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New York Bans Mandatory Captive Audience Meetings

Labor Relations Update on **September 11, 2023**

On September 6, New York State Governor Kathy Hochul signed into law (A6604 / S4982) a bill banning businesses from requiring employees to attend meetings or listen to communications where the "primary purpose" of such meetings or communications is for management to voice its views on certain religious or political matters, **including joining a labor organization ("captive audience meetings").** This law goes into effect **immediately.**

This law modifies New York Labor Law § 201-d and prohibits New York State employers from disciplining workers for refusing to attend captive audience meetings. Employers are also now required to post a notice to employees to inform them of their rights pursuant to this law. However, the law goes on to say that non-mandatory "casual conversations" between employees and employer representatives are not prohibited.

New York Labor Law § 201-d(7) outlines penalties for violating the new law: 1) the Attorney General can apply to enjoin or restrain an employer from committing further violations and a court may impose a civil penalty on the employer of $300 for the first violation and $500 for each subsequent violation; and 2) aggrieved individuals can bring claims against an employer for equitable relief and damages.

The law's crackdown on employers' ability to hold mandatory captive audience meetings is consistent with NLRB General Counsel Memorandum 22-04, wherein GC Abruzzo argues that captive audience meetings are unlawfully coercive under the National Labor Relations Act. (See our discussion here.)

The law is similar to the Connecticut law banning captive audience meetings, which has been challenged by the U.S. Chamber of Commerce as unconstitutional and preempted by the NLRA. *See* Chamber of Commerce v. Bartolomeo, No. 22-cv-01373 (D. Conn.).

The New York law may very well face similar legal challenge. The New York law defines "political matters" to include "the decision to join or support" labor organizations. By restricting the employers' ability to voice its views on joining a labor organization, the New York law is likely preempted by Section 8(c) of the NLRA, which allows an employer to express "any views, argument, or opinion" as long as such expression does not include threat of reprisal or force or promise of benefit. Further, the New York law, aimed at "protecting employee freedom of speech," likely will be challenged on grounds that it unlawfully violates businesses' First Amendment rights of free speech.

We also note that this law is broader than the reach of the NLRB and the NLRB General Counsel's efforts, as it includes employers **not** covered by the NLRA, such as public-sector employers.

Stay tuned as we continue to monitor this law.

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