SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1564 (Ahrens)
Version: May 18, 2026
Hearing Date: June 30, 2026
Fiscal: Yes
Urgency: No
ID

SUBJECT

Employer-employee relations: confidential communications

DIGEST

This bill prohibits a public employer from questioning employees and employee representatives about, or compelling them to disclose to a third party, communications between employees and employee representatives in connection with the representation relating to any matter with the scope of representation, as specified.

EXECUTIVE SUMMARY

The inviolability of the employee-union representative relationship is essential to an employee's representation and to the guarding of an employee's rights to self-organization and collective bargaining. In the context of public employees, the Public Employment Relations Board (PERB) has found that communications between an employee and their employee representative are protected from disclosure to an employer in some circumstances when the questioning harms the employee's collective bargaining rights. However, case law and statute so far has not provided an employee and employee representative with an evidentiary privilege, in which the communication cannot be compelled to be disclosed or used as evidence in a court proceeding, for their communications. This bill proposes to prohibit public employers from questioning their employees regarding communications between an employee and an employee representative regarding a matter within the scope of that representation, and from compelling them to disclose such communications to a third party. This bill provides an exception for criminal investigations.

This bill is sponsored by the Peace Officers Research Association of California, and is supported by a variety of employee associations. It is opposed by the California Chamber of Commerce, a number of public entity and school associations, the League of California Cities, and business groups. This bill passed out of the Senate Labor, Public Employment and Retirement Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Meyers-Milias-Brown Act of 1968 to establish collective bargaining rights for municipal, county, and local special district employers and employees. Provides that public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. (Gov. Code §§ 3500 et seq.)

2) Establishes the Public Employment Relations Board (PERB) and provides it with the powers to:
    a) determine and approve appropriate bargaining units;
    b) determine whether a particular item is within the scope of representation;
    c) arrange for and supervise representation elections by secret ballot;
    d) certify the results of elections;
    e) establish lists of persons to be available to serve as mediators, arbitrators, or factfinders;
    f) establish appropriate procedures for reviewing bargaining unit determinations;
    g) conduct studies relating to employer-employee relations;
    h) adopt rules and regulations;
    i) hold hearings, subpoena witnesses, administer oaths and take testimony or deposition of any person;
    j) to investigate unfair practice charges and take any action and make any determinations on such charges;
    k) bring an action in court to enforce its orders, rulings, and subpoenas; delegate its powers to any member of the board or person appointed by the board to perform its functions;
    l) decide contested matters regarding the certification or decertification of employee organizations;
    m) consider and decide issues relating to the rights, privileges, and duties of an employee organization; and
    n) to take any other action the board deems necessary to discharge its powers and duties. (Gov. Code § 3540 et seq.)

3) Makes it unlawful for governmental subdivisions, districts, public and quasi-public corporations, public agencies, and every town, city, county, city and county, and municipal corporation to do any of the following:
    a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
    b) Deny an employee organization any labor rights;

   c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in an impasse procedure. (Gov. Code § 3506.5.)

4) Makes it unlawful for the state to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with a recognized employee organization;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in a mediation procedure. (Gov. Code § 3519.)

5) Finds that California law does not impliedly provide for an employee-union representative privilege, but that, instead, the creation of evidentiary privileges is "the province of the Legislature." (*American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App 4th 881, 890.)

6) Provides that, with regard to the National Labor Relations Act (NLRA), when an employer compels disclosure of conversations between an employee and their union steward, it interferes with the employee's right to engage in concerted activities and collectively bargain, because allowing an employer to compel disclosure "manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives" and "inhibits [union] stewards in obtaining needed information from employees" for their representation. (*Cook Paint v. Varnish Co.* (1981) 258 N.L.R.B. 1230, 1232.)

7) Provides that a California public employer's legitimate interest in certain questioning of its employees when investigating an employee's specified conduct is outweighed by the harm to the employees' and their unions' protected collective bargaining right under state law by that questioning, as specified. (*California School Employees Association v. William S. Hart Union High School District* (2018) PERB Decision No. 2595, p. 7.)

8) Provides that questioning of an employee is permitted if: the questioning is relevant; the questioning does not have an illegal objective; and the employer's interest in obtaining the information outweighs the employees' protected rights. (*Victor Valley Teachers Association v. Victor Valley Union High School District* (2022) PERB Decision No. 2822.)

9) Provides that no person has a privilege to refuse to be a witness, to refuse to disclose any matter, or to refuse to produce any writing, object, or other thing, or prevent another person from doing the same, unless otherwise provided by statute. (Ev. Code §911.)

10) Governs the admissibility of evidence in court proceedings and generally provides a privilege to refuse to testify or otherwise disclose in judicial proceedings confidential communications made in the course of specified relationships. (Ev. Code §§ 954, 966, 980, 994, 1014, 1033, 1034, 1035.8, 1037.5, 1038.)

