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Labor Law Update: Oregon's "Employer Gag Law" Revisited- Court Finds NLRA Preempts Similar Wisconsin Law

January 17, 2011

LABOR LAW UPDATE

OREGON'S "EMPLOYER GAG LAW" REVISITED – COURT FINDS NLRA PREEMPTS SIMILAR WISCONSIN LAW

On November 15, 2010, a federal court in Wisconsin struck down a state law that prohibited employers from taking adverse employment action against employees who refused to attend meetings intended to communicate the employer's opinion on "religious matters or political matters." In *Metropolitan Association of Commerce v. Doyle* (E.D. Wis., Case No. 10-C-0760), the court held that Wisconsin's law was "preempted by the National Labor Relations Act under the Supremacy Clause of the United States Constitution," and it permanently enjoined Wisconsin state agencies from enforcing the law where the employer's meeting concerned the decision whether to support a labor organization. The federal NLRA generally protects the right of employers to hold mandatory meetings for the purpose of sharing the employer's views about labor organizations and whether or not employees should join or support a particular labor organization.

As reported in our [May 21, 2010 Bullard Alert](#), U.S. District Court Judge Michael Mosman had dismissed a lawsuit aimed at overturning a similar Oregon state law (Oregon SB 519, now codified at ORS 659.780-.785). Like the Wisconsin law, Oregon's law prohibits employers from holding mandatory meetings for the purpose of communicating the employer's views on "religious or political issues," defined specifically to include labor organizations. Judge Mosman stated that the legal challenge, filed by the U.S. Chamber of Commerce and Associated Oregon Industries, was premature because they were unable to show that any actual harm had taken place or that they faced "real and imminent threat of prosecution" under this law. That lawsuit also had sought a judgment that Oregon's state law is preempted by the federal NLRA, as well as unlawfully restricting an employer's constitutional right of free speech. Because he dismissed the case on procedural grounds, Judge Mosman never reached the merits of the case.

The court's decision to strike down Wisconsin's "Employer Gag Law" is not legally binding in regard to the enforceability of Oregon's similar law. Until a case challenging Oregon's law is decided on the merits, Oregon employers must continue to comply by avoiding mandatory communications that have the "primary purpose" of sharing the employer's views on religion or politics (including labor organizations) and following the posting requirement. See our [April 30, 2010 Bullard Alert](#) for compliance notice suggestions.

Bullard Law will continue to monitor developments related to this important issue, as well as other topics related to union organizing. Please feel welcome to contact us with any questions or concerns about this or

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any other labor, employment or benefits issues.

*-Barbara A. Bloom*