LEGAL UPDATES

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NLRB Aside, Bans on Captive Audience Meetings Spread Across the States

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The National Labor Relations Board (NLRB) made waves with its November 13, 2024 decision in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024) overturning *Babcock & Wilcox Co.* and 75 years of precedent that had allowed employers to require their employees to be a "captive audience" to anti-union messaging. The NLRB's general counsel, Jennifer Abruzzo, previously announced her intention to ask the NLRB to find captive audience meetings unlawful in Memorandum GC 22-04, published April 7, 2022.

While the incoming Trump administration is not likely to agree with the *Amazon* decision, employers must still comply with any applicable state laws similarly prohibiting "captive audience meetings."

States that either have current captive audience bans in effect or which will have such bans take effect in 2025 include: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Minnesota, New Jersey, New York, Oregon, Vermont, and Washington. In addition, Colorado, Maryland, Massachusetts, Rhode Island, and Virginia have recently proposed similar bans (Colorado's governor vetoed a proposed captive audience ban in the spring of 2024).

State captive audience bans

State captive audience laws generally prohibit employers from taking or threatening to take any adverse employment action (Illinois law additionally expressly prohibits incentivizing attendance) against employees who decline to attend required meetings where "political" (including issues related to "labor organizations") or "religious matters" are discussed. While the NLRA specifically *excludes* statutory "supervisors" from its definition of "employee," most state captive audience bans more broadly define "employee" to include

any person who performs a service for hire and who is not an independent contractor. Only New York and Connecticut currently limit their laws to non-supervisory employees.

State captive audience bans are generally enforceable through private rights of action by aggrieved employees. Remedies for violations include fines for each employee subjected to a captive audience meeting, and other penalties permitted by the state's labor commission.

Mandatory meetings have traditionally been viewed as one of the most effective tools employers have to discuss their position on labor organizations.

State captive audience bans have faced legal challenges in the past, and more challenges are expected. Business groups successfully challenged Wisconsin's law prohibiting captive audience meetings in 2010 on preemption grounds (at a time when the act was understood to *permit* captive audience meetings), but similar lawsuits against Oregon's law have been dismissed on procedural grounds, without receiving a ruling on the merits. The Illinois Policy Institute filed a lawsuit on August 8, 2024, which it amended October 30, in the United States District Court for the Northern District of Illinois (Eastern Division) trying to block Illinois's captive audience law from going into effect January 1, 2025 on First Amendment grounds. *Illinois Policy Institute v. Flanagan*, Case 1:24-cv-06976. No ruling has been issued as of the time of publication.

While legal challenges continue, employers can reduce their risks of violating any state's captive audience meeting ban by clearly communicating to employees that their attendance at any meetings in which union-related information (or any other political, religious, or other information covered by the bans) is discussed are truly voluntary.

Training "exception"

An important exception to the state captive audience bans allows employers to "provide employees with information that is legally required" or with information "necessary for them to perform their job duties." All of the current state law bans except for Hawaii's include this express exemption. Although we do not yet have the benefit of judicial decisions discussing and interpreting these state laws, to the extent supervisors and managers need to be trained with respect to labor and employment laws, related information concerning labor organizations might be lawful to discuss in the context of that training.

Whether a judge would find any particular union-related content to be lawful "training" or an unlawful captive audience meeting will depend on the particular facts and circumstances at issue. Employers should work closely with experienced labor counsel to ensure their union-related messaging complies with the NLRA, as well as any applicable state law.

Contact us

If you have questions about state captive audience laws or how you can craft appropriate training, contact Adam Doerr, Samantha Bowie, or your Husch Blackwell labor attorney.