

K&LNG Alert

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Employment Law

New Jersey Governor Signs "Worker Freedom from Employer Intimidation Act" into Law

On July 26, 2006, New Jersey Governor Jon S. Corzine signed P.L. 2006 Ch. 53, the "Worker Freedom from Employer Intimidation Act" into law. This statute, which went into effect immediately, is designed to protect New Jersey employees from employer intimidation by prohibiting most employers from requiring their employees to attend employer-sponsored meetings or participate in any communication whose purpose is to convey the employer's opinion about religious or political matters.

BASIC PROVISIONS

The statute prohibits, with certain exceptions, employers from requiring their employees to "attend an employer-sponsored meeting," or to "participate in any communications with the employer," where the purpose of the communication is to communicate the employer's opinion about religious or political matters. "Political matters" are broadly defined to include "political party affiliations and decisions to join or not join or participate in any lawful political, social, or community organization or activity."

Union organizing activity, however, is not covered. The version of the law as originally introduced in the New Jersey General Assembly would have included "labor organizations" in the definition of political activity, and thus, arguably, would have prevented employers from communicating with their employees in response to a union organizing campaign. If enacted, such a prohibition may have raised concerns that it was preempted by federal law, since the federal National Labor Relations Board regulates an employer's conduct in the course of an organizing campaign. In any event, the law as enacted dropped "labor organizations" from the definition of "political activity" under the statute, and thus, does not prohibit an employer from communicating with its workforce in response to a union organizing campaign.

The statute also provides that it is not to be interpreted as preventing an employer from allowing its employees to attend employer-sponsored meetings or providing other communications to the employees, so long as the employer notifies the employees that they are free to refuse to attend the meetings or accept the communications without penalty.

In response to concerns raised in the business community about the scope of the phrase, "participate in any communications," Governor Corzine stated in a signing statement that he did not interpret the phrase to prohibit an employer from merely sending an e-mail to employees, which the employee is free to delete or disregard, but the phrase must be interpreted in the context of the phrase "attend a meeting." Thus, in the Governor's view, the phrase "participate in any communications" is "intended to cover interactive communications such as video-conferences and tele-conferences, and not simple e-mails."

EXCEPTIONS

The statute contains several exceptions. New Jersey employers may continue to communicate information about religious or political matters where they are required by law to do so, but only to the extent required by law. Religious organizations are permitted to require their employees to attend employer-sponsored meetings and participate in communications concerning their religious beliefs, practices, or tenets. Likewise, political organizations may require their employees to attend employer-sponsored meetings and participate in communications relating to their political tenets or purposes. Finally, educational institutions may continue to require their students and instructors to attend lectures on political or religious matters that are part of the regular course work at the institution.

RETALIATION PROHIBITED

The statute also contains a broad anti-retaliation provision that provides that a New Jersey employer may not discharge, discipline, or otherwise penalize an employee, or threaten to do so, because the employee makes a good faith report of a violation or suspected violation of the statute. The employee's good faith report may be oral or in writing, and the report may come from the employee directly or anyone acting on his or her behalf.

ENFORCEMENT

The statute provides that any aggrieved employee may bring a civil action within 90 days after the date of the alleged violation in a court of competent jurisdiction. The court may award a prevailing employee "all appropriate relief," including, as appropriate: (1) a restraining order against any continuing violation; (2) reinstatement to the employee's former or equivalent position and reestablishment of any employee benefits and seniority rights; (3) the payment of lost wages, benefits, or other remuneration; and (4) the payment of the employee's reasonable attorney's fees and costs. The court may also award the employee punitive damages not greater than treble damages, or an assessment of a civil fine of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation.

COMPLIANCE TIPS

The statute is new and its limits have yet to be tested in the courts. Pending judicial interpretation, New Jersey employers should assume that the terms "religious or political matters" will be given broad interpretation and will cover such matters as employer requests for charitable contributions or support for community, social, or religious organizations. While employers in New Jersey may continue to support such organizations, they should use caution to ensure that their support is communicated to employees in a non-coercive way. In all cases, employer communications concerning religious, political, social, or community matters should include appropriate language making clear that employees are free not to participate in such matters or disregard the communications without penalty.

New Jersey employers should also scrutinize disciplinary and discharge decisions to reduce the risk of violations of the new statute. Employees in the State are protected from employer retaliation where they complain of conduct that they suspect violates the statute. Even erroneous complaints are protected if made in good faith. Thus, employers should ensure that a contemplated disciplinary or discharge action based, for example, on insubordination is not in reality a mask for action taken in retaliation for an employee complaint of conduct suspected to violate the new statute.

Counsel should be consulted when an employer is considering disciplining or discharging an employee who has made a recent complaint of a suspected violation of the statute.

New Jersey employers also should be aware that they may be subject to vicarious liability for the unauthorized actions of their employees in violation of the statute. To reduce or eliminate the risk of a finding of such liability, employers should consider implementing preventative measures, similar to those that have been found to provide a "safe harbor" in the anti-discrimination and anti-harassment context. For example, New Jersey employers should consider implementing policies that express the employers' commitment to the new statute and prohibit coercive communications concerning religious, political, social or community matters in violation of the statute. Any such policy should invite employees to come forward and report suspected violations and provide for a prompt investigation into reported violations. Such a policy should also assure employees that they will not be subject to retaliation for reporting suspected violations. New Jersey employers also may wish to consider requiring managers and supervisors to attend training in the requirements of the new statute.

Rosemary Alito
ralito@klnj.com
973.848.4022

George Barbatsuly
gbarbatsuly@klnj.com
973.848.4104

If you have questions or would like more information about K&LNG's Employment Law Practice, please contact one of our lawyers listed below:

Boston	Henry T. Goldman	617.951.9156	hgoldman@klng.com
	Mark D. Pomfret	617.261.3147	mpomfret@klng.com
Dallas	Von E. Hays	214.939.4959	vhays@klng.com
	Jaime Ramón	214.939.4902	jramon@klng.com
Harrisburg	Carleton O. Strouss	717.231.4503	cstrouss@klng.com
London	Paul Callegari	+44.20.7360.8194	pcallegari@klng.com
Los Angeles	Thomas H. Petrides	310.552.5077	tpetrides@klng.com
	Paul W. Sweeney, Jr.	310.552.5055	psweeney@klng.com
Miami	April L. Boyer	305.539.3380	aboyer@klng.com
	Judd J. Goldberg	305.539.3344	jgoldberg@klng.com
	Carol C. Lumpkin	305.539.3323	clumpkin@klng.com
	Michael C. Marsh	305.539.3321	mmarsh@klng.com
Newark	Rosemary Alito	973.848.4022	ralito@klng.com
	Vincent N. Avallone	973.848.4027	vavallone@klng.com
New York	Eva M. Ciko	212.536.3905	eciko@klng.com
Palo Alto	Linda L. Usoz	650.798.6702	lusoz@klng.com
Pittsburgh	David J. Kolesar	412.355.6252	dkolesar@klng.com
	Stephen M. Olson	412.355.6496	solson@klng.com
	Michael A. Pavlick	412.355.6275	mpavlick@klng.com
	Hayes C. Stover	412.355.6476	hstover@klng.com
San Francisco	Linda L. Usoz	650.798.6702	lusoz@klng.com
Washington	Lawrence C. Lanpher	202.778.9011	llanpher@klng.com



**Kirkpatrick & Lockhart
Nicholson Graham LLP**

www.klng.com

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