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Labor & Employment Alert

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NLRB likely to revisit “captive audience” meetings

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On April 7, 2022, the General Counsel to the NLRB urged the Board to reverse decades of Board decisions permitting employers to hold “captive audience” meetings aimed to dissuade employees from unionizing.



What’s the Impact?

- / The NLRB is likely to reconsider whether employers may hold mandatory meetings in which employees are required to listen to arguments against unionization
- / The nation’s top labor attorney urges the Board to declare such meetings unlawful unless employers make clear that employee attendance is “truly voluntary”

For decades, the NLRB has recognized that an employer does not violate the National Labor Relations Act (the “Act”) by compelling employees to attend mandatory “captive audience” meetings in which the employer attempts to dissuade employees from forming or joining a union. Employers, as well as employees, have speech rights under the Act, and such meetings have become a common employer response to union organizing campaigns. Employers generally have been free to discipline those employees who refuse to attend mandatory meetings on the theory that employers are paying for the employees’ time and can use it to communicate messages about unions if they wish.

The General Counsel's memorandum

Despite this long-accepted practice, the NLRB's top attorney has issued a memorandum urging the Board to reconsider decades of precedent and rule instead that such "captive audience" meetings violate the Act, on the rationale that such meetings unlawfully interfere with employees' choice of whether and how to exercise their rights.

The General Counsel's memorandum argues that such mandatory meetings have a coercive effect on employees through the threat of discipline, discharge, and/or reprisal if employees refuse to attend. In particular, the memorandum notes that, "Forcing employees to listen to such employer speech under the threat of discipline—directly leveraging the employees' dependence on their jobs—plainly chills employees' protected right to refrain from listening to" speech concerning the exercise of their workplace rights. The General Counsel proposes that the Board adopt "sensible assurances" that employers must inform their employees that their attendance is "truly voluntary" at any meeting in which an employer attempts to dissuade unionization efforts.

The General Counsel stated that she will ask the Board to reconsider its precedent "in appropriate cases, including in a brief that will be submitted to the Board shortly." Her public release of this position signals that a change in the law may be forthcoming.

Looking ahead

The General Counsel's memorandum underscores the current administration's efforts to empower and support employee unionization efforts. This change is one of many the General Counsel has announced she will seek from the Board. While the memorandum itself will not result in an immediate change in the law, employers should be aware of the heightened interest in union organizing and should be prepared to consult with their labor counsel to ensure that they remain apprised of any new Board developments.

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