

SENATE BILL REPORT

SSB 6313

As Amended by House, February 28, 2018

Title: An act relating to preserving an employee's right to publicly file a complaint or cause of action for discrimination in employment contracts and agreements.

Brief Description: Concerning an employee's right to publicly file a complaint or cause of action for discrimination in employment contracts and agreements.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Wellman, Frockt, Cleveland, Kuderer, Ranker, Conway and Saldaña).

Brief History:

Committee Activity: Labor & Commerce: 1/24/18, 1/31/18 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/14/18, 48-0.

Passed House: 2/28/18, 98-0.

Brief Summary of First Substitute Bill

- Provides that an employment agreement is void and unenforceable if it requires an employee to waive their right to file a complaint under the Washington Law Against Discrimination or federal antidiscrimination law, or if it requires a confidential dispute resolution process.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6313 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, King and Wilson.

Staff: Jarrett Sacks (786-7448)

Background: Sexual Harassment. Under the Washington Law Against Discrimination (WLAD), a person has the right to be free from discrimination related to a protected status,

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such as race, national origin, sex, veteran or military status, sexual orientation, and disability. An employer may not discriminate against a person because of one's protected status. Sexual harassment is a form of sex discrimination under WLAD and Title VII of the Civil Rights Act of 1964.

WLAD is administered by the Washington State Human Rights Commission (HRC). The HRC investigates complaints that allege unfair practices in violation of the WLAD. If the HRC finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If the parties do not reach an agreement, the HRC must refer the matter to an administrative judge for a determination.

Employment Contracts. In general, Washington is an at-will employment state, which means either the employee or employer can terminate an employment relationship at anytime. One exception to the at-will employment doctrine is if an employment contract exists. If an employment contract is found to violate public policy or to have illegal terms, it is void and cannot be enforced.

Summary of First Substitute Bill: An employment agreement is void and unenforceable if it requires an employee to waive their right to file a complaint under the WLAD or federal antidiscrimination law, or if it requires a dispute resolution process that is confidential.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: A survey conducted by the Equal Employment Opportunity Commission found that 68 percent of women have been sexually harassed. Sexual harassment hurts productivity and puts the burden on the victim to avoid situations at work. The bill takes away one of the tools employers use to limit victim's ability to speak up against sexual harassment. By limiting employment agreements, it puts the power in the hands of the impacted employee with how to proceed.

OTHER: The bill is too broad and may negatively impact workers. The bill does not help the other protected classes, which may imply these types of agreements are okay for them. The bill may void legitimate agreements. A bill that limits confidential arbitration would be better.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Terri Lindeke, Washington State NOW.

OTHER: Katie Chamberlain, Washington Employment Lawyers Association; David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Specifies that a provision in an employment contract is void and unenforceable if it requires an employee to resolve claims of discrimination, rather than other types of claims, in a dispute resolution process that is confidential.