and anti-union views with workers; so long as they do not coerce or force them to listen against their will.

The California Labor Federation and California Teamsters Public Affairs Council, sponsors of this bill, write:

> The bill clarifies that workers have the freedom to leave a mandatory meeting about their employers' views on religious or political matters, including support or opposition of political parties or unions.
>
> In most workplaces, workers are "at-will" and can be fired at any time for almost any reason. That gives employers tremendous power to pressure workers to do as they say through the use of mandatory meetings. These meetings are referred to as "captive audience meetings" because workers are not permitted to leave and are forced to listen to their employers' non-job-related views on politics or religion, or on reasons not to advocate for their own rights as workers. [. . .]
>
> [W]orkers across the state are demanding safer workplaces, higher wages, and respect. In response, many employers use "captive audience meetings" to dissuade workers from joining a union or advocating for their rights through anti-union messages, misrepresentations, and threats. Employers can, and do, discipline workers who speak up in the meetings and fire workers who refuse to attend. [. . .]
>
> [W]orkers need the freedom not to listen to their employers' political and religious views against their will.

The California Teachers Association writes the following in support of the bill:

> Captive audience meetings limit employee autonomy and autonomy over their own time, creating an environment of intimidation. These meetings are often used to present a biased or one-sided view of a particular issue, making it difficult for employees to challenge the opinion being presented. While the power dynamic inherent in employment relationships can be cooperative and productive, captive audience meetings create an atmosphere of distrust leading to a lack of collaboration between employees and employers. This bill stops an inappropriate form of manipulation where employers are trying to control the conversation and the outcome.
>
> Captive audience meetings are a one-way conversation, with the boss or manager dictating the terms and not allowing for any meaningful dialogue or feedback. Workers leave these meetings feeling demoralized, because they feel

> they are not free to speak their minds and voice their opinions for fear of retaliation from their employer.

California Professional Firefighters, supporters of this bill, write:

> Compulsory meetings required by an employer, often known as a "captive audience meeting" for the fact that employees must attend under threat of retaliation or termination, are an intimidation tactic used by employers to either push an ideology or discourage unionization efforts among their employees. By threatening to punish workers with reduced shifts, less favorable schedules, or even termination, employers are able to compel attendance often without pay.
>
> Personal politics, beliefs, and anti-union sentiments do not belong in a place of employment, particularly when it is directed by those in a position of power against those who cannot afford to push back. All people should be able to go to work without fear of retaliation for resisting these efforts, and SB 399 will ensure that employees are free from employer harassment and intimidation.

2. First Amendment

This main provision of this bill specifies that an employer shall not subject, or threaten to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters. The Division of Labor Standards Enforcement is provided with enforcement authority in this bill. An employee who is subjected to an adverse action by their employer may bring a civil action for damages caused by the adverse action, including punitive damages. The bill does not prohibit meetings where the employer's opinion about religious or political matters are expressed. The employer would not be liable for damages under SB 399 until and unless the employer takes an adverse action against the employee for exercising their right to decline. The author agreed to remove the provision in the bill that allows a court to grant the prevailing employee their attorney's fees and costs.

Sponsors of the bill assert that the bill does not violate the First Amendment. They explain that the "bill in no way prevents employers or anyone else from discussing religion, politics or any other subject. The only thing the bill prohibits is threatening to discharge or discipline or actually discharging or disciplining employees who do not wish to listen to such speech."

The opponents of the bill argue that SB 399 violates employers' First Amendment rights by prohibiting "employers from providing a forum for discussion, debate and

expressing their opinions regarding matters of public concern."[3] The bill does not, in fact, prohibit employers from providing such a forum; it merely prevents employers from punishing employees who decline to participate in such a forum. The opponents do not cite to any case law suggesting that the First Amendment protects an employer's right to speak at unwilling employees on topics unrelated to the job.

The sponsors of the bill argue that this bill is consistent with the principle that speech should not be forced on an unwilling listener.[4] It is not clear whether this principle extends to workplaces. In fact, it appears that the question of the scope of the First Amendment at workplaces has not been meaningfully developed. As such, there is no current constitutional barrier to this bill, and Committee staff cannot predict how a reviewing court would balance an employer's right to force speech on an employee vs. an employee's right to walk away.