11) Specifies various requirements and conditions for interrogations of a public safety officer who is under an investigation that may lead to punitive action by the commanding officer or any other member of the employing public safety department. (Gov. Code § 3303.)

This bill:

1) Prohibits a public employer from questioning a public employee, a representative of a recognized employee organization, or an exclusive representative regarding communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

2) Specifies that this prohibitions is intended to be consistent with, and not in conflict with, *California School Employees Association v. William S. Hart Union High School District* (2018) PERB Decision No. 2595.

3) Prohibits a public employer from compelling a public employee, a representative of a recognized employee organization, or an exclusive representative to disclose to a third party communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

4) Does not apply these provisions to any criminal investigation, and specifies that these provisions do not supersede Government Code section 3303.

COMMENTS

1. Author's statement

According to the author:

> Many employees reasonably believe that conversations with their union representatives about workplace issues are private and cannot be disclosed to their employer. However, current law does not expressly prohibit employers from compelling employees or their representatives to reveal those discussions.
>
> AB 1564 aims to establish a clear standard of protecting confidential communications between employees and their union representatives. Doing so would create a safe and secure environment for employees to openly discuss their workplace rights, concerns, and representation without fear of employer interference.

2. Evidentiary privileges and confidentiality protections

California and federal law recognizes in various contexts that the importance of certain relationships requires that those relationships and communications made pursuant to them be protected from forced disclosure. For example, for the attorney-client relationship, the law generally recognizes the need for the client to be free to speak candidly with their attorney, and thus rules of professional conduct and evidence preclude an attorney from disclosing or being required to disclose things that their client has told them in the course of representation. This protection typically takes two forms: a guarantee in the confidentiality of the communication, and a protection against compelled disclosure in a judicial proceeding.

The second form is what is called an evidentiary privilege, and it generally prohibits a court from compelling any person to disclose or testify about communications covered by the privilege. Thus, an evidentiary privilege is a protection of the communications under the privilege being used against one of the parties to the privilege in court, thereby excluding the evidence contained in the communication from the proceeding. The exclusion is irrelevant to the reliability or importance of the privileged information, and is generally absolute. California has created a number of statutory evidentiary privileges, including: the attorney-client privilege; lawyer referral service-client privilege; spousal privilege; physician-patient privilege; clergyman-penitent privilege; sexual assault counselor-victim privilege; and the privilege against self-incrimination. (Ev. Code § 930 et seq.)

The differences between an evidentiary privilege and a guarantee of confidentiality are important. Privileges generally prevent the introduction of certain communications or testimony in court. Rules guaranteeing confidentiality, however, do not. Thus, while a

court cannot compel a witness to testify about privileged information, it may compel testimony of confidential communications, in certain circumstances. Moreover, if the confidential information is obtained by a third-party in another way, it may be disclosed to another party and in court. Thus, a duty of confidentiality is far less broad and can be subject to various exceptions.

3. <u>AB 1564 prohibits a public employer from questioning employees and employee representatives about their communications</u>

AB 1564 proposes to create a rule ensuring the confidentiality of communications between an employee and their employee representative. It would specifically prohibit a public employer from questioning an employee, a representative of a recognized employee organization, or an exclusive representative regarding communications made in confidence between an employee and the representative in connection with the representation. It also prohibits a public employer from compelling an employee, a representative of a recognized employee organization, or an exclusive representative to disclose such communications to a third party.

AB 1564's prohibitions are not absolute. Rather, it applies narrowly: it only applies to communications made in confidence between the employee and their representative, and the communication must be in connection to the union's representation and relating to a matter within the scope of that representation. It does not prohibit other entities from questioning an employee or their representative about the confidential communications, such as a third-party or a court. Thus, a court may still require an employee or their employer to testify in court about their communications. Additionally, AB 1564 provides an exception to its prohibition for any communications when the questioning or compulsion is pursuant to a criminal investigation. It also does not supersede or affect the existing requirements for any interrogations of a peace officer by their employer as part of an investigation.

By prohibiting an employer from questioning an employee or employee representative, AB 1564 creates an unlawful employment practice for any covered public employer to violate that prohibition. Because the public employees covered by AB 1564 fall within the Public Employment Relations Board's (PERB) jurisdiction, an employee would not be able to file a civil action in court for a violation of AB 1564's provisions; their exclusive remedy would be before PERB. Thus, an aggrieved employee could allege an unlawful employment practice with PERB, or raise it in any pending action before the board, when their employer attempts to question them contrary to the prohibitions created by AB 1564. If an employee is discharged for refusing to answer an employer's questions that violate this section, the employee could also file an unlawful employment practice charge with PERB based on that discharge.

