

# Client Alert

A report  
for clients  
and friends  
of the firm August 2006

## New Jersey Enacts Worker Freedom From Intimidation Law

On July 26, 2006, Governor Jon Corzine signed into law the "Worker Freedom From Employer Intimidation Act" (the "Act"), prohibiting employers from requiring employees to attend meetings or to participate in communications, "the purpose of which is to communicate the employer's opinion about religious or political matters." The term "political matters" is very broadly defined to include "political party affiliation and decisions to join or not join or participate in any lawful political, social, or community organization or activity." Significantly, "labor organizations" initially were included in this definition, but were deleted from the final version of the Act. Accordingly, employers may communicate their opinions about unions without running afoul of this new law. The Act, which takes effect immediately, further proscribes employers from retaliating against an employee because the employee, or anyone acting on behalf of the employee, makes a good faith report of a violation or a suspected violation of the Act.

Meetings or communications on the subjects covered by the Act are permitted, however, if they are purely voluntary on the part of the employee *and* if the employer notifies its employees that they may refuse to attend or to receive the communications, without penalty. The Act also carves out exceptions for religious and political organizations, as well as for educational institutions, which may require employees to attend meetings or participate in communications about such matters, on a limited basis. Thus, a religious organization may require employees to attend meetings or accept communications about its religious beliefs, practices or tenets. Similarly, a political organization may require meetings or other communications concerning its political tenets or purposes, and an educational institution may require faculty or students

to attend lectures on political or religious matters that are part of regular coursework. Further, the Act permits any employer to communicate information about religious or political matters, if required by law.

The Act provides remedies for violations, including restraining orders, reinstatement, lost wages and benefits, punitive damages capped at treble the amount of non-punitive damages, and attorneys' fees for a prevailing employee. In addition, civil fines may be imposed of no more than \$1000 for the first violation and \$5000 for each subsequent violation. It should be noted that any "aggrieved employee" may bring an action to enforce the Act. Thus, it appears that a lawsuit may be brought by an employee for violation of the prohibition on such required meetings, activities or communications, even if the employee was not subjected to any retaliatory action. Actions must be brought within ninety days after the alleged violation.

**EDITORS' COMMENT:** The scope of this law is not yet clear. While many of the supporters of this legislation focus on preventing employers from foisting religious or political views on employees, it remains to be seen how far the reach of this law may extend. In particular, the inclusion of "social" and "community" groups and activities in the definition of "political matters" seems far-reaching in contrast to the common understanding of "political." Many employers support various social activities or community groups, and will now need to consider the impact of this law on communications concerning such activities or groups, as well as any communications concerning matters that could be viewed as religious or political in nature.

Thus, employers will need to be particularly sensitive to the nature of their communications to employees concerning the employer's views, position, support or non-support of religious, political, social or community organizations. To the extent that any meeting or communication to employees involves, or may involve, such matters, employers should consider

using the “safe harbor” provision of the law, *i.e.*, advising employees that attending such a meeting, participating in the activity, or accepting the communication is entirely voluntary and that there will be no penalty, retaliation or recrimination for anyone who declines. Of course, employers remain free to sponsor religious and political activities, but they must be careful not to exert any pressure on employees to participate.

In addition, employers should consider: (1) establishing clear guidelines for managers and supervisors concerning the requirements of this law; (2) providing training to managers and supervisors on this new law and the employer’s policies concerning it; (3) adding a provision to employee handbooks explicitly stating that all meetings, activities or communications concerning such matters are not required, but are purely voluntary; (4) further stating in the handbook that no one will be retaliated against for non-participation; and (5) establishing a mechanism for reporting potential

violations or including such complaints in existing complaint procedures. It is not clear, however, whether such handbook provisions would suffice to put employees on notice that particular religious or “political” activities are voluntary and, therefore, it would be advisable to explicitly note the voluntary nature of such meetings, activities or communications, on each occasion.

Lastly, although the Act’s retaliation provision explicitly protects only those employees who make a good faith “report” of a “violation,” or on whose behalf such a report has been made, employers should exercise caution in disciplining or terminating an employee for any reason involving an issue with a meeting or communication that could be covered by this new law. Counsel should be consulted in such situations, as the implications of this law, how it will be interpreted, and what legal theories may be based upon it are as yet uncertain.

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