

SENATE BILL REPORT

ESSB 5739

As Passed Senate, March 17, 1997

Title: An act relating to employee wearing apparel.

Brief Description: Establishing when employers are required to compensate employees for employee wearing apparel.

Sponsors: Senate Committee on Commerce & Labor (originally sponsored by Senators Horn, Haugen, Schow, Rasmussen and Wood).

Brief History:

Committee Activity: Commerce & Labor: 2/13/97, 2/28/97 [DPS, DNPS].
Passed Senate, 3/17/97, 32-16.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5739 be substituted therefor, and the substitute bill do pass.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Newhouse.

Minority Report: Do not pass substitute.

Signed by Senators Franklin, Fraser and Heavey.

Staff: Traci Ratzliff (786-7452)

Background: The Department of Labor and Industries is authorized by statute to adopt rules establishing employment standards for the protection of the safety, health, and welfare of employees and ensuring that wages satisfy the minimum wage prescribed by state law.

In 1976, the department adopted a rule that required the employer to furnish clothing when the employer required employees to wear uniforms or other articles of clothing of a specific style and color. However, an employer did not need to furnish required clothing that was usual and customary and that conformed to a general dress standard. Historically, businesses operated under an interpretation of the rule that did not require employers to furnish employees' clothing when the required clothing was white shirts or blouses and black slacks or skirts.

In 1992, the department issued a guideline for interpreting this regulation that considered white shirts to be usual and customary clothing that need not be furnished by the employer. However, the guideline would have interpreted black slacks or skirts to be clothing of a specific color which must be furnished by the employer. Reference to "dark" or "light" clothing was not considered to be a specific color, and such clothing was the responsibility of the employee. This guideline was challenged before the Joint Administrative Rules Review Committee and the department was strongly encouraged to take this deviation from a long-standing interpretation through the agency's formal rule-making process.

Recently, the department issued rules stating that employers who require employees to furnish uniforms or clothing with an employer designated logo, style or color (with no other color options allowed) must reimburse employees for such apparel when the cost of the clothing reduces the employee's wage rate below the state minimum wage in any payroll week. In addition, employers must pay the costs to maintain (professionally cleaning or repair) uniforms when such costs would reduce the employee's wage below the state minimum wage. This provision does not apply to uniforms that are "wash and wear".

Summary of Bill: If an employer requires an employee to wear a uniform, the employer must furnish or compensate the employee for such apparel.

A uniform is defined as: apparel of a distinctive style and quality that when worn outside the workplace clearly identifies the person as an employee of a specific employer; apparel that is marked with an employer's logo; unique apparel representing a historical time period or ethnic tradition; or formal apparel.

An employer's requirement that an employee wear apparel of a common color that conforms to a general dress code or style is not defined as a uniform. "Common colors" are defined in the bill. If an employer changes the color or colors of the apparel required to be worn by all employees more than once in a calendar year, such apparel is defined as a uniform and the employer must furnish or compensate the employee for the apparel.

Personal protective equipment required for employee protection under WISHA is not defined as employee wearing apparel.

The provisions of the act do not alter the terms, conditions, or practices contained in an existing collective bargaining agreement in effect at the time this bill becomes law until such agreement expires.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is a result of an ongoing dispute with Department Labor and Industries over the definition of a uniform and the responsibility of the employer to pay for an employee's uniform. This bill resolves this dispute by clearly defining what apparel constitutes a uniform and requires employers to pay for such apparel.

Testimony Against: This bill gives all the rights to employers and none to the employees. If all employees are wearing clothing of the same color, everyone recognizes this apparel as a uniform. Yet, the bill would not require employers to furnish or compensate employees for such apparel. This is not fair.

Testified: PRO: Kit Hawkins, Restaurant Association; CON: Steve Whipple, Secretary Treasurer United Food & Commercial Workers District Council; Tony Abeyta, President, Joe Daniels, United Food & Commercial Workers District Council.

House Amendment(s): If an employer changes the color or colors of required wearing apparel for less than all of the employees, more than once in a calendar year, the employer is required to pay for such apparel.