



Discussing the Minimum Wage Referendum with Employees

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For Discussion Only- Not Legal Advice

In November, New Jerseyans will be voting on a constitutional amendment to raise the State's minimum wage to \$8.25 an hour with an automatic annual Consumer Price Index escalator.

Unlike other ballot initiatives to spend public money – for education or the preservation of farm lands – this will be the first time that state residents will be asked to vote on a minimum wage hike. While the issue will be part of the gubernatorial race this year, it is unclear whether business and industry groups will spend any money on a public campaign to defeat the measure.

But employers are permitted to speak with employees directly about the impact of the wage hike on their business.

Employers have both a First Amendment right and a right under section 8(c) of the National Labor Relations Act (NLRA) to speak with their employees about public issues. The law is well settled that an employer can hold mandatory attendance meetings to give management's opinion on a public issue. The employer is not required to give equal time for alternative or opposing viewpoints.

Many employers have the opinion that any raise in the minimum wage will cause hourly wages to generally increase. While employees may want a raise, it may come at the expense of lost pay increases in the future, an increase in healthcare costs, or even job loss.

While employers have a right to speak with employees about the minimum wage ballot and to give an unadulterated opinion, there is a New Jersey statute that may complicate the presentation.

In 2006, the "Worker Freedom from Employer Intimidation Act" was enacted in the state. This statute is designed to protect employees from employer intimidation by prohibiting most employers from requiring their employees to attend employer sponsored meetings or participate

in any communication whose purpose is to convey the employer's opinion about religious or political matters.

The statute prohibits, with certain exceptions, employers from requiring their employees to "attend an employer-sponsored meeting," or to "participate in any communications with the employer," where the purpose of the communication is to communicate the employer's opinion about religious or political matters. "Political matters" are broadly defined to include "political party affiliations and decisions to join or not join or participate in any lawful political, social, or community organization or activity."

The statute also provides that it is not to be interpreted as preventing an employer from requiring its employees to attend employer-sponsored meetings or providing other communications to the employees, so long as the employer notifies the employees that they are free to refuse to attend the meetings or accept the communications without penalty.

The employer's opinion about the minimum wage vote does not appear to be a "political matter." But even if it were, the Act most likely violates the First Amendment and/or is preempted by the NLRA.

In *NLRB v. Gissel Packing Co.* (1969), the United States Supreme Court reinforced the legal rule that an employer's First Amendment free speech right was entrenched in section 8(c) of the National Labor Relations Act. According to the Court, when Congress added 8(c) to the NLRA in 1947 it was expressly to ensure that "an employer's free speech right to communicate his views to his employees [was] firmly established ..." These views can be about labor unions or about political matters in general and can be expressed during captive audience meetings, which have been considered lawful under the NLRA for over sixty years.

Thus, employers in New Jersey should not have any difficulty expressing its opinion to employees about the minimum wage. Here are some things to consider:

- Make attendance mandatory
- Meetings with hourly workers and supervisors should be separate
- Hold the meeting during working time
- State that employee voting preferences are a private matter and that employees are free to vote their conscience
- Opinions should be well reasoned and based on business considerations
- Do not entertain questions