Captive Audience Meetings: A Thing of the Past?

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For decades, employers faced with ongoing workplace unionization could hold a mandatory meeting, on paid time, to educate employees on the potential impacts of unionization and offer the employer's perspective on unionizing the workplace. A recent ruling from the National Labor Relations Board (NLRB), however, upends decades of precedent and means that employers will need to change how they conduct these meetings moving forward. Most importantly, employers can no longer require employees to attend.

On November 13, the NLRB overturned over 75 years of established law in ruling that employers could no longer require attendance at a captive audience meeting. The NLRB's majority found that captive audience meetings violate Section 8(a)(1) of the National Labor Relations Act's (NLRA) prohibition against coercion and interference with employees' rights guaranteed under the Act. According to the majority, the compulsory nature of captive audience meetings inherently showcases an employer's power over employees and interferes with the right of employees to "freely decide whether or not to unionize, including the right to decide whether, when, and how they will listen to and consider their employer's views concerning the choice."

This decision comes at a time of uncertainty at the NLRB, with a change in administration just months away. Lone republican member Marvin Kaplan's dissent offering a glimpse into a potential future return to prior precedent should the NLRB, upon a change in leadership, seek to overturn last week's ruling. For now, the ruling applies prospectively to these employer-led meetings and employers must comply with the NLRB's new guidance or face legal liability.

Key Takeaways

While the NLRB's decision puts an end—at least for now—to mandatory employee meetings, employers may still lawfully express their views on unionization at a voluntary meeting. While voluntary meetings at the workplace, during work hours, are still permitted, employers should reframe how such meetings are presented. The

decision outlines “safe harbors” to guide employers. Aligned with these safe harbors, employers who wish to offer their perspective at a workplace meeting should clearly communicate, in advance, the following to employees:

1. The employer intends to express its views on unionization at the meeting.
2. Attendance at the meeting is voluntary.
3. Employees will not be subject to discipline, discharge, or other adverse actions for leaving or not attending the meeting.
4. The employer will not take attendance at the meeting.

While communicating the above information to employees helps insulate the employer from liability, the employer must also follow through with these assurances. An employer may still violate the NLRA if an employee could reasonably believe that attendance at the meeting is required or that failure to attend or remain at the meeting could result in adverse consequences. This belief may arise from a supervisor’s express order to attend or by including the meeting on an employee’s work schedule. In such circumstances, an otherwise voluntary meeting may still violate the NLRA. Employers must therefore be careful to ensure that meetings are truly voluntary and are so communicated. Contact your Vorys lawyer with questions about navigating the new landscape of captive audience meetings, and any future developments.