

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

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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".

.225243.1AIC March 9, 2023 (10:28am)

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

C. "political matters" means matters relating to elections for political office, political parties, HJC→~~legislative proposals~~←HJC HJC→an attempt to influence legislation←HJC , rule or regulation change proposals and the decision to join or support a political party or a political organization, civic organization, community organization, fraternal organization or labor organization; and

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

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

.225243.1AIC March 9, 2023 (10:28am)

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

(1) attend an employer-sponsored meeting with the employer, or the employer's agent, representative or designee, to communicate HJC→~~the employer's opinion concerning~~←HJC political matters; or

(2) listen to speech or view communications, including electronic communications, that communicate HJC→~~the employer's opinion concerning~~←HJC political matters.

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

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

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

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

(2) an employer, or the employer's agent, representative or designee, from communicating to its employees any information that is necessary for such employees to perform their job duties;

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

(4) a religious corporation, entity, association, educational institution or society HJC→~~that is exempt from the requirements of Title 7 of the federal Civil Rights Act of 1964 pursuant to 42 U.S.C. Section 2000e-1(a) or is exempt from U.S.C. Sections 4a-60a, 46a-81a and 46a-81b pursuant to U.S.C. Section 46a-81p~~←HJC from communicating on religious matters to employees who perform work connected with the activities undertaken by such religious corporation,

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entity, association, educational institution or society;

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

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

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