California Bans "Captive Audience" Meetings: 5 Steps You Need to Take to Comply With New Law

Insights
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Governor Gavin Newsom just signed into law a bill on Friday that will soon ban employers from holding "captive audience" meetings – those employer-sponsored mandatory meetings that discuss religious or political matters, including union-representation discussions. SB 399, referred to as the "California Worker Freedom from Employer Intimidation Act," will subject most employers to a civil penalty or civil action starting January 1, 2025, if they require employee attendance at such meetings under threat of discharge, discipline, or some other adverse employment action. These captive audience bans are increasingly common across the country – and are tilting the balance of power to labor unions by preventing employers from exercising their protected free speech rights. Knowing this new law could have severe ramifications for California employers and businesses, read on to understand what you need to know and the five steps you should take to ensure compliance.

A Muzzle on Free Speech or a Champion of Intimidated Workers?

Starting January 1, SB 399 will bar employers from engaging in or threatening to:

- discharge
- discriminate
- retaliate against or
- take "any other adverse action"

against any employee who declines to attend an "employer-sponsored meeting" or declines to "participate in, receive, or listen" to any employer communications regarding "religious or political matters."

"**Political matters**" are broadly defined to include anything regarding "elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." Employer groups have also criticized the phrase "**employer-sponsored meetings**" as an attempt to ban employers from speaking out about unionization – that is, meetings where employers can discuss whether workers should unionize.

The law permits employees to bring a private right of action against their employer for violations, and allows for potential recovery of punitive damages.

Opponents of the new law have criticized it as hopelessly overbroad and a threat to employer's free speech rights. Chief among the concerns: the bill does not specify what, exactly, is an "employer sponsored-meeting" or "political matters" (i.e. does this include a political sign an employer has to support a local candidate?) California businesses have already expressed concern that such wide-sweeping language will have a chilling effect on free speech, particularly during future election seasons.

Additionally, the bill does not provide clear guidance as to mechanisms of enforcement. For example, if an employee declines to see an employer's political sign, will they need to drive a different route to avoid the sign, and will that in and of itself constitute retaliation?

On the other end of the spectrum, California labor unions have championed the proposed new law as a means to stop employers from forcing workers to attend anti-union meetings. Proponents argue that employees can feel compelled to sit through unwelcomed meetings about their employers' religious or political opinions, and do so in fear of losing their job. This new law, they argue, will minimize such worker intimidations.

Growing Trend Around the Country

California joins an increasing number of states that have enacted captive audience bans in the last few years. Between 2022 and 2023, **Connecticut**, **Maine**, **Minnesota**, and **New York** all passed captive audience bans, joining **Oregon** (which has had a similar law in the books since 2010). Most recently, **Washington**, **Illinois**, and **Vermont** passed laws in 2024.

In contrast, Colorado recently vetoed a proposed captive audience bill. Governor Jared Polis stated that while he agreed with the goals of the legislation, he had "significant concerns with the legislation's broad and uncertain implications for employers and employees, as well as legal concerns."

You can read a detailed analysis of this growing trend here.

Litigation is Brewing

Captive audience laws in these states were met with legal pushback. Opponents in Minnesota filed a lawsuit concerning the constitutionality of their law in May, and Connecticut also contended with a lawsuit regarding the constitutionality of its own law, as well as issues as to whether the National Labor Relations Act (NLRA) preempted it. Back in 2010, Wisconsin backed down from its own captive audience law after successful litigation argued the law impinged upon employer free speech rights and was preempted by the NLRA.

Opponents in California are already raising arguments regarding NLRA preemption. Presently the NLRA prohibits employers from making any threats to employees, interfering with or restraining exercise of their rights, coercing employees, or promising benefits to employees for voting a certain

way in a union election. And state law already protects employees engaging in political activities, prohibits employer coercion regarding political activities, and prohibits employer coercion or influence over workers' political activities. Since employer interference with union organizing activity or other protected concerted activity and political activity is already unlawful under the NLRA and California law, the new law appears unnecessarily duplicative.

What Should California Employers Do? 5 Steps to Comply With New Captive Audience Law

Employers cannot count on this new law being sidetracked before it takes effect. January 1 will be here before you know it, so you will want to take swift action to ensure compliance. Here are five steps you should take to comply with the new captive audience law.

1. Consult with local legal counsel for guidance in this evolving area of the law and to tailor an appropriate compliance strategy for your organization, particularly when employers and/or front-line supervisors desire to hold meetings on religious or political matters.

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

3. Update employee handbooks and policies to underscore the voluntary nature of meetings regarding religious or political matters (including the topic of union organizing).

4. Communicate to employees the purpose of any such meetings and emphasize the voluntary nature of them.

5. Consider ways to **memorialize the voluntary nature** of any potential meetings which could fall under the "captive audience" definition.

Conclusion

Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox, including the status of this new law and any related litigation. For further information as to compliance and best practices, contact your Fisher Phillips attorney, the author of this Insight, any member of our Labor Relations group, or any attorney in any one of our six California offices.

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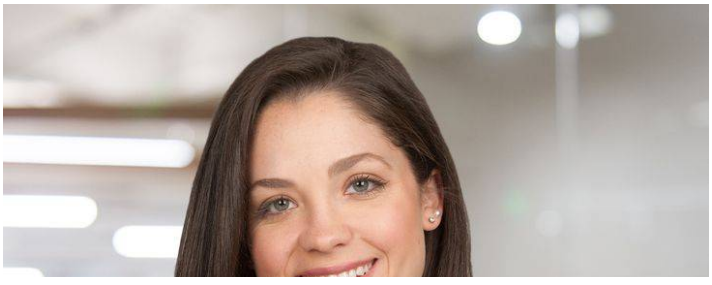

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