

EMPLOYMENT LAW UPDATE

March 2015

WISCONSIN'S NEW "RIGHT TO WORK" LAW

On March 9, 2015, Wisconsin became the twenty-fifth (25th) state to enact "right to work" legislation. Generally speaking, a "right to work" law guarantees that no person can be compelled, as a condition of employment, to join a union or pay dues to a union. Critics of right to work legislation believe that the law places the union between the proverbial rock and a hard place, due to existing obligations imposed upon unions under federal law. Under the National Labor Relations Act, once the majority of employees in a bargaining unit designate the union as its exclusive representative for purposes of collective bargaining, the union has a duty to represent all of the employees in the unit regardless of whether or not they are union members. Therefore, in a right to work state, the union may be forced to represent employees who are not members of the union and/or who do not pay union dues. Prior to enacting the "right to work" legislation, Wisconsin law allowed for a "union shop" workplace, which means that an employee may be required to join a union after a certain time period and may also be required to pay the union dues. Twenty-Five (25) states, including Midwestern states Illinois and Minnesota are still "union shop" states.

Wisconsin has joined fellow Midwestern states Indiana, Iowa, and Michigan in enacting "right to work" legislation. Under the new law, no person may be required, as a condition of employment, to: (1) refrain or resign from a union; (2) become a member of a union; or (3) pay dues or provide anything of value to a union. Any employer or union who engages in any of the prohibited practices is guilty of a Class A misdemeanor. Unlike the "right to work" legislation passed in Indiana and Michigan, there is no civil remedy under Wisconsin's "right to work" law. Wisconsin's "right to work" law applies to any collective bargaining agreement that is renewed, modified, extended, or created after March 9, 2015. Therefore, the law does not apply to any existing agreements unless those agreements have been modified or extended in any fashion.

Employers still have restrictions and legal obligations that are unchanged by the passage of this law. For instance, the new law does not allow an employer to unilaterally decide whether or not it will have a union in the workplace. That decision is still made by employees. Similarly, the new law does nothing to prevent unions from organizing in the workplace. If anything, unions may increase organizing efforts to counter the belief that they are weakened by such legislation. For example, according to the Department of Labor's Bureau of Labor Statistics, the percentage of union membership in Indiana workplaces increased from 9.1% to 10.7% since it passed right to work legislation in February 2012. Finally, if a union is elected to represent employees, the employer still has a duty to bargain with the union.

If you have any questions about how to address union organizing efforts or need any other assistance in dealing with a union, please contact:

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