

# The Worker Privacy Act

**American workers shouldn't have to drop their First Amendment and privacy rights at the workplace door.**

Employers have the right to express their views on all subjects including religion, politics, unions and charitable giving. But they should not be allowed to force those views on employees under threat of losing their jobs.

Wal-Mart recently sparked a firestorm of criticism when it was reported that they were holding mandatory employee meetings to "warn" employees of dire consequences if they vote for Barack Obama and Democrats in the 2008 elections. The public is outraged. An employer's position of power and influence over their employees' livelihoods makes it just plain wrong for them to force their opinions on private matters of individual conscience.



The Washington State Legislature has an opportunity to fix this problem by passing the Worker Privacy Act.

## Why is the protection of worker privacy necessary?

- Current law allows employers to force workers to participate in communication, including mandatory meetings, where the employer can press their own views on religion, politics, unions and charitable giving.
- Employers use mandatory communication to intimidate and coerce managers and supervisors to discourage unionization or to press particular views, as in the case of Wal-Mart. Workers can be, and are, fired or disciplined for refusing to participate in such communication.

## What will the Worker Privacy Act do?

- The Worker Privacy Act allows workers to choose whether to participate in employer communication unrelated to job performance when that communication is about private matters of individual conscience, without any threat to their employment status.
- Workers who report or challenge such mandatory communication will be protected from retaliatory discharge or discipline.
- Workers will have a civil court remedy for violations of the Worker Privacy Act.

## What mandatory communication is permitted?

- Communication about job performance, training, and lawfully required employee action (health and safety, discrimination, etc.) is all permitted under the Worker Privacy Act.
- Mandatory communication about religious matters by faith-based employers is permitted.

## Does the Worker Privacy Act violate the First Amendment?

- **NO.** Employers can express their views on any topic, they just can't force workers to listen. After employers raised concerns, the bill was amended to clarify, "For example, employers may conduct employee meetings, disseminate literature, or send e-mails to employees regarding their political and religious views but shall not be able to require employees to attend these meetings, or listen to, or respond to, or participate in this communication."
- With the Worker Privacy Act, workers will be allowed to express their First Amendment right not to listen to an employer's view on private matters of individual conscience.

## Is the Worker Privacy Act preempted by the National Labor Relations Act?

- **NO.** The U.S. Supreme Court has long recognized that states can establish minimum working conditions without interfering with federal law, e.g., minimum wage, anti-discrimination protections, health and safety regulations, etc. The Worker Privacy Act creates a minimum privacy right that protects a worker's First Amendment rights at the workplace.
- Unlike the recent U.S. Supreme Court decision regarding a California law in *Chamber of Commerce v. Brown*, No. 06-939 (June 19, 2008), the Worker Privacy Act does NOT stifle an employer's ability to engage in free debate in labor disputes.
- A brief "informal opinion" written Feb. 17 by Deputy Solicitor General Jeffrey Even of the state Attorney General's office mistakenly claims the Worker Privacy Act "would prohibit employers from communicating with employees" about unionization, and therefore would be preempted by federal law. In fact, the Worker Privacy Act contains no ban on employer speech either directly through its provisions or indirectly through its enforcement scheme. It is only the act of discharging or disciplining or threatening to do so—not employer speech—that is banned.
- Fred Feinstein, General Counsel of the National Labor Relations Board (1994-1999): "I believe a state is not preempted from providing protection to employees who choose not to listen to an employer's views on unionization. Protecting employees from being compelled to listen to political speech, including views about unionization, falls within the language of *Garmon* that permits state regulation of activity touching upon 'deeply rooted local concerns.' In my view a court asked to consider the question would hold that the legislation is not preempted."
- Connecticut Attorney General Richard Blumenthal: "I have reviewed the case law regarding preemption of state laws by the National Labor Relations Act... Since state laws are presumed to be constitutional, and no cases specifically preempt captive audience state laws, the General Assembly should not withhold approval of this proposed legislation because of preemption concerns... I will vigorously defend the law against any challenge based on federal preemption."

## The Worker Privacy Act is about respect for basic rights.

- Private matters of individual conscience include who to vote for, what party to belong to, whether to vote yes or no for union representation, what charity to contribute to, and what faith to practice. Individuals have the right to listen or not listen to the views of others on these matters at home: this fundamental privacy right also needs protection in the workplace.

For more information, visit the Washington State Labor Council web site at [www.wslc.org](http://www.wslc.org)