
HOUSE BILL 3312

State of Washington 59th Legislature 2006 Regular Session

By Representatives Chase, Hasegawa, Williams, Ormsby and Appleton

Read first time 02/11/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to fair employment practices; and adding a new
2 chapter to Title 49 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature intends to set forth certain
5 rights and remedies with respect to wrongful discharge. These rights
6 and remedies are intended to aid the enforcement of the state's
7 antidiscrimination laws and related policies by replacing the common
8 law at-will employment doctrine with a just cause standard.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Discharge" means involuntary dismissal from employment, and
12 includes, but is not limited to:

13 (a) A resignation that results from an improper or unreasonable
14 action or inaction of the employer; and

15 (b) A reduction in pay of twenty-five percent or more.

16 (2) "Employer" includes any person acting in the interest of an
17 employer, directly or indirectly, who employs eight or more persons.

1 (3) "Employee" means a person who is employed by an employer for
2 hire. "Employee" does not include any individual employed by his or
3 her parents, spouse, or child, or in the domestic service of any
4 person.

5 (4) "Benefits" means the value of any employer-paid vacation leave,
6 sick leave, disability insurance plan, medical insurance plan, life
7 insurance plan, and pension benefit plan in force on the date of the
8 termination.

9 (5) "Just cause" means reasonable job related grounds for dismissal
10 based on a failure to satisfactorily perform job duties, misconduct, or
11 legitimate business reasons.

12 (6) "Lost wages" means the gross amount of wages that would have
13 been reported to the internal revenue service as gross income.

14 (7) "Misconduct" means the employee behaved in a manner
15 inconsistent with the continuation of employment.

16 (8) "Willful misconduct" means the employee knew what to do and
17 deliberately did not do it, or knew what not to do, and deliberately
18 did it. A mistake, especially if due to inexperience or lack of
19 training, is not considered to be willful misconduct.

20 NEW SECTION. **Sec. 3.** (1) A discharge is wrongful if it is not for
21 just cause. To satisfy just cause, the discharge must be based on
22 failure to perform job duties, misconduct, or the success and
23 efficiency of the business.

24 (2) The following conduct shall under no circumstances be
25 considered just cause:

26 (a) Exercise of rights under the First Amendment to the United
27 States Constitution;

28 (b) Exercise of other legal rights or civic obligations;

29 (c) Revelation of what the employee in good faith believes to be
30 illegal or unethical conduct by the employer;

31 (d) Good faith refusal to engage in illegal conduct requested by
32 the employer; and

33 (e) Misconduct which, by action or inaction, the employer
34 encouraged, condoned, or forgave.

35 (3) The following acts may be considered just cause for dismissal,
36 and require only one provable incident to justify dismissal:

37 (a) Serious willful misconduct;

1 (b) Assault or harassment of coworkers, managers, clients, or
2 customers;

3 (c) Theft;

4 (d) Serious breach of duly published company rules or practices;
5 and

6 (e) Fraud and dishonesty.

7 (4) If an employee is discharged for unsatisfactory performance,
8 the employer must show the following criteria have been met:

9 (a) The employer makes the employee aware of an expected standard
10 of performance. Unless a collective bargaining agreement provides
11 otherwise, the employer has the right to determine how the business
12 will be conducted and may adopt any procedure or standard of
13 performance, as long as it is not unlawful, dishonest, or unsafe, and
14 is within the ability of the employee to perform;

15 (b) If the employee failed to meet the expected performance
16 standard, the employer has made reasonable efforts to assist the
17 employee, by training or otherwise, to meet the expected performance
18 standard;

19 (c) The employee, despite the employer's reasonable efforts to
20 assist, fails to meet the expected performance standard; and

21 (d) The employer has specifically notified the employee that
22 continued failure to perform to the expected performance standard will
23 result in dismissal.

24 (5) If an employee is discharged for a cause related to the success
25 and efficiency of the business, the employer must show that the choice
26 of which employees to discharge was directly related to the success and
27 efficiency of the business.

28 (6)(a) During a probationary period of employment, the employment
29 may be terminated at the will of either the employer or the employee on
30 notice to the other for any reason, or for no reason, except for
31 unlawful reasons.

32 (b) If an employer does not establish a specific probationary
33 period or provide that there is no probationary period to or at the
34 time of hire, there is a probationary period of three months from the
35 date of hire.

36 NEW SECTION. **Sec. 4.** (1) If an employer has committed a wrongful
37 discharge, the aggrieved employee may file a complaint in superior

1 court. The court may award the employee: (a) Reinstatement to his or
2 her former position; (b) pay, lost wages, and benefits for a period not
3 to exceed four years from the date of discharge, together with interest
4 on the lost wages and benefits; and (c) costs and reasonable attorneys'
5 fees.

6 (2) The employee may recover compensatory damages otherwise allowed
7 by law if it is established by clear and convincing evidence that the
8 employer willfully committed wrongful discharge, and the employee can
9 show evidence of economic damages as a result of the wrongful
10 discharge.

11 (3) The burden of proof is on the employer to show the employer had
12 just cause for the discharge.

13 NEW SECTION. **Sec. 5.** This chapter does not apply to the discharge
14 of an employee covered by a written collective bargaining agreement
15 which includes a just cause provision or a written contract of
16 employment for a specific term.

17 NEW SECTION. **Sec. 6.** This act may be known and cited as the "just
18 cause act."

19 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
20 a new chapter in Title 49 RCW.

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