

Green Growth and Labor Harmony: Navigating Labor Peace Agreements in the Booming Cannabis Industry

Labor & Employment Law Update

By Beverly Alfon and Kevin Kleine on April 2, 2024

As legalization of cannabis has spread, profits have grown in the 25 states that allow for the retail sale of cannabis for recreational use, and labor unions have found great opportunity for getting a lift from the cannabis industry -- no pun intended. Eight of those 25 states have passed legislation that encourage or even require cannabis industry employers to enter into labor peace agreements (LPA), often referred to as "neutrality agreements," with labor unions, as a condition of obtaining or renewing a cultivation or dispensary license.

The United Food and Commercial Workers (UFCW) and the International Brotherhood of Teamsters unions have been most active in organizing cannabis workers. There is little doubt that these legislative initiatives are fueled by Big Labor's lobbying efforts.

Generally, a labor peace agreement is an agreement between the employer and a labor union, where they both waive certain rights under the National Labor Relations Act (NLRA) related to union organizing. In theory, LPAs are supposed to benefit both sides (management and labor) because they prohibit unions and their members from engaging in activities that interfere with an employer's business operations, i.e., picketing, work stoppages, boycotts, etc., and in turn, prohibit employers from interfering with a union's efforts to communicate with, and attempt to organize and represent their employees.

In reality, however, LPAs can create unintended consequences for cannabis industry employers, including the following:

- restricting the employer's right of free speech by requiring the employer to stay neutral and not speak against the union's efforts to organize the employer's workforce or even attempt to simply educate workers on the "good, bad and ugly" of union membership with a particular labor organization;
- allowing the union to come into the employer's place of business to encourage and directly solicit employees for union membership;

- requiring employers to share employee contact information with the union, giving the union another avenue to directly solicit employees; and
- requiring the employer to work with the union to encourage and solicit employees for union membership by requiring employees to attend on-the-clock “captive audience speeches” with union representatives.

In states like California and New Jersey where LPAs are required, unions are actively reporting violators and lobbying state legislators to enforce the LPA mandates.

In states like Illinois, which do not require LPAs in the cannabis industry, it remains that the licensing process for cultivation and dispensing incentivizes cannabis industry employers to enter into LPAs by awarding additional “points” for such LPAs. The resulting effect is that cannabis employers are left with the option of either entering into an LPA or being placed at the back of the line behind other licensing applicants in an already saturated market.

Whether required or incentivized by government bodies, cannabis industry employers should consult with experienced labor and employment counsel when contemplating or negotiating labor peace agreements.

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