

## GUEST COLUMN

## SB 399: Employers can't force workers to listen to them

By JJ Johnston

On April 7, 2022, the General Counsel of the National Labor Relations Board issued a memorandum to all field offices whose content may have come as a surprise to many employers. General Counsel Jennifer Abruzzo told employers that it was unlawful for them to make their workers listen to their opinions about unions or to require their attendance at mandatory meetings about the exercise of statutory rights to form and join labor unions. Such requirements, she said, violated the National Labor Relations Act.

According to Abruzzo, in workplaces across America, employers have routinely held captive audience meetings in which employees have been forced to listen to employer speech concerning the exercise of their statutory labor rights, especially during organizing campaigns. Captive audience meetings are mandatory meetings held during work hours and organized by employers. Employees are paid for their time attending these meetings and face discipline for failure to attend.

Now, on the heels of one of the most fractious elections in our nation's history, California has said enough. Employers cannot coerce their workers into listening to them - not just on union issues, but on a range of other matters. Commencing Jan. 1, 2025, it will be unlawful for employers to penalize workers for failing to attend captive audience meetings at which the employers share their views on religious or political matters.



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### The new law

SB 399, signed into law on Sept. 27, 2024, significantly expands the scope of matters upon which employers may not bend their employees' ears. The California Worker Freedom from Employer Intimidation Act, authored by Senator Aisha Wahab, is a direct response to stories of companies penalizing workers for refusing to participate in such meetings. Its sponsors wrote that "The effectiveness of captive audience meetings has led to employers using these forced meetings for political and religious purposes."

The law, which takes effect in the new year, prohibits employers from "subjecting, or threatening to subject, an employee to discharge,

discrimination, retaliation, or any other adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters."

It excludes most religious and political organizations, as well as schools and training programs that deal with religious or political subjects, and it imposes a civil penalty of \$500 on any covered employer who violates its provisions. The Labor Commissioner is charged with enforcing the law and investi-

gating alleged violations, but individual employees may also file civil actions against their employers.

### The background

Numerous stories have emerged over the past few years about companies penalizing workers who have refused to participate in employer-mandated events. In 2019, the Royal Dutch Shell company hosted an appearance by then-presidential candidate Trump, for which workers faced penalties if they did not attend. A memo sent to workers stated that attendance at the Trump rally was "not mandatory," but if they did not clock in to work that day they would lose pay and become ineligible to receive overtime pay.

Workers who attended were warned against making any display of protest.

Employers have argued that their religious and political views are constitutionally protected speech, but others have argued that captive meetings can be used to intimidate workers. When delivered during a mandatory meeting, employer political speech can be particularly coercive, coming from a source of authority and carrying “a different weight than that of any other participant in political debates,” according to Paul M. Secunda, an associate professor of law at Marquette University Law School. (“Addressing Political Captive Audience Workplace Meetings in the Post-Citizens United Environment,” 120 Yale L.J. Online 17 (2010))

“The unequal power dynamic between an employer and its employees creates a setting ripe for intimidation,” writes Secunda. “Some workers may feel compelled to adopt an employer’s view on a political matter because “people need their jobs, and many will sacrifice their rights as citizens to continue to provide for themselves and their families. Consequently, an employer that tries to use its financial muscle to control employees’ political behavior will often succeed.”

According to the Economic Policy Institute (EPI), a review of employer actions during union elections over a five-year period found that 89% of employers used captive audience meetings during the campaign. Such meetings may have been responsible for fewer workers winning representation and fewer first-time labor contracts. (Bronfenbrenner, Kate, EPI Briefing Paper, “No Holds Barred: The Intensification of Employer Opposition to Organizing,” 2009)

### Why SB 399

“We live in highly polarized times where political discussions occur all too frequently in the workplace,” writes Senator Wahab. “No worker should be subject to forced indoctrination by their employer on politics, religion, or for exercising their protected rights on the job.” Bill supporters cited an EPI study finding that 63% of employers interrogated workers in one-on-one captive audience meetings and 54% of employers threatened workers in such meetings.

The California Labor Federation, a co-sponsor of the bill, observed that in most workplaces, workers are “at-will” and can be fired at any time for almost any reason. “The

bill clarifies that workers have the freedom to leave a mandatory meeting about their employers’ views on religious or political matters, including support or opposition of political parties or unions.”

### Conclusion

Because the speech in question is neither job- nor safety-related, workers’ jobs should not be at risk if they fail to listen. For many workers, their first choice will be to stay on the job and do their work. The most important provision of the new law requires employers to pay workers for doing their jobs instead of attending captive meetings. As long as an employee is capable of performing their job assignment, they must be paid for their time - even if the employer locks them out or otherwise prevents them from working.

According to Senator Wahab, SB 399 “promotes workers’ rights, especially those of marginalized communities, by protecting their right to advocate for themselves and opt out of conversations about politics or religion that have nothing to do with their ability to properly execute their job. By giving people the choice to listen to the political or religious views of their

employer, we are ensuring that the most marginalized workers are not taken advantage of by their employers.”

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