

AMENDED IN SENATE MAY 2, 2023

SENATE BILL

No. 399

**Introduced by Senator Wahab
(Coauthor: Senator Durazo)**

February 9, 2023

An act to add Chapter 9 (commencing with Section 1137) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Wahab. Employer communications: intimidation.

Existing law, the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, 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.

Other existing law relating to employment prohibits employers from making, adopting, or enforcing rules, regulations, or policies that forbid or prevent employees from engaging or participating in politics or from becoming candidates for public office, and from controlling or directing, or tending to control or direct, the political activities or affiliations of employees.

This bill, except as specified, would prohibit an employer from ~~requiring its employees~~ *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 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 certain rights guaranteed by the United States Constitution and California Constitution, as defined: matters.

The bill would require the Division of Labor Standards Enforcement, upon the filing of a complaint by an employee, to enforce the bill's provisions. The bill would also authorize any employee who the employer has subjected, or threatened to subject, to adverse action on account of the employee's refusal to attend an employer-sponsored meeting to bring a civil action, as specified, and to petition for injunctive relief.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

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.

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

5 (4) “Religious matters” means matters relating to religious
6 affiliation and practice and the decision to join or support any
7 religious organization or association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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