

## **LEGISLATIVE UPDATE**

David B. Lichtenberg, Esq.  
Morris County SHRM Legislative Chair  
Jackson Lewis LLP  
(973) 538-6890 (phone)  
[lichtend@jacksonlewis.com](mailto:lichtend@jacksonlewis.com)

### **NEW JERSEY WORKER FREEDOM FROM EMPLOYER INTIMIDATION ACT GOES INTO EFFECT**

On July 26, 2006, Governor Jon Corzine signed the New Jersey Worker Freedom from Employer Intimidation Act. Effectively immediately, the Act prohibits employers from requiring employees "to attend" or "participate in any communications . . . about religious or political matters." The Act also protects employees from retaliation if they raise a "good faith" concern about activity that may be covered by the law. Available remedies for violations of the Act include restraining orders, reinstatement, lost wages, attorney's fees, and punitive damages. Additionally, violators are liable for civil fines capped at \$1,000 for first time offenders and \$5,000 for subsequent violations.

Under the Act, employers may discuss religious or political matters with an employee if the employer notifies the employee that participation is voluntary and the employer will not penalize non-participants. Significantly, while the Act stems from the AFL-CIO's model Freedom from Employer Intimidation Act, drafters of the New Jersey law eliminated the phrase "labor organizations" from the Act's definition of "political matters." Consequently, employers may continue to hold mandatory captive-audience speeches to communicate with employees their position on unions without running afoul of the Act. The law also exempts religious and political groups, as well as educational institutions so long as the religious or political requirements of the institution pertain to "the regular course work at the institution."

The Act broadly defines the term "political matters" as "any lawful political, social, or community organization or activity." Given the term's breadth, New Jersey employers should proceed with caution when planning to discuss any issue with their employees that potentially fits within this definition. For instance, the law may impact employers who hold work events at social clubs, host guest speakers associated with community organizations, or distribute materials published by special interest groups. When in doubt, employers should tell employees that participation is voluntary and those who choose not to participate will not be subject to any employment repercussions.

Additionally, employers must be mindful of the potential for a retaliation claim when an employee in "good faith" questions the employer's activities as violating the Act. Employers may be liable for any adverse employment action, even if the employee's concerns are unsubstantial.

The Act has a relatively short statute of limitations period, and employees must bring a civil action within 90 days of the alleged violation. While a short limitations period may be helpful in some instances, it also may force employees (and their attorneys) to rush into court

to litigate claims because they fear the time limit may expire. The Act does not have an administrative exhaustion requirement.

Similar to dealing with equal employment opportunity issues and whistleblower claims, employers should establish procedures for handling employee concerns, train their supervisors under the procedures, and formalize their support for employees to choose freely whether to participate in religious and political activities.