A similar law was enacted in Oregon in 2009.[5] The Oregon law has been in effect for over a decade. The law has never been struck down. And, there is no case law on the issue of whether the Oregon bill violates the First Amendment or is federally preempted. Supporters of SB 399 also note that the "Oregon law was challenged twice in court but both suits were dismissed. Opponents explain that the Oregon law was challenged, but the "court never reached the merits of the case because it was dismissed on ripeness grounds." In 2022, Connecticut enacted a similar law.[6] The Chamber of Commerce of the United States of America is in the process of challenging the Connecticut law in the United States District Court, District of Connecticut.[7]

3. <u>The NLRA and Preemption</u>

Should SB 399 become law, employers or employer groups will likely file litigation contending that the bill is preempted by the NLRA. The opponents of the bill assert that the bill is preempted by the NLRA. The issue is not settled.

A coalition of employer and business groups, including the California Chamber of Commerce, writes:

> California and federal law already protect against employer coercion related to political matters. For example, the NLRA prohibits employers from making any threats to employees, interfering with or restraining exercise of their rights, coercing employees, or promising benefits to employees, interfering with or restraining exercise of their rights, coercing employees, or promising benefits to employees for voting a certain way in a union election. *SEE, e.g.,* NLRA Sections 8(a)(1); 29 U.S.C. §§ 158(a)(1), (c).

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[3] *See First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 784-785.
[4] *See, e.g., Hill v. Colorado* (2000) 530 U.S. 703, 718.
[5] ORS 659.785 (1).
[6] Conn. Gen. Stat. §§ 31-51q; Public Act No. 22-24.
[7] *Chamber of Commerce of the United States of America v. Bartolomeo*, 3:22-CV-01373.

As explained in Comment 1, above, supporters believe the types of communications and meetings employees should not be forced to participate in are coercive and in violation of the NLRA.

As explained by the National Labor Relations Board (NLRB):[8]

> Employees have the right to unionize, to join together to advance their interests as employees, and to refrain from such activity. It is unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of their rights. For example, employers may not respond to a union organizing drive by threatening, interrogating, or spying on pro-union employees, or by promising benefits if they forget about the union.
>
> Section 7 of the National Labor Relations Act (the Act) guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."
>
> Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" of the Act.

The General Counsel of the NLRB issued Memorandum GC 22-04 in 2022 wherein they note that mandatory meetings in which employees are forced to listen to employer speech concerning the exercise of their statutory labor rights "inherently involve an unlawful threat that employees will be disciplined or suffer other reprisals if they exercise their protected right not to listen to such speech." The General Counsel explained that "NLRB case precedent, which has tolerated such meetings, is at odds with fundamental labor-law principles, our statutory language, and our congressional mandate." The General Counsel further explained that the NLRB must keep in mind the basic inequality of bargaining power between individual employees and their employers, as well as employees' economic dependence on their employers. According to the General Counsel, "[f]orcing employees to listen to such employer speech under threat of discipline—directly leveraging the employees' dependence on their jobs—plainly chills employees' protected right to refrain from listening to this speech in violation of Section 8(a)(1). The fact that the threat arises in the context of employer speech does not immunize its unlawful coercive effect." The General Counsel cites to 29 U.S.C. § 158(c) as standing for the proposition that Section 8(c) of the Act shields from unfair-labor-practice liability only expression of "views, argument, or opinion" that

[8] National Labor Relations Board; *About NLRB: Interfering with employee rights* (Section 7 & 8(a)(1)) available at: https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1 [as of April 23, 2023]

"contains no threat of reprisal or force." The General Counsel cites to *NLRB v. Gissel Packing Co., Inc.* (1969) 395 U.S. 575, 617) for standing for the proposition that the provision "merely implements the First Amendment by preserving an employer's free speech right to communicate its views to its employees.

The General Counsel also noted that in the past the NLRB incorrectly concluded that an employer does not violate the NLRA by compelling its employees to attend meetings in which it makes speeches urging them to reject union representation. The General Counsel highlighted that the employer uses express or implicit threats to force employees into these meetings and follows through on those threats through discharge or discipline if employees assert their right to refrain from listening, or refuse to attend, or leave the mandatory meeting. The General Counsel stated that they will urge the NLRB to "correct that anomaly" and find specified mandatory meetings are unlawful (1) when employees are forced to convene on paid time or (2) when employees are cornered by management while performing their job duties. As stated by the General Counsel, in "both cases, employees constitute a captive audience deprived of their statutory right to refrain, and instead are compelled to listen by threat of discipline, discharge, or other reprisal—a threat that employees will reasonably perceive even if it is not stated explicitly."

