

RIGHT-TO-WORK: What It Means For Wisconsin Employers

Wisconsin recently enacted “right-to-work” legislation (2015 Wisconsin Act 1). Despite the significant media attention that has been given to the legislation, right-to-work legislation is frequently misunderstood by employers, employees, and the public. This article will explain the new right-to-work law and how it impacts union security provisions, and will answer commonly asked questions regarding the right-to-work law.

General Background on Right-to-Work and Union Security. The National Labor Relations Act (NLRA) protects the right of employees to join or not to join a union. As a general rule, an employer or a union may not coerce an employee in the exercise of that right. That means, with one exception, an employee cannot be fired or laid off because the employee refused to join a union or pay dues.

The exception to the general rule is that an employer and a union may enter into an agreement which requires employees to pay “the periodic dues and the initiation fees uniformly required.” If such an agreement is reached, employees must be given thirty days to pay the union dues (in the construction industry, employees must only be given seven days to pay the dues). Although an employer and union may agree to require employees to pay union dues, they cannot require an employee to sign a membership application, a membership oath, or a dues deduction authorization. In addition, employees cannot be required to attend union meetings or to become or remain a full member or a member “in good standing” in the union. Such agreements can only require the employee to pay uniform dues and initiation fees. This is commonly referred to as “union security.”

Impact of State Law

Another provision of the NLRA, Section 14, provides that nothing in the NLRA shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment if such action is prohibited by state law. In other words, if a state passes a law providing that an employee does not have to be a “member” of a union or “pay dues” to a union, the employer and union in that state are prohibited from reaching an agreement requiring employees to pay union dues. These legislative provisions have become commonly known as the “right-to-work” laws, and form the basis for 2015 Wisconsin Act 1.

Simply put, Act 1 provides that no individual can be required to become or remain a member of a labor organization; be required to pay any dues or fees to any labor organization (or 3rd party); be prevented from voluntarily financially supporting a labor organization; or be forced to resign from membership in any labor organization. Wisconsin has become the 25th state in the country to pass “right-to-work” legislation.

Effective Date

Act 1 took effect on March 11, 2015. However, for employers who have existing collective bargaining agreements, the law takes effect upon the renewal, modification, or extension of any agreement after the effective date of the law. Therefore, if a collective bargaining agreement is reopened for the purpose of negotiating changes in any provision in the agreement, including wages, Act 1 becomes immediately effective with respect to the agreement and voids any union security provision contained in the agreement.

Impact on Existing Contracts. The terms of a current collective bargaining agreement remain in effect until the expiration of the contract, including any current union security provisions. Any new employees hired will be governed by the terms of the existing contract. As contracts near their expiration dates (or maybe sooner), unions may be interested in discussing matters concerning union security and dues check-off with the employer. Every employer’s circumstances may be different and employers should seek further guidance when agreement terms are being addressed. Unions will likely be hesitant to resolve any disputes under the existing contract by a memorandum or letter of understanding because such a change to an existing contract would trigger the application of the right-to-work law as to that contract before the stated term of its expiration.

What About Dues Check-off? Many labor agreements include a provision stating that the employer will deduct union dues from an employee’s paycheck and submit the dues to the union each month. This makes it easier for the union to collect dues. Such provisions are lawful as long as the employee authorizes the deduction. The new “right-to-work” law in Wisconsin still permits dues deduction “check-offs”. However, Act 1 provides that employees now have the right to terminate such authorizations upon 30 days’ written notice.

Communication with Employees. Act 1 does not require employers to provide any notice to employees or take any other action. Employees will need to provide dues check-off forms to employers or notify employers to stop any deductions. Historically, it has been assumed that unions would discuss membership, union security, and dues check-off provisions with employees. In practice, this has not always been the case. Employees have at times been left to figure these issues out on their own and some employers simply follow union guidance. It is likely that unions will take a much more active role in communicating with employees on these issues, and in particular soliciting union membership and dues check-off authorizations.

Penalties

Violating Act 1 constitutes as Class A misdemeanor which is punishable by 9 months in jail and/or a \$10,000 fine. Employers should be careful about continuing any sort of union security provision after the effective date of the law, or agreeing to any extension of an agreement with such a provision.

Words of Caution

Employers must be careful about addressing these issues with employees! Under the NLRA, an employer may not interfere in any way with an employee's full and free exercise of the employee's rights by directing, suggesting, encouraging, assisting, etc., an employee in any way in deciding to become or in becoming a union member, a financial core member, or whether or not to pay dues. An employer can only tell employees what their contractual obligation is, and answer employee questions. An employer cannot encourage the questions, and any answers to employee questions cannot go beyond what was asked by the employee.

Probably most important, if an employer talks to an employee on these issues, the employer must make it absolutely clear that the decision of whether the employee is or is not a union member, or pays dues, is entirely up to the employee, and the employee's decision on any of these issues will in no way affect the employee's employment now or in the future.

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