State Bans of On-The-Clock "Captive Audience Speeches" Restrict Employers' First Amendment Rights

Labor & Employment Law Update

By Kevin Kleine on April 30, 2024

Captive audience meetings are on-the-clock meetings (employee attendance is often mandatory) where employers express an opinion on "religious or political matters" – including whether or not employees should join or support any labor organization.

For decades, non-union employers have used captive audience meetings as a first line of defense to educate their employees in response to labor organizations that aggressively target their workers. Not surprisingly, National Labor Relations Board General Counsel Jennifer Abruzzo has been adamant that existing federal law should be interpreted to ban anti-union captive audience meetings. Labor organizations are following her cue and aggressively lobbying and testifying before state legislatures that are considering such measures because these laws directly benefit them and their efforts to increase membership and/or unionize non-union businesses. These laws have a detrimental effect on employers' free speech rights, specifically on their ability to educate employees on the pros and cons of union membership in general or in a particular union or labor organization.

States are increasingly banning captive audience speeches, or, prohibiting employers from taking adverse employment actions against employees who refuse to attend such meetings. There are currently 6 states with laws banning "captive audience speeches" (Connecticut, Maine, Minnesota, New York, Oregon, and Washington) --- and 8 others with proposed legislation in the works (Alaska, California, Colorado, Illinois, Maryland, Massachusetts, Rhode Island, and Vermont). Washington is the latest state to ban captive audience speeches, with its governor signing the Employee Free Choice Act into law on March 28, 2024, which goes into effect on June 6, 2024.

In Illinois, Senate Bill 3649 (SB 3649), the "Worker Freedom of Speech Act" is similarly aimed at prohibiting employers from discharging or disciplining employees, or from threatening to take such actions against employees, who

refuse to attend captive audience meetings or who report violations of the Act.

The bottom line is that non-union employers, in particular, should be mindful of these existing and developing bans on captive audience meetings. Notably, the current Illinois bill provides for a private right of action for employees and enforcement authority to the Illinois Department of Labor – giving unions yet another avenue to detract from employer counter-organizing efforts. While there is certainly debate that such laws impacting the private sector are subject to federal pre-emption arguments, the trends here cannot be ignored. The implications may be serious. Stay tuned as we will provide updates on the status of Illinois SB 3649, and similar developments impacting an employer's ability to communicate to its workforce.

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