
THIRD READING

Bill No: SB 399
Author: Wahab (D), et al.
Amended: 5/2/23
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/12/23
AYES: Cortese, Durazo, Laird, Smallwood-Cuevas
NOES: Wilk

SENATE JUDICIARY COMMITTEE: 9-2, 4/25/23
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern, Wiener
NOES: Wilk, Niello

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SUBJECT: Employer communications: intimidation

SOURCE: California Labor Federation
California Teamsters Public Affairs Council

DIGEST: This bill enacts the California Worker Freedom from Employer Intimidation Act to prohibit an employer from subjecting, or threatening 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.

ANALYSIS: Existing federal law 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)

Existing state law:

- 1) Prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy:
 - a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.
 - b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees.
(Labor Code §1101)
- 2) Prohibits an employer from coercing, influencing, or attempting to coerce or influence employees through or by means of threat of discharge or loss of employment to adopt or follow, or refrain from adoption or following, any particular course or line of political action or political activity. (Labor Code §1102)
- 3) Establishes within the Department of Industrial Relations (DIR) and under the direction of the Labor Commissioner, the Division of Labor Standards Enforcement (DLSE) tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)
- 4) Provides the Labor Commissioner with authority to be assigned claims for loss of wages that arise from retaliation for lawful conduct occurring during nonworking hours and away from the employer's premises. (Labor Code §96)

This bill:

- 1) Enacts the "California Worker Freedom from Employer Intimidation Act" to prohibit an employer, except as specified, from subjecting, or threatening 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, as defined.

- 2) 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.
- 3) Requires the Division of Labor Standards Enforcement to enforce these protections upon the filing of a complaint by an employee.
- 4) Alternatively to filing a complaint with 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.
 - a) Specifies that in any such civil action, an employee or their exclusive representative may petition the superior court, as specified, for appropriate temporary or preliminary injunctive relief.
- 5) Provides that these provisions do not prohibit an employer from any of the following:
 - a) 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) Communicating to its employees any information that is necessary for those employees to perform their job duties.
 - c) For institutions of higher education, 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.
- 6) Exempts the following from these provisions:
 - a) 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, as defined, or is exempt from employment discrimination protections of state law, 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.

- b) 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.
 - c) An educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework.
- 7) Provides that these provisions are severable and if any provision 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.

Background

Captive audience meetings are mandatory meetings during work hours, organized by an employer where employees are paid for their time attending the meeting and are required to attend or face discipline. Critics of these meetings argue that they are used to intimidate workers and spread the employers' personal views on various issues. Employers argue the practice as being part of freedom of speech.

On April 07, 2022, National Labor Relations Board General Counsel Jennifer Abruzzo issued a memorandum to all field offices announcing that she would be asking the Board to find mandatory meetings in which employees are forced to listen to employer speech concerning the exercise of their statutory labor rights, including captive audience meetings, a violation of the National Labor Relations Act (NLRA). According to General Counsel Abruzzo, in workplaces across America, employers routinely hold mandatory meetings in which employees are forced to listen to employer speech concerning the exercise of their statutory labor rights, especially during organizing campaigns.

[NOTE: Please see the Senate Labor, Public Employment and Retirement Committee analysis on this bill for more background information on similar efforts in other states.]

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The Department of Industrial Relations (DIR) indicates that it would incur first-year enforcement costs of \$334,000, and \$323,000 annually thereafter, to implement the provisions of the bill (Labor Enforcement Compliance Fund).
- Administrative costs to the Department of Justice (DOJ) have yet to be identified.

SUPPORT: (Verified 5/18/23)

California Labor Federation (co-source)
 California Teamsters Public Affairs Council (co-source)
 Alameda Labor Council
 American Federation of Labor and Congress of Industrial Unions, AFL-CIO
 American Federation of State, County and Municipal Employees
 California Conference Board of the Amalgamated Transit Union
 California Conference of Machinists
 California Faculty Association
 California Federation of Teachers, AFL-CIO
 California IATSE Council
 California Nurses Association
 California Professional Firefighters
 California Rural Legal Assistance Foundation, INC.
 California School Employees Association
 California State Legislative Board, Sheet Metal, Air, Rail and Transportation
 Workers – Transportation Division
 California Teachers Association
 California Teamsters Public Affairs Council
 Center on Policy Initiatives
 Central Coast Labor Council
 Clergy and Laity United for Economic Justice
 Contra Costa Central Labor Council
 Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
 Hadassah
 International Union of Elevator Constructors Local 8
 Ironworkers Local 433
 JCRC of Jewish Silicon Valley
 Jewish Center for Justice
 Jewish Community Relations Council of Sacramento

Jewish Democratic Club of Silicon Valley
Jewish Family & Children's Service of Long Beach and Orange County
Jewish Family Services of San Diego
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
Jobs to Move America
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
State Building and Construction Trades Council of California
TechEquity Collaborative
UAW Region 6
Unemployed Workers United
UNITE HERE, AFL-CIO
United Food and Commercial Workers, Western States Council
United Nurses Associations of California/Union of Health Care Professionals
Utility Workers Union of America
Warehouse Worker Resource Center
Worksafe

OPPOSITION: (Verified 5/18/23)

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 & Air Conditioning Contractors National
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
Carlsbad Chamber of Commerce
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
Danville Area Chamber of Commerce
Family Business Association of California
Flasher Barricade Association
Folsom Chamber of Commerce
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 Canada Flintridge Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of 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 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

ARGUMENTS IN SUPPORT: According to the sponsors of this bill, “The effectiveness of captive audience meetings has led to employers using these forced meetings for political and religious purposes. The Royal Dutch Shell company invited then-candidate Trump to give a speech at their facility in 2019. The employers sent a memo to workers stating that attendance of the Trump rally was “not mandatory,” but that if they did not clock in to work that day they would lose pay and become ineligible to receive the 16 hours of overtime pay. Workers who attended were told “anything viewed as resistance” would not be tolerated at the event.” Sponsors further argue that other examples of coercion happen when workers advocate for their rights and write, “In California, Amazon workers in Moreno Valley endured multiple captive audience meetings where they were told they would lose their benefits if they unionized.”

ARGUMENTS IN OPPOSITION: A coalition of employers are opposed arguing that it’s overbroad provisions effectively prohibit any discussion of political matters in the workplace and are unnecessary in light of existing California and federal laws that protect employees from any coercion related to their political beliefs or activities. Furthermore, they argue, “Because SB 399 creates a new section of the Labor Code, any good faith error in interpreting the bill or its exceptions creates liability under the Private Attorneys General Act (PAGA), which carries significant penalties of \$100 to \$200 per employee per pay period. Because trial attorneys walk away as the winners under PAGA by taking at

least one third of the total settlement or court award while workers often get mere pennies, SB 399 creates an enticing new cause of action for lawyers to manipulate for financial gain.” Lastly, the coalition points out that, “similar laws have been enacted four times in other states. One was struck down, one was repealed because the state *agreed* that the provision was preempted by the NLRA, one lawsuit was dismissed solely based on a ripeness issue, and the fourth is presently in litigation.”

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
5/20/23 12:44:47

**** END ****