Opponents of the bill contend that the NLRA protects the employer's right to require employee attendance in meetings or participation in communications regarding the employer's opinion on union organizing. The opposition coalition, which includes the California Chamber of Commerce, writes:

> The NLRA comprehensively regulates labor matters in the United States [. . .]. State law is preempted by the NLRA where it interferes with the NLRB's interpretation and enforcement of the NLRA, regulates activity that the NLRA protects, prohibits, or arguably protects or prohibits, or regulates conduct that Congress intended to be left to the "free play of economic forces[."]
>
> Employers have the right to express their views and opinions regarding labor organizations. NLRA Section 8(c). Following the enactment of that section, the NLRB stated that Congress had intended for both employers and unions to be free to influence employees as long as the speech is noncoercive. The United States Supreme Court also held that Section 8(c) of the NLRA has been interpreted as implementing the First Amendment for employers and as congressional intent to encourage free debate on issues between labor and management. [. . .] The Court also interpreted Section 8(c) as precluding the regulation of speech about organizing as long as the speech does not violate other provisions of the NLRA, such as containing threats or promising benefits for voting or not voting for the union. [. . .] It characterized the NLRA as a whole as favoring robust, uninhibited debate in labor disputes.

The California Labor Federation contends that federal labor law does not bar states from enacting legislation prohibiting employers from requiring their employees to listen to speech unrelated to job performance on pain of termination or other disciplinary action. They write:

> As the United States Supreme Court has recognized, "The NLRA contains no express pre-emption provision." Building & Construction Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218, 224 (1993). Moreover, "'Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law.'" Id. [. . .] Finally, "the Court has recognized that it 'cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers, and unions; obviously, much of this is left to the States." Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 757 (1985) [. . .].
>
> The proposed bill falls into several well-recognized exceptions to federal labor law preemption. [. . .] The Supreme Court has made clear that "[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State." [. . .] [T]here is no suggestion in the legislative history of the [National Labor Relations] Act that Congress intended to disturb the myriad state laws then in existence that set minimum labor standards." [. . .] "Federal law in this sense is interstitial, supplementing state law where compatible, and supplanting it only when it prevents the accomplishment of the purposes of the federal Act." [. . .] In other words, the Court has long recognized that states can establish minimum working conditions without interfering with federal labor law. [. . .] A state can pass a law preventing an employer from forcing employees to work under conditions that threaten their physical safety ("laws affecting occupational health and safety"). Similarly, a state can pass a law preventing an employer from forcing employees to attend a meeting that threatens their psychological safety – i.e., their freedom of conscience. It is clear, to cite another example, that a state can pass a law barring discharge of employees without just cause. [. . .] It is also clear that a state can pass a law barring discharge of employees for a limited set of improper reasons, for example, on the basis of race. The proposed legislation falls into the latter category. It bars employers from disciplining or discharging employees for an improper reason -- refusing to listen to speech unrelated to their job performance. The bill is thus permissible minimum conditions legislation and is not preempted by federal labor law. [. . .]
>
> States are permitted to adopt regulations, even when they affect labor relations, when they address matters "deeply rooted in local feeling and responsibility." Farmer v. Carpenters Local 24, 430 U.S. 290, 298 (1977). This is because in these areas there is "an overriding state interest" in the regulations. Id. The state

> regulations that have been upheld on this ground typically protect personal dignity and private property. [. . .]
>
> The State has a similar deeply rooted interest in protecting personal dignity and freedom of thought by barring employers from forcing employees to listen to speech concerning core matters of individual conscience unrelated to their job performance. [. . .][9]

SUPPORT

California Labor Federation (sponsor)
California Teamsters Public Affairs Council (sponsor)
Alameda Labor Council
American Federation of State, County, and Municipal Employees
America Federation of Labor and Congress of Industrial Unions, AFL-CIO
California Conference of the Amalgamated Transit Union
California Conference of Machinists
California Faculty Association
California IATSE Council
California Nurses Association/National Nurses United
California Professional Firefighters
California Rural Legal Assistance Foundation
California School Employees Association
California State Legislative Board of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division
California Federation of Teachers, AFL-CIO
California Teachers Association
Center on Policy Initiatives
Central Coast Labor Council
Clergy and Laity United for Economic Justice
Contra Costa Central Labor Council
Elevator Constructors Local 8
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO
Hadassah
International Union of Elevator Constructors Local 8
Ironworkers Local 433
Jobs to Move America
JCRC of Jewish Silicon Valley
Jewish Center for Justice
Jewish Community Relations Council of Sacramento
Jewish Democratic Club of Silicon Valley
Jewish Family and Children's Service of Long Beach and Orange County
Jewish Family Service of San Diego

[9] Citations omitted throughout.

