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OFFICE OF
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April 11, 2001

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: Letter of Opposition to Assembly Bill 1015 - Prohibition of Employment
Discrimination Based on Off-Duty Conduct**

LOCATION AND COUNCIL DISTRICT: All

RECOMMENDATION:

It is recommended that the Law and Legislation Committee oppose the bill and approve the attached letter to be sent to the bill's author, Assemblymember Wright.

CONTACT PERSONS: Dee Contreras, Director of Labor Relations (264-5424)
Michon Batipps Johnson, Senior Administrative Services
Officer (264-5424)

FOR COMMITTEE MEETING OF: April 17, 2001

SUMMARY

This report provides an overview of Assembly Bill 1015, which would make it an unlawful employment practice to engage in specified employment discrimination based upon a person's lawful conduct that occurred outside of the hours of the person's employment, whether current or prior, and off the premises of the person's employer at the time of the conduct.

BACKGROUND

On April 5, 2001, staff was informed of a bill sponsored by Assemblymember Wright that would prohibit an employer from discriminating against an employee on the basis of lawful conduct occurring off-duty and away from the employer's premises. Specifically, the bill amends the Fair Employment and Housing Act to add the following provision to those that constitute unlawful discrimination:

"For an employer to refuse to hire or employ a person, to refuse to select a person for a training program leading to employment, to bar or discharge a person from employment or a training program leading to employment, or to discriminate against a person in the compensation or terms, conditions, or privileges of employment because of any lawful conduct of the person that occurred (a) outside of the hours of the person's employment, whether current or prior, and (b) off the premises of the person's employer at the time of the conduct. Nothing in this subdivision shall be construed to make lawful any conduct that is otherwise prohibited by this chapter. This subdivision does not apply to a state or local law enforcement agency."

Staff analyzed the policy implications of this legislation and decided that it was clearly in the City's best interest to oppose it.

DISCUSSION

There are certain kinds of off-duty conduct that can have a significant impact on an employee's job. An employer must be free to address such conduct while at the same time remaining ever mindful of an employee's due process rights and the necessity for the City to demonstrate, in every case, a nexus between the conduct and the employee's job. Further, processes are already in place to ensure that disciplinary actions the City takes against employees are subject to review by a third party.

There are numerous examples of the nexus between off-duty conduct and employment. One involves the statutory presumption that cancer developing in a safety member arises out of and in the course of employment. Employers have understandably chosen to impose restrictions on a safety member smoking off the job so as not to incur unnecessary workers compensation and retirement costs associated with tobacco-induced cancers. This bill would preclude such restrictions.

Another example is an employee who is an alcoholic and drinks off of the job. To the extent that the employee's drinking impairs his or her judgment while on duty, it is a legitimate concern of the employer, and one that should be addressed to protect the employee as well as any members of the public with whom the employee comes in contact. An employer would be unable to do so under this legislation.

Another type of off-duty conduct into which an employer should legitimately be able to inquire involves the disclosure and/or use by an employee of confidential information gained at work. For instance, assume that a supervisor discloses information to others while off the job concerning pending disciplinary actions. While this activity is not unlawful and may be protected as free speech, it clearly calls into question the ability of the supervisor to carry out his or her most basic duties. Under AB 1015, an employer would most likely be foreclosed from addressing the matter.

It is staff's position that employment discrimination is extremely destructive and has no place in the City of Sacramento. However, AB 1015, in its current form, sweeps too broadly and prohibits an employer from acting within legitimate spheres of concern. The drafters of the bill should consider revising it to more narrowly address the ills it was intended to correct.

The League of California Cities opposes this bill on the grounds that it would prevent local government public agencies from prohibiting certain types of lawful off-duty conduct when that conduct contravenes the principles and practices of the agencies. The League cites the following as local agency policies that would be illegal under AB 1015: a policy that forbids firefighters from smoking, whether on or off duty; a conflict of interest policy that prohibits employees from accepting remuneration for the performance of an act while off duty that the employee is required to perform on duty; a policy that forbids employees from disclosing confidential information acquired or made available to them in the course of their employment with the local agency, or from using such information for personal gain.

FINANCIAL CONSIDERATIONS

Implementation of this bill will likely result in increased costs to the City since it will curtail our ability to restrict off-duty conduct that significantly impacts employee productivity, health and safety.

ENVIRONMENTAL CONSIDERATIONS

There are no environmental considerations associated with this report.

POLICY CONSIDERATIONS

This bill makes the employer's job more difficult both in terms of recruiting employees and in disciplining them for conduct that has a nexus to and interferes with employment.

ESBD CONSIDERATIONS

There are no ESBD considerations associated with this report.

Respectfully submitted,



Dee Contreras
Director of Labor Relations

RECOMMENDATION APPROVED:



Betty Masuoka
Assistant City Manager

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Senator Roderick Wright
State of California
State Capitol
Sacramento, California 95814

SUBJECT: Opposition to Assembly Bill 1015

Dear Assemblymember Wright:

The City of Sacramento respectfully opposes this bill, in its current form, for the reasons outlined below.

There are certain kinds of off-duty conduct that can have a significant impact on an employee's job. An employer must be free to address such conduct while at the same time remaining ever mindful of an employee's due process rights and the necessity for the City to demonstrate, in every case, a nexus between the conduct and the employee's job. Further, processes are already in place to ensure that disciplinary actions the City takes against employees are subject to review by a third party.

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The City of Sacramento concurs with the League of California Cities in its position that AB 1015 restricts public agencies from effectively managing legitimate public employment issues. Accordingly, the City opposes AB 1015.

Sincerely,

Steve Cohn
Chairperson, Law and Legislation Committee

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