Illinois Joins Trend to Ban "Captive Audience" Meetings: 5 Steps Employers Can Take to Comply

Insights
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Illinois just became the latest state to ban employers from holding mandatory meetings with employees concerning religious or political matters, including discussions on union representation. Such employer-sponsored meetings, sometimes known as "captive audience meetings," generally require employees to attend or face consequences such as discharge, discipline, or some other penalty. States with such bans have largely justified them by asserting that these meetings coercively interfere with employee freedom of speech. But these captive audience bans can tilt the balance of power to labor unions by preventing employers from exercising their protected free speech rights. Consequently, these bans have faced lawsuits claiming they are preempted by federal labor law, and we expect more to come. Here's what employers need to know about these state laws – including the new requirements in Illinois that take effect on January 1 – and five steps you can take to comply.

A Trend to Track

A growing list of states now ban employers from requiring attendance at meetings on religious or political matters. For example, **Minnesota** prohibits employers from requiring — under threat of discharge, discipline, or some other penalty — employee attendance or participation in employer-sponsored meetings or otherwise requiring them to listen or receive communications regarding employer opinions on "religious" or "political" matters. **Connecticut, Maine, and New York** all passed captive audience laws in 2022 or 2023, and **Oregon** has had a similar law on the books since 2010. Additionally, **Washington State** recently finalized a new law that took effect on June 6. Although Colorado's governor vetoed a similar bill this year, **Vermont's** governor recently allowed a captive audience meeting ban to go into effect without his signature.

In addition to banning certain mandatory meetings, these laws generally require employers to post a notice and follow certain procedures. Employers also face significant penalties for failing to comply. For example, in Washington State, employers are required to post a state-drafted notice of employee rights — and employees who claim they were forced to attend a captive audience meeting may file a claim in state superior court within 90 days of the alleged violation. If the employee is successful, the court can award the employee injunctive relief, reinstatement, back pay, and any other benefits it deems appropriate. You can read more about the nuances of these state laws here.

Key Aspects of New Illinois Law

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Here are some of the key points to note about the Worker Freedom of Speech Act, which Governor Pritzker signed on July 31:

- Employers may not take adverse employment action against an employee for:
  - Declining to attend an employer-sponsored meeting or to receive or listen to communications concerning the employer's opinion about religious or political matters; or
  - Making a good faith report of a violation or a suspected violation of the act.
- Employers also may not use discipline or rewards to persuade employees to participate.
- Within 30 days of the effective date, the new law requires employers to post a notice in the same area you already post other required notices.
- Employees have the right to sue for violations and may be entitled to injunctive relief, reinstatement, backpay, and any benefits they would have otherwise accrued.
- Employers may also face a civil penalty from the Illinois Department of Labor of up to $1,000 for each violation.

Notably, the new Illinois law — which is slated to take effect on January 1 — has an exception for employer meetings involving political or religious matters if employee attendance is voluntary. State law exceptions like this may vary, so be sure to carefully review the requirements in the locations where you operate.

Federal Ban is Brewing

Captive audience meetings have long been upheld as a lawful exercise of employer free speech rights under Section 8(c) of the National Labor Relations Act (NLRA). This stems from the NLRB's 1948 decision in *Babcock & Wilcox*, which held that mandatory group meetings are lawful in the absence of other prohibited conduct (*i.e.,* conduct that coerces employees in the exercise of their rights) under Section 7 of the NLRA.

In 2022, however, the National Labor Relations Board's top prosecutor issued a memo claiming that captive audience meetings violate the National Labor Relations Act. As a result, NLRB's regional offices have been pursuing unfair labor practice charges against employers in an effort to secure a reversal of longstanding precedent supporting an employer's right to hold mandatory group meetings.

While the NLRB has not yet ruled on the issue, we anticipate that it may depart from established precedent and find that captive audience meetings violate the NLRA (especially given the Board's current construction).

5 Steps Employers Can Take to Comply

In addition to the states that have already banned captive audience meetings, more states are considering similar measures — so you'll want to track developments in this area. Moreover, if you are covered by one of these state laws or hold nationwide meetings with employees on union representation, you should act quickly to comply and consider taking the following five steps:

1. Collaborate with internal stakeholders and labor counsel to tailor an appropriate compliance strategy around the unique aspects of your workplace.

2. Train your front-line supervisors on the applicable legal parameters of captive audience laws.

3. Update your employee handbook and policies to clarify that meetings concerning religious or political matters are voluntary and there are no benefits or punishments for either participating or not participating in such meetings.

4. Be clear and upfront to employees about the purpose of your meeting if it will concern religious or political matters and expressly state that the meeting is voluntary.

5. Explore suitable ways to **document the voluntary nature** of your employees' attendance and participation in such meetings.

Conclusion

Fisher Phillips will continue to monitor workplace law developments and provide additional insights as needed. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information and invitations to our webinars. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our Chicago office, or any attorney in our Labor Relations Group.

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