4. <u>Judicial decisions regarding whether communications between an employee and union representative</u>

The existence of confidentiality between an employee and their employee representative is not an entirely new concept. In *American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App.4th 881, the court held that California law does not impliedly provide for an employee-union representative privilege, but that, instead, the creation of evidentiary privileges is "the province of the Legislature." (*American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App 4th 881, 890.) Yet that case only dealt with the question of whether an evidentiary privilege existed, and not with the question of whether an employer can compel an employee to answer questions about communications between employee and their union representative. In *Cook Paint v. Varnish Co.*, the National Labor Relations Board (NLRB) recognized that allowing an employer to compel disclosure "manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives" and "inhibits [union] stewards in obtaining needed information from employees" for their representation. (*Cook Paint v. Varnish Co.* (1981) 258 N.L.R.B. 1230, 1232.) Thus, the NLRB found that, when an employer compels disclosure of conversations between an employee and their union steward, it interferes with the employee's right to engage in concerted activities and collectively bargain. (*Id.*)

While *Cook Paint* related to the National Labor Relations Act (NLRA) and not state labor law, its reasoning has also been applied in the context of public employees in California as well. In *California School Employees Association v. William S. Hart Union High School District*, PERB cited to *Cook Paint* to find that a public school district impermissibly questioned a union representative about the substance of conversations she had with employee members of the bargaining unit under the Educational Employment Relations Act. (*California School Employees Association v. William S. Hart Union High School District* (2018) PERB Decision No. 2595, p. 7.) In that case, PERB determined that the harm to employees' protected labor rights outweighed the interest the employer had to investigate an alleged improper relationship between an employee and the union representative. In another case, PERB adopted a three-part test of the NLRB for determining when an employer's questions of an employee or union representative during a deposition interfere with the protected labor rights of public employees under PERB-administered statutes. (*Victor Valley Teachers Association v. Victor Valley Union High School District* (2022) PERB Decision No. 2822.) The standard adopted by PERB in that case provides that questioning in a deposition may be permissible if: the questioning is relevant; the questioning does not have an illegal objective; and if the employer's interest in obtaining the information outweighs the employees' protected rights. (*Id.*, p. 11.)

These PERB cases recognize the importance of the employee-employee representative relationship, as well as the risk that the questioning of an employee or employee representative about communications between the employee and representative pose to

an employee's rights to engage in self-organization and collective bargaining. However, they do not create an evidentiary privilege for employee-employee representative communications, and they also do not create a strict rule of confidentiality. Instead, they allow an employer to question an employee or employee representative in a variety of instances, based on the employer's need for the information and a balancing test between that need and the employee's rights.

AB 1564 provides a more robust guarantee of confidentiality. However, it also includes exceptions for the purposes of ensuring that an employer can still question the employee or employee representative pursuant to a criminal investigation. AB 1564 also clarifies that its provisions are intended to be consistent with, and not in conflict with, PERB's decision in *William S. Hart Union High School District* described above.

SUPPORT

California Association of Highway Patrolmen (co-sponsor)
Peace Officers Research Association of California (PORAC) (co-sponsor)
California Teachers Association)
SEIU California

OPPOSITION

Alameda County Office of Education
Association of California Healthcare Districts (ACHD)
Association of California School Administrators
California Association of Joint Powers Authorities (CAJPA)
California Association of Recreation & Park Districts
California Association of School Business Officials (CASBO)
California Chamber of Commerce
California County Superintendents
California School Boards Association
California Special Districts Association
California State Association of Counties (CSAC)
Community College League of California
County of Kern
League of California Cities
Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California (RCRC)
School Employers Association of California (SEAC)
Schools Excess Liability Fund (SELF)
Small School Districts' Association
University of California
Urban Counties of California (UCC)

RELATED LEGISLATION

Pending Legislation: AB 340 (Ahrens, 2025) is substantially similar to this bill and prohibits a public employer from questioning employees and employee representatives about communications between employees and employee representatives related to the representative's representation, or from compelling them to disclose such communications to a third party. AB 340 is currently pending before the Senate Appropriations Committee.

Prior Legislation:

AB 2421 (Low, 2024) prohibited specified public employers from questioning employees and employee representatives about communications between employees and employee representatives related to the representative's representation, with specified exceptions. AB 2421 died in the Senate Appropriations Committee.

AB 418 (Kalra, 2019) established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. AB 418 died on the Senate inactive file.

AB 3121 (Kalra, 2018) established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. AB 3121 died on the Senate inactive file.

AB 729 (Hernández, 2013) provided a union agent, as defined, and a represented employee or represented former employee a privilege of refusing to disclose any confidential communication between the employee or former employee and the union agent while the union agent is acting in their representative capacity, except as specified. AB 729 was vetoed by Governor Brown, who stated that "I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations."

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 65, Noes 4)
Assembly Appropriations Committee (Ayes 11, Noes 0)
Assembly Public Employment and Retirement Committee (Ayes 6, Noes 0)

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