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New York State Bans Workplace “Captive Audience” Meetings

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On September 6, 2023, Governor Kathy Hochul signed into law Senate Bill 4982 and Assembly Bill 6604, which amends Section 201-D of the New York Labor Law to prohibit most employers from requiring non-managerial and non-supervisory employees to attend employer-sponsored meetings where the primary purpose is to communicate the employer’s opinions on religious or political matters. The amendment took immediate effect and makes New York the latest state to ban so-called “captive audience meetings,” following the National Labor Relations Board (NLRB) General Counsel’s 2022 memorandum outlining the General Counsel’s plan to bring a case before the Board and advocate that the Board find such mandatory meetings concerning union representation and related matters unlawful nationwide under federal labor law.

New York’s new amendment defines “religious matters” as those relating to religious affiliation and practice and the decision to join or support any religious organization or association. “Political matters” include “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." This means that employers in New York State may no longer require non-managerial and non-supervisory employees to attend meetings meant to persuade them from joining or supporting a labor union organizing effort.

Despite the broad restrictions, the amended law explicitly permits "casual conversations" between employers and non-supervisory employees about religious and/or political matters, so long as the employees are not required to participate in the discussion. Employers are also free to communicate information required by law and information that is necessary for employees to perform their job duties. Further, the amended law does not prohibit religious entities and educational institutions exempt under Title VII of the Civil Rights Act of 1964 to engage in speech related to "religious matters" with employees who perform work connected with the activities undertaken by the entity or institution.

This state law may be challenged insofar as it conflicts with controlling federal labor law, primarily Section 8(c) of the National Labor Relations Act (NLRA), which expressly permits employers to disseminate their views on unions to employees in the form of so-called captive audience speeches. As more states pass such legislation, challenges to state authority to overrule federal labor law have followed. These challenges are based on the doctrine of preemption, which has recognized that states and local governments may not enact or enforce laws that are inconsistent with or contradictory to federal legislation in which Congress has addressed the subject. Employers must post a sign informing employees of their rights under Section 201-D, which must be posted in every workplace at a location where other notices to employees are normally posted. However, the State has not published a model notice to date, and it is unclear when or whether a model notice may become available.

What's Next?

Employers should review their workplace policies and practices for compliance with the new restrictions on mandatory employee meetings. Additionally, until the New York State Department of Labor or another agency publishes a model notice, employers should develop their own sign or print a copy of Section 201-D, as amended, and post it in their workplaces. Employers should also consult with counsel to the extent that they may plan to engage in activities that would be protected by Section 9(c) of the NLRA but that are prohibited by State law.

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