
ENGROSSED SUBSTITUTE HOUSE BILL 2274

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Appelwick, Heavey, Prince, Day, Schmidt, Wineberry, R. Meyers, Riley, Winsley and Wilson)

Read first time 02/07/92.

1 AN ACT Relating to employee privacy; and adding new sections to
2 chapter 49.44 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW
5 to read as follows:

6 (1) It is unlawful for an employer to refuse to hire or to
7 discharge any individual, or otherwise disadvantage any individual,
8 with respect to compensation, terms, conditions, or privileges of
9 employment because the individual engages in the consumption of lawful
10 products off the premises of the employer during nonworking hours,
11 provided the individual complies with applicable laws or policies
12 regulating that consumption of lawful products on the premises of the
13 employer during working hours.

1 (2) It is not unlawful or an unfair employment practice under this
2 section for an employer to offer, impose, or have in effect a health,
3 disability, or life insurance policy that makes distinctions between
4 employees for the type of coverage or the coverage based upon the
5 employees' consumption of lawful products if:

6 (a) Differential premium rates charged employees reflect a
7 differential cost to the employer; and

8 (b) The employer provides employees with a written statement
9 delineating differential rates used by insurance carriers.

10 (3) It is not unlawful or an unfair employment practice under this
11 section for an employer to discharge an individual or otherwise
12 disadvantage an individual with respect to compensation, terms,
13 conditions, or privileges of employment if that decision is based on
14 the individual's failure to meet reasonable job performance standards
15 set by the employer. Also, this section does not apply if the actual
16 reason for the discharge or other disadvantage is found by the court to
17 be for valid reasons other than the consumption of a lawful product.

18 (4) The provisions of subsection (1) of this section shall not be
19 deemed to protect any consumption of lawful products that:

20 (a) Materially threatens an employer's legitimate conflict of
21 interest policy reasonably designed to protect the employer's trade
22 secrets, proprietary information, or other proprietary interests; or

23 (b) Relates to a bona fide occupational requirement and is
24 reasonably and rationally related to the employment activities and
25 responsibilities of a particular employee or a particular group of
26 employees, rather than to all employees of the employer. In addition,
27 RCW 4.24.350 may be invoked under this section.

28 (5) The court shall award the prevailing party in an action under
29 this section court costs and reasonable attorneys' fees.

1 (6) In addition to other provisions of this title, the remedy for
2 any individual claiming to be aggrieved by a violation of this section
3 is a civil action for damages which includes all wages and benefits
4 deprived the individual by reason of the violation.

5 (7) Nothing in this section is intended to breach or prevent
6 collective bargaining agreements between employer and employee.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
8 to read as follows:

9 Nothing in section 1 of this act precludes a religious or health
10 organization whose tenets prohibit the use of an otherwise lawful
11 product or a company or nonprofit organization whose primary business
12 purpose is the prevention of heart and lung disease, from refusing to
13 employ an individual who uses an otherwise lawful product.