
OLR Bill Analysis

sSB 163 (File 482, as amended by Senate "A")*

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 (i.e., penalizing) 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). The prohibition covers meetings with the employer or its agent, representative, or a designee.

Current law prohibits employers from penalizing employees for exercising their First Amendment rights under the U.S. Constitution or similar rights under the Connecticut Constitution. The bill expands the law to also prohibit employers from threatening to penalize employees for exercising these rights. By law and unchanged by the bill, an employee may exercise these rights as long 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 makes certain exceptions to both its prohibition on penalizing employees for refusing to attend captive audience meetings and current law's prohibition on penalizing employees for exercising their constitutional rights. Among other things, these exceptions allow employers to communicate information required by law or that the employees need to perform their jobs. It also exempts certain religious organizations' speech on religious matters made to their own employees.

The bill also changes the enforcement provisions that apply to both

the current law on employees exercising certain constitutional rights and the bill's prohibition on penalizing employees for refusing to attend captive audience meetings. It does so primarily by limiting potential awards to lost wages or compensation, with no punitive damages.

*Senate Amendment "A" removes a provision from the underlying bill that would have specified that the protected First Amendment rights include, among other things, the right to freedom from a requirement to listen to speech.

EFFECTIVE DATE: July 1, 2022

POLITICAL AND RELIGIOUS MATTERS DEFINED

Under the bill, "political matters" relate to (1) elections for political office, (2) political parties, (3) proposals to change legislation or regulation, and (4) decisions to join or support a political party or political, civic, community, fraternal, or labor organization. "Religious matters" relate to (1) religious affiliation and practice and (2) decisions to join or support a religious organization or association.

EXEMPTIONS

The bill allows exceptions to both its prohibition on penalizing employees for refusing to attend captive audience meetings and current law's prohibition on penalizing 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. voluntary, casual conversations between employees or between an employee and an employer's agent, representative, or

designee; or

4. a requirement that is limited to the employer's managerial and supervisory employees.

The bill also exempts, under certain circumstances, a religious corporation, entity, association, education institution, or society that is exempt from (1) the federal Civil Rights Act's prohibition of religious discrimination in employment or (2) the state's prohibitions on discriminatory employment practices and sexual orientation discrimination under the Connecticut Human Rights Act and related contracting provisions. The exemption applies to speech on religious matters to employees who perform work connected with carrying on the organizations' activities.

ENFORCEMENT

Current law's prohibition on employers penalizing employees for exercising certain constitutional rights makes an employer liable to the affected employee for damages caused by the prohibited action, 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) penalize employees or threaten to do so for refusing to attend, listen to, or watch a captive audience meeting or (2) threaten to penalize employees for exercising their First Amendment rights. However, it limits the potential award in civil cases involving violations of current law or the bill to the full amount of gross lost wages or compensation, with costs and reasonable attorney's fees, with no punitive damages or other unspecified damages.

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.

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, Attorney General Jepsen 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). In 2019, Attorney General Tong issued a formal opinion on SB 440, which was substantially similar to this bill (SB 318), and concluded that, “[a]s a generally applicable state law aimed at protecting the constitutional rights of all Connecticut employees,” it could be “fairly defended as outside the scope of NLRA preemption” (Opinion 2019-03).

Related Bill

SB 318 (File 266), reported favorably by the Labor and Public Employees Committee, contains substantially similar provisions to this bill.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 23 Nay 15 (03/29/2022)