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New Jersey is the Latest State to Ban Union-Related Captive Audience Meetings, But Will States' Foray into Private-Sector Labor Law Last?

States are becoming more involved in private-sector labor law issues typically addressed by the federal National Labor Relations Board (NLRB). Specifically, states are passing laws relating to "captive audience" meetings and are attempting to have state agencies, which are normally limited to adjudicating state public-sector labor law matters, handle private-sector labor law disputes during the NLRB's current lack of quorum. As labor law developments continue, these state activities may be short-lived.

Prohibitions on Captive Audience Meetings

In November 2024, when it did have a quorum, the NLRB issued a decision in *Amazon.com Services LLC*, which overturned 70-plus-year precedent and outlawed captive audience meetings under the National Labor Relations Act (NLRA). This decision was concerning to employers since such meetings, when focused on union-related issues, are considered by employers to be crucial during a union organizing campaign, including to communicate the employer's preference to remain union-free; to explain the potential downside of organizing, including the need to pay union dues, assessments and initiation fees, reduced access to management and potential strikes; and to counter union misinformation since union communications with employees are largely unfettered.

Amendments to New Jersey's Labor and Workmen's Compensation Law to Prohibit Union-Related Captive Audience Meetings

Following the NLRB's lead in Amazon, on September 3, New Jersey Governor Philip D. Murphy signed into law Assembly Bill 4429/Senate Bill 3302. This amendment to the New Jersey Labor and Workmen's Compensation Law, originally passed in 2006, expands existing prohibitions on an employer's ability to require employees to attend meetings where the employer expresses its opinion on “political or religious matters” to include meetings during which the employer expresses its opinion on the advisability of employees joining or supporting labor unions. Specifically, the definition of "political matters" has been amended to include "matters which relate to ... the employee's decision to join or support any ... labor organization or association." As written, the amended law's prohibitions on required attendance apply to all meetings during which the employer's opinion on labor organizations and associations is discussed, regardless of whether the employer's opinion is positive, negative, or neutral.

The amended law also now prohibits employers from taking adverse action against employees who refuse or otherwise fail to participate in any captive audience meeting. Specifically, the amended law prohibits employers from discharging, disciplining, or in any way penalizing, and from threatening to discharge, discipline, or in any way penalize, employees for refusing to participate in captive audience meetings. In other words, while employers can still ask that employees attend meetings where the employer expresses its view on unionization, such attendance cannot be mandatory, and the employer cannot take any adverse action against employees who choose not to attend or participate. The amended law, however, continues to allow employers to require employees to attend other types of meetings, including those communicating information the employer is required to communicate by law, those necessary for employees to perform their required job duties, and training to reduce or prevent unlawful workplace harassment or discrimination.

The amended law expands the relief available when an employer violates the captive audience prohibition. Specifically, aggrieved employees may bring a private civil action within 90 days of an alleged violation by their employer, and courts may award "all appropriate relief," including, where applicable, injunctive relief including, but not limited to, a restraining order against a continuing violation; reinstatement of the employee when an adverse action was taken; payment of lost wages,

benefits, and other remuneration; attorneys' fees and costs; and "[o]ther appropriate relief as considered necessary by the court." Additionally, a court may grant a prevailing employee punitive damages not greater than treble damages, or a civil fine of up to $1,000 for the employer's first violation, and up to $5,000 for each subsequent violation.

Notably, the amended law requires employers to post a notice of employees' rights under the law "in a conspicuous place reserved for employment-related notices and in a place commonly frequented by employees." At this time, no notice has been provided for employers' use.

The amendments are set to take effect on December 2.

Other States' Captive Audience Laws

New Jersey is not alone in legislating prohibitions on employees' mandatory attendance at captive audience meetings. Alaska, California, Connecticut, Illinois, Maine, Minnesota, New York, Oregon, Rhode Island, Washington, and Vermont all have similar laws. Rhode Island's law goes even further and prohibits employers requiring employees to review electronic communications on political or religious topics, including views on labor unions. Recent challenges to the California and Minnesota laws have failed due to technicalities, but further challenges are expected if and when the states attempt to enforce these laws against employers.

States' Attempts to Step in for the NLRB

States have also become involved in private-sector labor disputes traditionally left to the NLRB. For example, earlier this month, New York Governor Kathy Hochul signed a law empowering New York's Public Employment Relations Board (PERB) -- traditionally responsible for public-sector labor relations in New York -- to step in and regulate private-sector labor disputes when the NLRB cannot lawfully act. That law also authorizes PERB to certify bargaining representatives and enforce collective bargaining agreements and requires the NLRB to seek declaratory relief in federal court to reclaim jurisdiction over affected labor matters. Elected officials in other states, including California and Massachusetts, are currently considering similar legislation.

The question remains, however, whether these states' attempts to regulate private-sector labor disputes are preempted by the NLRA. In fact, on September 15, the NLRB filed a lawsuit in federal court seeking a declaratory judgment and injunctive relief that would prevent New York from enforcing its law empowering PERB to regulate private-sector labor disputes. The NLRB's suit alleges that New York's law is preempted by the NLRA and violates the Supremacy Clause of the United States Constitution. The outcome of the NLRB's lawsuit may shape the path for future legal challenges to similar laws of other states.

Takeaways

While mandatory attendance at employer-sponsored meetings on political and religious topics have been outlawed in New Jersey for almost 20 years, recent amendments to New Jersey's Labor and Workmen's Compensation Law extend that prohibition to meetings where employers express their opinions on employees' decisions to join or support labor unions, consistent with the NLRB's November 2024 Amazon decision. Given this, before holding any meetings discussing their views on unions, employers should consider notifying employees that they can opt out of attending such meetings, attendance will not be taken, and no discipline will occur for employees who do not attend. An employer's failure to comply with the law could lead to employees obtaining injunctive relief as well as other fines and monetary penalties.

It is important to note, however, that if the NLRB's Amazon decision is overruled once the NLRB is again fully staffed with a quorum and Republican majority, and mandatory captive audience meetings on union-related topics are again allowed under the NLRA, state laws prohibiting mandatory attendance at such meetings, such as the one in New Jersey, may be found preempted as inconsistent with federal labor law and may no longer be in effect. Similarly, state agencies may be prevented from addressing private-sector labor matters normally reserved for the NLRB as a result of preemption by federal law.

Only time will tell the outcome of these complex labor law issues, but given the ever-changing legal landscape, employers should consult with experienced labor counsel to ensure that they are complying with applicable federal and state labor laws.

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