

The Status of Right-to-Work Laws in Select States

Labor & Employment Law Update

By Suzannah Wilson Overholt on June 25, 2019

Illinois recently enacted a Collective Bargaining Freedom Act which bars local governments from establishing “right-to-work” (“RTW”) laws or zones. This most recent piece of legislation serves as a timely reminder of the differing responses by states to the right-to-work movement.

Section 14(b) of the National Labor Relations Act (NLRA) gives states the discretion to pass laws limiting the ability of unions to collect dues from non-members, commonly referred to as RTW laws. Critics claim that such laws lower wages and benefits. Supporters argue that RTW laws and zones promote free choice by allowing workers to choose whether to financially support unions or not.

Over the past several years states have passed more regulations addressing this issue, resulting in varying regulations from state to state. In 2012, Indiana became the 23d state to enact a right-to-work law that stated a person could not require an individual to (1) become or remain a member of a union; (2) pay dues, fees or assessments or other charges to a union; or (3) pay a charity or third party an amount equal to or a pro rata amount of dues, fees, assessments or other charges for a union. Indiana Code 22-6-6-8. The law, codified at Indiana Code 22-6-6, *et seq.*, applies to public and private sector employees and creates a mechanism for filing complaints with the Indiana attorney general, department of labor, or prosecuting attorney of the county in which the individual making the complaint is employed. A knowing violation is a Class A misdemeanor, and an individual who allegedly sustains an injury due to a violation may file a civil action. Indiana’s law has been upheld by both the Indiana Supreme Court and the Seventh Circuit Court of Appeals.

In 2015, Wisconsin followed in Indiana’s footsteps, passing a law barring mandatory union membership and prohibiting unions or employers from requiring non-members to pay dues. Wisconsin’s law was also challenged and upheld in both state and federal court. (The aspect of the law changing the period in which an employee’s authorization for dues deductions is deemed irrevocable was found to be pre-empted by federal law.) The law, codified at Wisconsin Code 111.04, *et seq.*, makes a violation an unfair labor practice.

As we explained in our prior post, in 2018, the United States Supreme Court weighed in on the issue in *Janus v. AFSCME*. In that case, the Court overturned a prior Illinois law that required public sector, non-union employees to pay union dues.

Illinois' most recent law, signed in April, prohibits local right-to-work ordinances and imposes penalties for violations. The law was passed in response to an ordinance passed by the town of Lincolnshire in 2015. Whether local governments may adopt such ordinances is not clear. The Seventh Circuit Court of Appeals struck down the Village of Lincolnshire's RTW ordinance that prohibited any requirement that private sector workers join a union or compensate a union in order to keep their job in a unionized workforce or that employees be recommended, approved, referred or cleared for employment by or through a union. The Lincolnshire ordinance was headed to the Supreme Court for review, but the Court has now declined to hear the case.

Like Illinois, Missouri has taken action against right-to-work measures. In 2017, Missouri's legislature passed a bill that would have allowed private sector workers to opt out of paying union dues. However, a coalition of labor groups petitioned to put the measure to a vote, and it was defeated in a voter referendum the next year. We will continue to monitor this evolving area of the law and provide any necessary updates.

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