NEW YORK STATE BANS EMPLOYEE CAPTIVE AUDIENCE MEETINGS

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On September 6, 2023, New York State Governor Kathy Hochul signed into law a bill that prohibits employers from mandating that employees attend meetings or listen to communications where the "primary purpose" of such gatherings or messages is for management to express its views on certain religious or political matters, including supporting or joining a labor organization. Such "captive audience meetings" have long been a key tactic that employers use to persuade employees to remain union-free when faced with union organizing. The bill, which amended section 201-d of the New York Labor Law, prohibits employers from disciplining workers from refusing to attend captive audience meetings. It went into effect immediately upon the Governor's signature on September 6.

The National Labor Relations Act has long protected captive audience meetings as employer free speech. Under the NLRA's captive audience doctrine, an employer may hold employee meetings at which attendance is required. At such captive audience meetings, an employer may talk with employees about unionization. However, in accordance with section 8(c) of the Act, an employer cannot punish, threaten, or promise benefits to employees during these meetings. Notwithstanding the longstanding legality of captive audience meetings under the NLRA, New York's amended statute now purports to prohibit such gatherings. New York's new law does, however, include language the notes that non-mandatory "casual conversations" are not banned.

The new law also requires employers to post a notice to employees to advise them of their rights under the amended statute. In addition, as set forth in section 201(d)(7) of the New York Labor Law, in response to a violation of the new law, New York's Attorney General may seek to enjoin or restrain an employer from engaging in additional violations and a court may assess a civil penalty against the employer of $300 for the first violation and $500 for each subsequent violation. Further, aggrieved persons may assert a private right of action against an employer for equitable relief and damages.

New York now joins several other states that have enacted statutes that ban captive audience meetings. However, New York's new law is likely to be subject to a legal challenge on the ground that a state's ability to prohibit an employer from discussing unions and union organizing with employees is preempted by federal law. Section 8

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(c) of the NLRA protects an employer's right to espouse "any views, argument, or opinion" about unions so long as such expression does not include punishments, threats, or promises of benefits. Further the new law is also subject to challenge because it unlawfully violates the free speech rights of employers. For example, in neighboring Connecticut, the U.S. Chamber of Commerce has challenged, in federal court, the state law there prohibiting captive audience meetings as preempted by the NLRA and unconstitutional.

Employers in New York should act promptly to comply with the new statute. Until the New York State Department of Labor publishes an example of a required notice, employers should make their own workplace posting, which could comprise a copy of the amendment. In addition, management should consult with a seasoned labor and employment law attorney concerning how best to meet the new law's requirements, particularly if the employer is facing potential or actual labor union organizing.

If you have any questions about your obligations as an employer under amended section 201-d of the New York Labor Law, please contact Glen P. Doherty (518.433.2433), Charles H. Kaplan (646.218.7513), Elizabeth D. McPhail (716.848.1530), or any other member of Hodgson Russ LLP's Labor & Employment Practice.

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