

Agenda Report

June 30, 2003

TO: City Council

THROUGH: Legislative Policy Committee

FROM: City Manager

RE: Opposition to AB 274 (Koretz), Relating to Employment;
Creating a Rebuttable Presumption of Retaliation for
Adverse Employment Action Taken Within Ninety Days of a
Complaint

RECOMMENDATION

It is recommended that the City Council take a position in opposition to AB 274 (Koretz), which, as introduced, would create a rebuttable presumption of retaliation for any adverse employment action taken within ninety (90) days of an employee filing a complaint against an employer for any activity protected by the Labor Code, and authorize the Mayor to send letters to the appropriate authorities conveying the City's position.

BILL SUMMARY

This law would amend Labor Code Section 1182.9 to create a rebuttable presumption of retaliation whenever an employer takes any adverse employment action within ninety (90) days following the filing of a complaint by the affected employee regarding any rights protected by the Labor Code.

BACKGROUND

Whenever an employee files a complaint against an employer based on the Labor Code, the employee is protected from retaliation by existing laws. A claim of retaliation may be based upon any adverse employment action taken by the employer following the filing of a complaint. An "adverse employment action" may be a reduction of hours, reduction of pay, suspension, demotion, or termination. Under current employment laws, there is no presumption that an

employment action taken within a specified period of time following the filing of a complaint is necessarily considered retaliation.

This bill would create a rebuttable presumption that any adverse employment action taken within ninety (90) days of the filing of a complaint under the Labor Code will be considered retaliation. Labor Code complaints may include complaints about wages, hours, workplace safety, worker's compensation, meal breaks, and various other working condition issues. If this bill passes, the City would have to investigate and defend any such retaliation claims even if there was a legitimate business reason for the action that was taken.

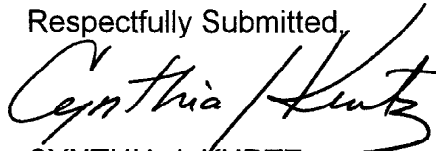
Given significant increases in employment related litigation based upon issues of retaliation in recent years, coupled with the City's interest in maintaining the ability to manage its personnel, SB 274 will create an unnecessary intrusion on local governments in managing important employment matters and possibly increase the number of frivolous retaliation claims filed.

AB 274 was passed by the Assembly on May 22, 2003 (45 yes; 32 no) and has been referred to the Senate Judiciary Committee. A similar bill (AB2990) was vetoed by the Governor last year (2002).

FISCAL IMPACT

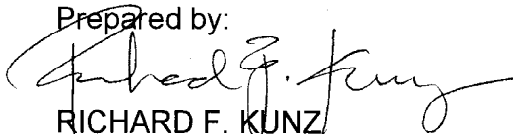
The fiscal impact cannot be determined at this time, but it is anticipated that the bill could result in additional retaliation claims that would have to be defended.

Respectfully Submitted,



CYNTHIA J. KURTZ
City Manager

Prepared by:



RICHARD F. KUNZ
Human Resources Department

Approved by:



KARYN S. EZELL
Director of Human Resources