Legal Update Article

New Illinois Law Aims to Curtail Employers' Mandatory, Captive Audience Meetings

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Illinois joined a handful of other states in limiting employers' ability to conduct "captive audience" meetings when Governor J.B. Pritzker signed into law SB3649, commonly known as the Worker Freedom of Speech Act. The Act is set to take effect on Jan. 1, 2025.

The new law prohibits employers from disciplining, discharging, penalizing, or threatening to discipline, discharge, or penalize employees for refusing to attend mandatory employer-sponsored meetings in which the employer communicates its opinion about religious or political matters. The Act defines "political matters" to include "the decision to join or support any … labor organization."

In addition to prohibiting employers from taking an adverse employment action against employees who decline to participate in mandatory meetings about religious or political matters, the Act prohibits employers from incentivizing employees to attend such meetings by providing a positive change in any employment condition based on attendance.

Background

Mandatory meetings in which employers discuss potential unionization (called "captive audience" meetings) with employees have long been an important method of communication for employers facing a union organizing campaign. Although union communications (which often include promises of greater benefits and higher wages) are chiefly unregulated during an organizing campaign, employers cannot promise improvements and are largely barred from discussing employee grievances. As a result, for decades, captive audience meetings have been a staple of employers' taking part in union election campaigns.

However, captive audience meetings have come under attack on both the federal and state level in recent years. More than 75 years ago, the National Labor Relations Board (NLRB) ruled in *Babcok & Wilcox Co.,* 77 NLRB 577 (1948), that employers are permitted under the National Labor Relations Act (NLRA) to hold captive audience meetings during union election campaigns to express their views about labor organizations. In April 2022, NLRB General Counsel Jennifer Abruzzo issued a memorandum announcing she will argue that the NLRB should find employer captive audience meetings and related mandatory meetings violate the NLRA. Although the NLRB's general counsel cannot effectuate unilaterally such a change in NLRB policy, the general counsel can advance cases and arguments before the NLRB that advocate for a change in the law. If the NLRB adopts the general counsel's arguments, employers will lose a primary vehicle for communicating their position — and employees would lose a significant opportunity to hear facts and opinions that differ from those presented by the union.

In addition, state efforts in this area face significant legal challenges on the basis that they are preempted by the NLRA and violate the First and Fourteenth Amendments. A group has

filed a federal suit claiming the new Illinois law infringes employers' freedom of speech rights and is too broad. Lawsuits challenging similar laws in Connecticut and Minnesota are pending.

Requirements of the Act

The new law prohibits an employer from disciplining, discharging, penalizing, or threatening to discipline, discharge, or penalize employees:

1. Who refuse to attend mandatory employer-sponsored meeting if the meeting's purpose "is to communicate the opinion of the employer about religious matters or 'political matters,'" including but not limited to unionization;

2. As a means to "induce" employees to attend employer-sponsored meetings on such matters; and

3. Because an employee or a person acting on behalf of an employee has made a good faith report of a violation or suspected violation of the law.

Employers are also prohibited from offering positive incentives (such as compensation and other rewards) to employees to induce attendance at such meetings.

These restrictions are not limited to meetings. The Act also prohibits employers from disciplining, discharging, penalizing, or threatening to discipline, discharge, or penalize employees who refuse to "receive" or "listen to" communications from the employer about political matters, including unionizing.

Employers have an affirmative duty to post and keep a notice about the law's protections where such notices are customarily posted within 30 days after the effective date.

Enforcement

Finally, aggrieved employees have a private right of action. They may file a lawsuit to enforce the law within one year of an alleged violation. If the employee prevails, the court may award, among other things, injunctive relief, backpay, reinstatement, and attorney's fees. In addition to a private lawsuit, the Illinois Department of Labor (DOL) is empowered to "inquire" into alleged violations and can assess a civil penalty of $1,000 for each violation. Similarly, "interested parties" (unions) may communicate potential violations to the DOL on behalf of employees. Each employee who attends a meeting or receives a communication under prohibited circumstances is considered a separate violation.

Please contact a Jackson Lewis attorney with any questions about the new law and compliance strategies for your business.