



# **NEW JERSEY LABOR AND EMPLOYMENT LAW QUARTERLY**

**Vol. 29  
No. 2  
Winter 2007**



**NEW JERSEY STATE  
BAR ASSOCIATION**

---

## THE WORKER FREEDOM FROM EMPLOYER INTIMIDATION ACT

PANACEA OR CONSTITUTIONAL  
TRAIN WRECK?*by Jed Marcus*

On July 26, 2006, Governor Jon Corzine signed into law a bill that prohibits employers from requiring employees to attend meetings or communicate with the employer regarding religious or political matters. The act, known as the Worker Freedom From Employer Intimidation Act,<sup>1</sup> also protects employees from retaliation if they raise a “good faith” concern about activity that may be covered by the law. Employees who successfully sue their employers can get restraining orders, back pay, front pay, punitive damages and attorneys fees. The employer also can be fined.

The act prohibits compulsory, employer-sponsored meetings or activities that communicate the employer’s opinion about religious or political matters. At the same time, the act does not prevent employers from permitting employees to attend voluntary employer-sponsored meetings. If employers want to hold voluntary employer-sponsored meetings or distribute communications, they must notify their employees that they may refuse to attend the meetings or accept the communications without penalty; the meetings or communications must be truly voluntary.

The act also contains important exceptions for religious organizations, political organizations and educational institutions. For instance, the act does not prohibit religious organizations from requiring their employees to attend employer-sponsored meetings or participate in communications regarding the employer’s religious beliefs, practices, or tenets. Nor does it prohibit political organizations or parties from requiring their employees to attend employer-sponsored meetings or partic-

ipate in communications regarding the employer’s political tenets or purposes. Further, the act does not prohibit educational institutions from requiring students or instructors to attend lectures on political or religious matters that are part of the regular coursework.

All this, on its face, seems fine. After all, no one could reasonably argue with a law that prevents employers from compelling employees to attend meetings or engage in communications about religious or political matters. Oddly enough, however, the prohibition against compulsory political meetings and activities is, by the author’s lights anyway, a very narrow one.

The act very specifically defines “political matters” as including “political party affiliation and decisions to join or not join or participate in any lawful political, social, or community organization or activity.”<sup>2</sup> Thus, while the act prohibits communications regarding the “employer’s opinion about religious or political matters,”<sup>3</sup> the nature of the political opinion banned is a very narrow one indeed. In fact, what invites skepticism about this new law is that while the act prohibits compulsory meetings about religious or “political matters,” it does not, at least on its face, prohibit employers, particularly public employers, from asking employees to voluntarily contribute to political campaigns, or attend political dinners or fundraisers. Nor does it prohibit employers from allowing employees to solicit other employees on political matters.

The narrow definition of “political matters” is a curious one, the author feels, given that public employers in New Jersey have traditionally intimidated their workers into contributing to

various political campaigns and attending expensive fundraising dinners.

Unfortunately, the act is far more careless when it comes to the potential suppression of religious expression in the workplace. In fact, the Legislature did not even bother to define the scope of permitted and prohibited religious speech or conduct. One could even reasonably argue that while the act seeks to outlaw only a narrow band of political expression, it actually prohibits all religious expression, except as required by law. Specifically, the law provides that:

An employer...may communicate to employees information about religious or political matters that the employer is required by law to communicate, but only to the extent required by law.<sup>4</sup>

Since there is no law requiring employers to communicate to employees religious information, the law is a blanket prohibition against any and all forms of religious expression in the workplace.

There is, in short, the author believes, a serious constitutional problem with the act, especially to the extent that it punishes religious or political expression. While the act is designed to protect employees from compelled religious or political activity, a laudable goal to be sure, it also suppresses otherwise innocent expressions of religious or political opinion by employers or their supervisors. Thus, the author views the act as violative of the First Amendment of the U.S. Constitution on at least two grounds. First, to the extent that the act suppresses all religious speech in the workplace, it violates the

