

Right-to-Work: Who's Got Next?

Labor & Employment Law Update

By Beverly Alfon on March 18, 2015

Despite labor's historical stronghold in the Midwest – Indiana, Michigan, Iowa, Tennessee and now, Wisconsin – have become Right-to-Work (RTW) states. Is Illinois next? What does this mean for employers?

RTW In a Nutshell: Money and Power

In the 25 states that have **not** passed RTW laws, including Illinois and Missouri, a union security clause in a collective bargaining agreement requires all employees in the bargaining unit to either be a dues/fee-paying union member – or a non-member who pays “fair share” fees. The battle is over the non-member “fair share” fees which are used to supplement dues cash flow used for, among other things, local and international officer salaries, overhead costs and political lobbying.

In the 25 states that have passed RTW laws, a non-member at a unionized workplace is no longer required to pay any fees to the union – even if s/he is benefitting from union representation. Financially, RTW is a major blow to unions. From an organizing standpoint, it is equally damning. An individual is far less likely to become or remain a union member if s/he can benefit from representation without having to pay. After all, a union owes a legal duty of fair representation to all individuals in the bargaining unit – regardless of member status.

Proponents of RTW laws argue that they attract new business and promote expansion of existing businesses because of the likely decline of union strength and numbers. Opponents of RTW laws argue that employee wages, benefits and protections will deteriorate as a result of lower union representation.

The Pulse

Missouri: Even if the RTW bill before the Missouri legislature fails this year, GOP representatives are celebrating. Last month, in a 91-64 vote, the House approved a RTW bill. Despite the possibility of defeat in the Senate and expected veto of Gov. Jay Nixon, the RTW movement has clearly gained significant ground. It would only take 109 votes in the House to override a veto.

Illinois: Last month, Gov. Bruce Rauner issued an executive order allowing state employees to opt out of paying union dues. AFSCME, Illinois AFL-CIO and 25 other unions filed suit last week challenging the executive order. Meanwhile, Rauner has filed his own lawsuit asking the courts to confirm his position that fair share fees violate workers' First Amendment rights.

Wisconsin: Last week, a group of unions filed suit to challenge the recently enacted RTW law. Notably, union challenges to the constitutionality of RTW laws in Michigan and Indiana have failed.

Kentucky: Under home rule, in December 2014, Warren County, Ky., adopted a countywide RTW ordinance after it became clear the state legislature was not going to pass a RTW bill. Since last year, 11 counties have passed local RTW laws, including several along the Tennessee border.

What to Expect Right Now

Expect an uptick in union activity as unions ramp up "internal organizing" to prove that membership has its benefits. Frontline management will also likely receive increasing questions from employees about what all of this means. Now is the time to consider re-training your supervisors and managers about what they can say and do when these discussions arise. Finally, stay tuned as these legal and legislative battles continue to develop.

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