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NEW WISCONSIN LAW PROHIBITS EMPLOYERS FROM DISCRIMINATING  
AGAINST EMPLOYEES WHO DECLINE TO ATTEND RELIGIOUS OR POLITICAL  
MEETINGS OR PARTICIPATE IN RELIGIOUS OR POLITICAL COMMUNICATIONS

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On May 12, 2010, Governor Doyle signed into law 2009 Senate Bill 585, which amends the Wisconsin Fair Employment Act (WFEA). The bill adds provisions to the WFEA that prohibit an employer from discriminating against an employee because the employee declines "to attend a meeting or to participate in any communication about religious matters or political matters."

The restriction on communications and meetings regarding political matters is particularly relevant to employers that are confronted with a union organizing campaign. The law defines "political matters" to include, among other things, "the decision to join or not to join, or to support or not to support, any lawful... constituent group," which includes a "labor organization." Consequently, the law effectively prohibits an employer from conducting mandatory meetings to communicate its views on unionization, if there would be any negative consequences for declining to attend. Although the law still allows an employer to communicate its views on unionization through voluntary meetings and communications, the restriction on mandatory meetings may limit an employer's ability to effectively communicate with its employees on union issues.

In addition to restrictions on meetings and communications regarding unions, the law also restricts an employer's ability to discriminate against employees who decline to participate in meetings or communications regarding religious or political matters. The law does, however, provide a limited exception to these rules for certain employers that are religious or political organizations. But, unless an exception clearly applies, employers should be careful to avoid discriminating against employees who decline to participate in meetings or communications regarding religious or political matters.

It is possible that the law's restrictions on communications regarding unionization could be subject to legal challenge. This is because the new restrictions potentially conflict with the National Labor Relations Act (NLRA), which provides private employers with the right to hold mandatory meetings during a union organizing campaign (subject to certain limitations). It is possible that if the WFEA's restrictions on communications regarding unionization are challenged in court, a court could find that the NLRA preempts those provisions. But until this issue is resolved, employers seeking to communicate their views regarding unionization must consider the possible impact of the WFEA's new restrictions and must not discriminate against any employee who declines to attend a meeting or participate in a communication regarding unionization.