

Date of Hearing: August 16, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 399 (Wahab) – As Amended May 2, 2023

Policy Committee:	Labor and Employment	Vote:	5 - 1
	Judiciary		7 - 3

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill enacts the California Worker Freedom from Employer Intimidation Act.

Specifically, this bill:

- 1) Prohibits an employer from taking an adverse employment action against an employee because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to communications regarding the employer's opinion about religious or political matters.
- 2) Defines "political matters" to mean 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) Exempts from this prohibition certain communications, such as an employer communicating information necessary for employees to perform their job duties, and certain situations, such as a political organization or party employer requiring its employees to attend a meeting to communicate its political tenets.
- 4) Requires the Division of Labor Standards Enforcement (DLSE) to enforce this prohibition upon the filing of an employee complaint.
- 5) Authorizes an employee subject to such an adverse employment action for refusing to attend an employer-sponsored meeting to bring a civil action for damages and injunctive relief. However, the authorized civil action does not extend to an employee who affirmatively declines prohibited communications of the employer's opinions.

FISCAL EFFECT:

- 1) Costs of approximately \$334,000 in the first year and approximately \$323,000 annually thereafter to DLSE to provide enforcement upon receiving an employee complaint (Labor Enforcement Compliance Fund).
- 2) The Department of Justice, which represents state agencies in employment litigation, reports no fiscal impact from this bill. However, as further discussed in comment 3 below, state agencies may incur costs to the extent there is ambiguity regarding how this bill's exemptions apply to a public employer.

Any similar costs incurred by local agencies are likely non-reimbursable by the state, as such provisions likely do not result in a higher level of service to the public and trigger creation of a state-mandated local program.

- 3) Annual cost pressures (General Fund (GF) or Trial Court Trust Fund) of an unknown amount, potentially up to \$150,000, to the courts in additional workload. In addition to administrative enforcement through DLSE, this bill authorizes an employee to bring a civil action through the courts. It is unclear how many actions may be filed statewide, but the estimated workload cost of one hour of court time is \$1,000. Although courts are not funded on the basis of workload, increased pressure on staff and the TCTF may create a need for increased court funding from the GF to perform existing duties. The 2023-24 state budget agreement includes \$105.1 million in ongoing GF revenue to continue backfilling the TCTF for expected revenue declines.

COMMENTS:

- 1) **Purpose.** According to the author:

It is important that workers of all religious 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.

- 2) **Support and Opposition.** This bill is co-sponsored by the California Labor Federation and California Teamsters Public Affairs Council, which argue “In most workplaces, workers at ‘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.” This bill is supported by other labor organizations and economic justice groups.

This bill is opposed by a large coalition of business groups, led by the California Chamber of Commerce, which argues this bill’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 outside the workplace.” This bill is also opposed by a coalition of public employer associations, led by the League of California Cities, which argues this bill “would treat many routine government functions as political matters and interfere with government operations” or “potentially be argued to be political, leading to costly disputes.”

- 3) **Background.**

Need for Additional Employee Protections. An employer’s control over an employee’s workplace conditions and compensation establishes a power dynamic in the employer’s favor, which could expose the employee to significantly coercive behaviors by the employer. For example, an employer’s political speech delivered during a mandatory or “captive

audience” meeting may intimidate an employee to concur, out of fear of losing one’s job. Reports indicate that such captive audience meetings are particularly damaging in a workplace where employees are engaging in a unionization campaign.

This bill prohibits an employer from subjecting, or threatening to subject, an employee to disciplinary action, including discharge, discrimination, or retaliation, because the employee declines to participate in an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to communications imparting the employer’s political or religious opinions. A law similar to this bill was passed in Oregon in 2009 and has withstood a number of legal challenges, although a recently enacted law in Connecticut is currently being challenged in federal court on First Amendment and federal preemption grounds.

Implementation by Public Employers. As described above, public employer associations are concerned that as local government entities required to make and implement legislation and regulations (“political matters”), this bill may inadvertently preclude an employer from necessary employee communications. This bill provides a number of employer exemptions, such as an employer communicating information necessary for employees to perform their job duties or a political organization or party employer requiring its employees to attend a meeting to communicate its political tenets.

However, it is unclear whether a local government qualifies as a political organization or the first exemption applies if an employee tasked with staffing a city council meeting has job duties largely irrelevant to the political matters being discussed at the meeting. Thus, as noted in the Assembly Judiciary Committee’s analysis of this bill, “While potentially unlikely, it is possible that the discussion of inherently political matters at that meeting may result in the employee feeling they were forced to listen to an employer’s political position.” Since such a scenario is also possible at a state government meeting, clarifying language may help guide implementation for public employers.

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