

## BUSINESS AND LABOR COALITION FOR EMPLOYEE PRIVACY

### Purpose

To enact reasonable federal legislation that preserves the principle of employment at will but protects employees from discrimination and harassment due to their legal, avocational activities which do not directly and immediately affect job performance. In other words, an employer would not be allowed to impose restrictions on an employee's private, off-the-job life that extend beyond the restrictions already imposed by the law, but would continue to have discretion for all job-related activities of an employee.

### Rationale

Employee litigation against employers has mushroomed in recent years. According to the Washington Post, there are 25,000 cases of wrongful discharge in litigation today. Doubtless, most are without merit, but a few are justifiable grievances, more than a few will prevail in court and all cost business money.

More ominous is the trend in state legislatures to consider legislation reducing or eliminating "employment at will." On any given day, one can find a majority in one state house somewhere to pass anything. Last year Missouri considered legislation to outlaw sneezing in restaurants.

Increasingly, the media is featuring "horror" stories about businesses, large and small, which refuse to hire or dismiss employees for personal relationships they have, off-the-job activities they engage in, and other avocational endeavors which bear no clear and direct relationship to job performance. One or two cases of wrongful discharge could easily become a cause celebre. Two weeks later we could have a law abolishing "employment at will" and imposing civil service rules on private employers.

Arbitrary dismissals of employees for legal, non-work actions are inconsistent with the American values regarding privacy and lead to political calls for laws to restrict employer discretion in hiring and firing. Rather than allow largely isolated incidents to drive new laws which may intrude on an employer's legitimate right to determine standards for on-the-job performance, we propose to support legislation which will preserve the essence of employment-at-will while proscribing those few practices that extend beyond the legitimate concerns of an employer regarding an employee's off-the-job behavior.

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### Legislation

The law would generally prohibit an employer from hiring, promoting or firing an employee because of his/her legal activities OUTSIDE THE WORKPLACE such as:

- o Political or union activities outside the workplace
- o Personal or marital relationships
- o Hobbies, sports and recreational activities
- o Use of legal substances such as alcohol, tobacco, prescription drugs
- o Consumption of various food products such as beef, sweets, eggs, milk
- o Personal appearance off-the-job

The law would NOT prohibit an employer from dismissing or refusing to hire an employee or imposing rules governing the following (if it is otherwise not prohibited by law):

- o Illegal drug use or other criminal activities
- o Drug testing for ILLEGAL substance use as long as the test results did not include any report of the use of LEGAL substances
- o Using polygraphs as long as the inquiries include only ILLEGAL or on-the-job activities
- o Imposing any rules governing on-the-job behavior such as dress codes, alcohol or smoking restrictions, political or union activities, legal drug use while at work

### Coalition Elements

The overall coalition would include a few key corporations whose management have demonstrated a leadership role in the business community, and several of the principal unions representing employees in the public and private sectors. We anticipate that various conservative and liberal groups would actively endorse this legislation because it affirms basic American values of individual privacy while preserving the business need to maintain control of employees while on-the-job. We also believe it will receive bipartisan support in Congress and support of the Bush Administration.

### Funding

Financial support would be shared among the coalition members according to their level of commitment to the coalition goal and their ability to pay.

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