
OLR Bill Analysis

sSB 440

AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE.

SUMMARY

This bill generally prohibits employers, including the state and its political subdivisions, from disciplining or discharging an employee, or threatening to do so, because the employee refused to attend employer-sponsored meetings, listen to speech, or view communications primarily intended to convey the employer's opinion about religious or political matters (i.e., "captive audience meetings"; see BACKGROUND). Such meetings are held by the employer or its agent, representative, or a designee.

Additionally, the bill expands the prohibition in current law against employers disciplining or discharging employees for exercising their First Amendment rights under the U.S. Constitution or similar rights under the Connecticut Constitution to include threats by employers to discipline or discharge employees for exercising these rights. By law and unchanged by the bill, an employee may exercise these rights as long as his or her activity does not substantially or materially interfere with the bona fide job performance or the working relationship between the employer and employee. The bill specifies that these rights include the right to (1) free speech, (2) freedom of religion, (3) freedom of association, and (4) freedom from the requirement to listen to speech, except as allowed under the bill.

The bill provides certain exceptions to both its prohibition on punishing employees for refusing to attend captive audience meetings and the current law's prohibition on punishing employees for exercising their constitutional rights. Among other things, these allow employers to communicate information required by law or that the employees need to perform their jobs. It also exempts speech on

religious matters made by certain religious organizations to their employees.

The law's prohibition on employers disciplining or discharging employees for exercising their constitutional rights makes an employer liable to the affected employee for damages caused by the prohibited discipline or discharge, including punitive damages, and reasonable attorney's fees. These employers are also liable for a \$300 civil penalty imposed by the Department of Labor (CGS § 31-69a).

The bill extends these liability provisions to employers who (1) discipline or discharge employees, or threaten to do so, for refusing to attend, listen to, or watch a captive audience meeting or (2) threaten to discipline or discharge employees for exercising their constitutional rights. As under existing law, if a court determines that the action was brought without substantial justification, it may award the employer costs and reasonable attorney's fees.

EFFECTIVE DATE: July 1, 2019

POLITICAL AND RELIGIOUS MATTERS DEFINED

Under the bill, "political matters" relate to (a) elections for political office, (b) political parties, (c) legislation, (d) regulation, and (e) decisions to join or support a political party or political, civic, community, fraternal, or labor organization. "Religious matters" relate to (a) religious affiliation and practice and (b) decisions to join or support a religious organization or association.

EXEMPTIONS

The bill allows exceptions to both its prohibition on punishing employees for refusing to attend captive audience meetings and the current law's prohibition on punishing employees for exercising certain constitutional rights. It explicitly permits the following:

1. an employer or its agent, representative, or designee to communicate to employees information (a) required by law, but only to the extent of the legal requirement, or (b) the employees need to perform their job duties;

2. a higher education institution, or its agent, representative, or designee, to meet or participate in communications with employees that are part of coursework, a symposia, or an academic program at the institution;
3. casual conversations between employees or between an employee and an employer's agent, representative, or designee, as long as participation is not required; or
4. a requirement to attend captive audience meetings that is limited to the employer's managerial and supervisory employees.

The bill also exempts from the prohibition on punishing employees, under certain circumstances, a religious corporation, entity, association, education institution, or society that is exempt from (1) Title VII of federal Civil Rights Act (which generally prohibits employment discrimination based on race, color, religion, sex, and national origin) or (2) the state's prohibitions on discriminatory employment practices and sexual orientation discrimination under the Connecticut Human Rights Act. The exemption applies to these organizations' speech on religious matters to employees who perform work connected with carrying on the organizations' activities.

BACKGROUND

Captive Audience Meetings and Federal Preemption

The federal National Labor Relations Act (NLRA) governs private-sector union organizing and collective bargaining rights and delineates unfair labor practices. The NLRA created the National Labor Relations Board (NLRB) to administer the law and rule on specific cases alleging unfair labor practices.

The NLRB and federal courts have generally allowed captive audience meetings as long as they are held more than 24 hours before a union election and the employer does not commit an unfair labor practice, such as threatening reprisal for supporting a union (e.g., *Peerless Plywood Co.*, 107 NLRB 427 (1953); *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1966); and *Chamber of Commerce v. Brown*, 554 U.S.

60 (2008)).

In 2018, Connecticut's attorney general issued a formal opinion on HB 5473 (2018), which would have prohibited employers from holding captive audience meetings, and concluded that a court would likely determine that the bill is preempted by federal law (Opinion 2018-02).

Related Bill

SB 64 (File 360), favorably reported by the Labor and Public Employees Committee, generally prohibits employers from requiring their employees to attend employer-sponsored meetings that are primarily meant to communicate the employer's opinion about political or religious matters (i.e., captive audience meetings).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 16 (04/10/2019)