

NEW YORK LABOR LAW AMENDMENTS TARGET CAPTIVE AUDIENCE MEETINGS

INSIGHT

New York Governor Kathy Hochul signed a bill on September 6, 2023, which expands Section 201-d of the New York Labor Law to provide employees with protection from the political and religious ideologies of their employer. The law took effect immediately. The sponsor memorandum indicates the justification for the amendment is a decline in union membership and an increase in partisan messaging from employers.

PROTECTIONS AND TERMS DEFINED

The amended law provides two specific protections with respect to employer-sponsored meetings. First, employees may refuse to attend employer-sponsored meetings – when the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters. Second, the employee may refuse to listen to speech or view communications – when the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters.

The amended law additionally provides definitions for both “political matters” and “religious matters.” Specifically, “political matters” – “shall mean matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political, civic, community, fraternal or labor organization.” Additionally, “religious matters” – “shall mean matters relating to religious affiliation and practice and the decision to join or support any religious organization or association.”

The amended law additionally requires employers to post a notice “in every workplace at the location or locations where notices to employees are normally posted” – for the purpose of informing employees of their expanded rights. Notably, by including the term “labor organization” in the definition of “political matters,” the law presumably applies to meetings regarding union membership or union campaigns.

EXEMPTIONS

The law also notes that it is not intended to prohibit “casual conversations . . . provided participation in such conversations is not required.” In addition, the law does not apply to any communications required by law.

The law also provides three exemptions for certain employers and employees. First, religious and educational entities exempted from Title VII “with respect to speech on religious matters” also will be exempt from the amended law. Second, higher educational institutions will also not be prohibited from meeting with or otherwise communicating with employees as “part of coursework, any symposia or an academic program at such institution.” Finally, the law’s expanded protections will remain inapplicable to managerial and supervisory employees – meaning employers may continue to communicate with these individuals on the issue of political or religious matters without fear of legal consequence under § 201-d (as amended).

ENFORCEMENT

The law continues the existing enforcement structure for alleged violations of § 201-d. In other words, employers may be subject to civil actions by aggrieved individuals, enforcement by the State Department of Labor, or enforcement by the New York State Attorney General.

LEGAL CHALLENGES

The amended law follows similar efforts at the federal level and in other states to restrict employer-sponsored meetings. To this end, the National Labor Relations Board’s General Counsel, Jennifer Abruzzo, has argued that the National Labor Relations Act (NLRA) prohibits such meetings. National labor groups and other states have similarly pushed for the protections now offered by § 201-d.

New York is the fourth state to prohibit mandatory captive audience meetings, but the future of the law is still uncertain. There is ongoing litigation considering whether captive audience bans are preempted by the Nation Labor Relations Act, which protects certain forms of employer speech. For the time being, however, employers should comply with the new restrictions.

Should you have questions about this law, please feel free to reach out to attorney [Daniel J. Moore](mailto:dmoore@harrisbeach.com) at dmoore@harrisbeach.com and (585) 419-8626; [Roy R. Galewski](mailto:rgalewski@harrisbeach.com) at rgalewski@harrisbeach.com and (585) 419-8661; attorney [Daniel J. Palermo](mailto:dpalermo@harrisbeach.com) at dpalermo@harrisbeach.com and (585) 419-8964, or the Harris Beach attorney with whom you most frequently work.

This alert does not purport to be a substitute for advice of counsel on specific matters.

Harris Beach has offices throughout New York State, including Albany, Buffalo, Ithaca, Long Island, New York City, Rochester, Saratoga Springs, Syracuse and White Plains, as well as New Haven, Connecticut, Washington, D.C. and Newark, New Jersey.

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