

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 245

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE EMPLOYEE FREE SPEECH ACT;
PROTECTING EMPLOYEE FREE SPEECH FROM CAPTIVE AUDIENCE SPEECHES;
PROVIDING REMEDIES FOR VIOLATIONS OF EMPLOYEE FREE SPEECH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Employee Free Speech Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Employee Free Speech Act:

A. "employee" means an individual employed by an
employer for remuneration, including an individual employed on
a part-time, seasonal or temporary basis;

B. "employer" means any individual, partnership,
association, corporation, business trust, legal representative
or organized group of persons employing one or more employees

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underscoring material = new
[bracketed material] = delete

1 in the state at one time, including the state or any political
2 subdivision of the state, or a person acting in the interest of
3 an employer in relation to an employee;

4 C. "political matters" means matters relating to
5 elections for political office, political parties, legislative
6 proposals, rule or regulation change proposals and the decision
7 to join or support a political party or a political
8 organization, civic organization, community organization,
9 fraternal organization or labor organization; and

10 D. "retaliatory action" means taking any
11 discriminatory or adverse employment action against an employee
12 in the terms and conditions of employment, including discharge
13 of employment, discipline, suspension, demotion, withholding
14 promotion, punitive scheduling or a reduction of hours.

15 SECTION 3. [NEW MATERIAL] RETALIATORY ACTION
16 PROHIBITED.--

17 A. Except as provided in Subsection D of this
18 section, an employer shall not take or threaten to take any
19 retaliatory action against an employee because of the
20 employee's refusal to:

21 (1) attend an employer-sponsored meeting with
22 the employer, or the employer's agent, representative or
23 designee, to communicate the employer's opinion concerning
24 political matters; or

25 (2) listen to speech or view communications,

1 including electronic communications, that communicate the
2 employer's opinion concerning political matters.

3 B. An employer that violates the provisions of the
4 Employee Free Speech Act shall be liable to the employee for
5 actual damages, reinstatement with the same seniority status
6 that the employee would have but for the violation, the total
7 sum of gross wages or compensation lost as a result of the
8 retaliatory action and punitive damages.

9 C. An employee bringing an action against an
10 employer pursuant to Subsection A or B of this section shall,
11 if the employee prevails, also be awarded reasonable attorney
12 fees and costs. An employee may bring an action in any court
13 of competent jurisdiction. The remedies provided for in the
14 Employee Free Speech Act are not exclusive and shall be in
15 addition to any other remedies provided for in any other law or
16 available under common law.

17 D. Nothing in the Employee Free Speech Act shall
18 prohibit:

19 (1) an employer, or the employer's agent,
20 representative or designee, from communicating to its employees
21 any information that the employer is required by law to
22 communicate;

23 (2) an employer, or the employer's agent,
24 representative or designee, from communicating to its employees
25 any information that is necessary for such employees to perform

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1 their job duties;

2 (3) a public or private post-secondary
3 educational institution, or an agent, representative or
4 designee of a public or private post-secondary educational
5 institution, from meeting with or participating in any
6 communications with its employees that are part of coursework,
7 symposia or an academic program at a public or private post-
8 secondary educational institution;

9 (4) a religious corporation, entity,
10 association, educational institution or society that is exempt
11 from the requirements of Title 7 of the federal Civil Rights
12 Act of 1964 pursuant to 42 U.S.C. Section 2000e-1(a) or is
13 exempt from U.S.C. Sections 4a-60a, 46a-81a and 46a-81o
14 pursuant to U.S.C. Section 46a-81p from communicating on
15 religious matters to employees who perform work connected with
16 the activities undertaken by such religious corporation,
17 entity, association, educational institution or society;

18 (5) a casual conversation between employees or
19 between an employee and an employer's agent, representative or
20 designee; provided that participation in the casual
21 conversation is not required; or

22 (6) a requirement limited to the employer's
23 managerial and supervisory employees.