Alert
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COZEN O'CONNOR

New Illinois Law Limits Employer Speech in the Workplace

On July 31, 2024, Illinois Governor JB Pritzker signed into law Illinois Senate Bill 3649, or the Worker Freedom of Speech Act (WFSA), prohibiting employers from holding mandatory meetings to discuss company views on religious and political matters, including union membership (commonly referred to as captive audience meetings). Federal law strictly regulates employer speech on union issues but has long held that captive audience meetings are permissible if the employer does not threaten, punish, or promise employee benefits during the meeting. Because the WFSA prohibits this type of employer speech, it will effectively diminish what has been an important tool for employers wishing to share their opinions on unions with employees.

Prohibited Conduct Under the WFSA

Under the WFSA, employers are prohibited from:

1. Taking an adverse employment action against an employee:
    i. for declining to attend employer-sponsored meetings or receive or listen to communications from the employer about the employer's opinion on religious or political matters; or
    ii. because the employee or a person acting on behalf of the employee make a good-faith report that the employer is in violation of the WFSA.
2. Threatening or incentivizing employees to participate in employer-sponsored meetings or to accept employer communications regarding the employer's opinion on religious or political matters.

Notice Requirement

Employers have 30 days from the effective date (January 1, 2025) to post a notice of employee rights under the WFSA in the same area as other mandatory notices.

Penalties

Aggrieved employees (whether by one or more employees for and on behalf of themselves and other employees similarly situated) may bring a civil action within one year of the alleged violation. If a violation is found, the WFSA provides for:

1. Injunctive relief;
2. Reinstatement;
3. Back pay;
4. Reestablishment of employee benefits;
5. Reasonable attorneys fees and costs for the prevailing employee; and
6. Any other relief the court determines is necessary to make the employee(s) whole.

Additionally, the Illinois Department of Labor may impose a $1,000 civil penalty for each violation.

Future of Captive Audience Meetings

Since the National Labor Relations Board's (the Board) decision in *Babcock v. Wilcox Co.*, 77 NLRB 577 (1948), employers have had the right to conduct captive-audience meetings as a lawful

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exercise of the employer's free speech rights under the National Labor Relations Act of 1935 (NLRA). However, some states have recently passed legislation prohibiting employers from conducting such meetings. Prior to Illinois' passage of the WFSA, Connecticut, Maine, Minnesota, New York, Oregon, Vermont, and Washington all recently enacted similar bans on an employer's right to conduct captive audience meetings to share their opinion on union issues. These state-level bans are being contested in courts, with those opposing such legislation claiming it is preempted by Section 8(c) of the NLRA or that these laws violate the First Amendment based on restricting certain types of speech. The first legal challenge to the WFSA is already on the books. On August 8, 2024, the Illinois Policy Institute filed a legal complaint in the Northern District of Illinois alleging, similar to the challenges of other state prohibitions on captive audience meetings, that the WFSA violates employer's First Amendment rights and is preempted by federal labor law. It is unclear how this challenge will shake out or what other challenges Illinois' WFSA will face, but we expect to see similar arguments in any future litigation.

In addition to state-led legislation seeking to prohibit captive audience meetings, the Board General Counsel issued a memorandum in 2022 claiming such meetings violate employees' free speech rights. The Board General Counsel does not have the power to unilaterally change the law on captive audience speeches. In response to her 2022 memorandum, however, the Board's Regional Directors have been directed to identify cases where the General Counsel can argue her position before the Board in hopes of effecting this desired change. To date, the Board has not overturned its position on captive audience meetings. Still, the current administration and Board have been receptive to efforts to overturn prior precedent, and we expect the Board will continue this trend with captive audience meetings.

Final Thoughts

The WFSA does permit employers to conduct meetings to share opinions on union issues if employee participation is voluntary. Employers should prepare for how they will comply with this legislation when it takes effect on January 1, 2025, including reviewing any workplace policies about such meetings and ensuring management has been updated and trained on their obligations under the new legislation. If an employer intends to conduct such meetings, the voluntary nature of any employee participation should be well documented to prevent any claims to the contrary.

If you have any additional questions, contact your Cozen O'Connor attorney or Jeremy Glenn and Bret Vetter.