Illinois' Aims to Silence Employers –- Banning of Mandatory Captive Audience Meetings

Labor & Employment Law Update

By Jeffrey Risch on May 29, 2024

On May 26, 2024, the Illinois Legislature passed Senate Bill 3649 – titled the "Worker Freedom of Speech Act." The legislation prohibits virtually all Illinois employers from discharging or disciplining any employee, or from threatening to take such actions against any employee, who refuses to attend meetings related to unions (aka "the Captive Audience Meeting"). In short, employers cannot require or give the impression to anyone that they are compelling workers to attend meetings that touch on labor unions. While the restrictions cover anything "political" or "religious" in nature (and union issues fall under "political"), the true intent is to shut up employers while union representatives are already legally allowed to say just about everything and anything to dupe the worker into "signing up" with a labor union. To be more clear, the legislation specifically aims to prevent employers from educating employees on the pros and cons of union membership in general or in a particular union or labor organization. Once signed by the governor (he'll sign it), it will become effective.

Under the legislation, any meetings related to unions or labor organizations must be strictly "voluntary" on the part of the worker. "Voluntary" is defined broadly. Employers cannot incentivize employees to attend such meetings while taking any negative action against those who do not attend the meeting. This will certainly create chaos if not managed well. Any perceived adverse job action may trigger a complaint or lawsuit. The law will give enforcement authority to the Illinois Department of Labor (IDOL). The IDOL can pursue action against an employer and seek civil penalties in the amount of $1,000 per violation ($1,000 for every employee, for every instance). These civil penalties are paid to the IDOL. Further, any "interested party" can also file a complaint against an employer with the IDOL and eventually file its own private lawsuit seeking civil penalties and injunctive relief. If successful, the interested third party can recover incurred attorneys' fees and costs as well as receiving a bounty in the amount of 10% of any civil penalties ordered by a court. Further, while there is a 3-year statute of limitation period, this period can be tolled indefinitely upon agreement between the interested third party and the IDOL. Finally, employees may pursue their own civil lawsuits against their employers and seek make whole remedies, injunctive relief, as well as the recovery of their attorneys' fees and costs.

Pursuant to the National Labor Relations Act (NLRA), unions not only DO NOT have an obligation to share key information to prospects, they can also lawfully mislead workers and provide them with false information while making promises that they cannot possibly follow through on. Treating prospective members like mushrooms is quite effective — telling the prospect everything they want to hear and leaving out the ugly details is often a winning strategy. Educating the prospect fully, directly and honestly is not in a union's playbook because it's not a winning hand.

Examining the labor organization at issue under a microscope and educating the worker on the *fine print* leads to a more informed voter. This is why it's always left to the employer to actually educate the workforce on the good, bad and ugly of becoming part of a particular labor union. Combing through the union's bylaws and constitution is important. Evaluating a union's finances and how/where they spend their members' money is critical. Without the employer explaining this to the worker, it would never get done. This practice --- often referred to as *captive audience meetings* – has been deemed lawful in the private sector for generations and is expressly recognized under Section 8(c) of the NLRA, provided they are free from unlawful threats and promises.

This pending law must still contend with Constitutional 1st Amendment Rights along with Section 8(c) of the NLRA. Indeed, the U.S. Supreme Court has long recognized the employer's right to certain free speech in the private sector aimed at unions and union organizing. In other like-minded states that have passed similar laws, litigation challenging such laws is active and commonplace. Time will tell if the soon-to-be Illinois law will be upheld. From an initial read, it should be deemed unlawful. But, time will tell and some employers will be intimidated by it and may just "stay quiet" --- which would be a huge mistake. Supplying workers with information related to a particular union is likely going to be their only source of accurate information. Failing to provide such information and staying on the sidelines plays right into the unions' hand. Careful navigation of not only this mandate but also the many other new workplace mandates that continue to unfold, is critical. The stakes are too high --- particularly in light of the *Cemex* decision.