Jewish Family Services of Silicon Valley
Jewish Federation of the Greater San Gabriel and Pomona Valleys
Jewish Federation of the Sacramento Region
Jewish Long Beach
Jewish Public Affairs Committee of California
Jewish Silicon Valley
JVS SoCal
North Bay Labor Council
Pillars of the Community
Progressive Zionists of California
Sacramento Central Labor Council, AFL-CIO
San Diego Black Workers Center
TechEquity Collaborative
Unemployed Workers United
United Automobile Workers, Region 6
United Food and Commercial Workers, Western States Council
UNITE HERE, AFL-CIO
United Nurses Associations of California/Union of Health Care Professionals
Utility Workers Union of America
Warehouse Worker Resource Center
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
Associated General Contractors of California
Associated General Contractors-San Diego Chapter
Association of California Healthcare Districts
Brea Chamber of Commerce
California Apartment Association
California Association for Health Services at Home
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Credit Union League
California Employment Law Council
California Farm Bureau
California Grocers Association

California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Lodging Industry Association
California Manufactures & Technology Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Family Business Association of California
Flasher Barricade Association
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Independent Lodging Industry Association
La Cañada Flintridge Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation for Independent Business
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South County Chambers of Commerce
Southwest California Legislative Council
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Vacaville Chamber of Commerce
Vista Chamber of Commerce

Western Growers Association
Yorba Linda Chamber of Commerce

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Labor and Public Employment Committee (4 to 1)

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AMENDMENTS

SECTION 1. Chapter 9 (commencing with Section 1137) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 9. Employer Intimidation

1137. (a) This chapter shall be known, and may be cited, as the "California Worker Freedom from Employer Intimidation Act."

(b) As used in this section, the following definitions apply:

(1) "Employee" means any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(2) "Employer" means any individual, partnership, association, corporation, or any agent, representative, designee or person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and shall include all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

(3) "Political matters" means matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization.

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

~~(5) "Rights guaranteed by the First Amendment to the United States Constitution or Section 2, 3, or 4 of Article I of the California Constitution" includes, but is not limited to, the rights of freedom of speech, freedom of association, and freedom of religion.~~

(c) An employer, except as provided in subdivisions (f) and (g), shall not subject, or threaten to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines ~~require its employees~~ to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious ~~matters,~~ or political matters~~, or rights guaranteed by the First Amendment to the United States Constitution or Section 2, 3, or 4 of Article I of the California Constitution~~.

(d) Upon the filing of a complaint by an employee, the Division of Labor Standards Enforcement shall enforce this section.

(e) (1) Alternatively to subdivision (d), any employee who the employer has subjected, or threatened to subject, to discharge, discrimination, retaliation, or any other adverse action on account of the employee's refusal to attend an employer-sponsored meeting may bring a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages~~, and for reasonable attorney's fees as part of the costs of any such action for damages~~.

(2) In any civil action brought pursuant to paragraph (1), an employee or their exclusive representative may petition the superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary or preliminary injunctive relief.

(f) This section does not prohibit any of the following:

(1) An employer ~~or its agent, representative, or designee~~ from communicating to its employees any information that the employer is required by law to communicate, but only to the extent of that legal requirement.

(2) An employer ~~or its agent, representative, or designee~~ from communicating to its employees any information that is necessary for those employees to perform their job duties.

(3) An institution of higher education, or any agent, representative, or designee of that institution, from meeting with or participating in any communications with its employees that are part of coursework, any symposia, or an academic program at that institution.

~~(4) A requirement limited to the employer's managerial and supervisory employees.~~

(g) This section does not apply to any of the following:

(1) A religious corporation, entity, association, educational institution, or society that is exempt from the requirements of Title VII of the Civil Rights Act of 1964 (Public Law 88-352) pursuant to 42 U.S.C. 2000e-1(a) or is exempt from employment discrimination protections of state law, including, but not limited to, subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, and subdivision (d) of Section 98.6 of the Labor Code, with respect to speech on religious matters to employees who perform work connected with the activities undertaken by that religious corporation, entity, association, educational institution, or society.

(2) A political organization or party requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's political tenets or purposes.

(3) An educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework at the institution.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.