



## How Michigan's New Right-To-Work Legislation Will Affect Municipalities

Michael R. Blum

*Foster Swift Municipal Law News*

January 2013

On December 11, 2012, Governor Snyder signed into law right-to-work legislation covering both private and public sector employment in Michigan, becoming the 24th state to enact such legislation. In summary, Michigan's right-to-work law prohibits an individual from being required, as a condition of obtaining or continuing employment, to do any of the following:

- Join or support a labor organization.
- Engage in, or refrain from, collective bargaining activities.
- Pay dues, fees, assessments or other charges or expenses of any kind or amount, or provide anything of value to a labor organization.
- Pay to any charitable organization or third party any amount in lieu of or equivalent to full or partial dues, fees, assessments or other charges or expenses required of members.

Any agreement, contract, understanding or practice between or involving an employer and a labor organization in violation of these prohibitions is unlawful and unenforceable. Michigan's right-to-work laws will apply to collective bargaining agreements that become effective or are extended or renewed after the scheduled effective date in late March 2013. So what does this mean for public sector employers in Michigan?

Public sector employees employed by the state, its political subdivisions, or public school systems are covered by the right-to-work legislation. However, police and firefighters are specifically exempt because of the unique nature of their jobs. In addition, there is disagreement among experts and political officials whether right-to-work legislation could constitutionally be applied to state employees, so the courts will ultimately need to answer that question.

Under current law, employees who object to full union membership status have the right to refrain from paying any portion of the dues spent on politics and other non-bargaining activities. However, once the

---

### **AUTHORS/ CONTRIBUTORS**

Michael R. Blum

---

### **PRACTICE AREAS**

Labor Relations

Municipal & Public Entity Law



right-to-work law takes effect, employees who are not members of or withdraw from membership in the union will no longer have an obligation to pay any portion of the amount of the assessed dues. Thus, if an employee is not a union member and has not signed a dues check-off authorization card, the employer should cease deducting dues from the employee's paycheck when the right-to-work law takes effect.

However, an employer's legal obligations may be different if an employee has signed a valid dues check-off authorization, as dues check-off provisions are common in right-to-work states and likely will be viewed by the Michigan Employment Relations Commission as a separate, lawful agreement between the employee and the union. Thus, even after the effective date of the right-to-work law, an employer who has agreed to a dues check-off provision in the collective bargaining agreement may have a contractual obligation to continue to remit monthly dues to the union for employees who have signed dues check-off authorizations. To the extent any such employee no longer wishes to pay dues, s/he should both exercise his/her rights under the right-to-work law and revoke his/her check-off authorization in accordance with the language on the authorization form and applicable law.

The exercise by an employee of his/her rights under the right-to-work law does not affect any other term or condition of employment. First, it is unlawful for an employer to discriminate against an employee based on his/her non-membership in the union. In addition, the union is legally obligated to represent all employees in the bargaining unit regardless of union membership. Any benefits provided by an employer pursuant to the collective bargaining agreement (e.g., wages, seniority, vacations, pensions, and health insurance) would not be affected by an employee's non-membership.

In other words, if a member resigns from union membership under the right-to-work law, s/he will still be entitled to all wages and benefits of the negotiated collective bargaining agreement. In fact, a union commits an unfair labor practice if it fails to fully represent both members and non-members in a bargaining unit, whether in contract negotiations, grievances or other representative activities. However, if an employee is not a member, the employee will not be able to participate in union elections or meetings, vote in collective bargaining ratification elections, or participate in other "internal" union activities.

Until Michigan's right-to-work legislation takes effect, non-member employees will still be subject to "union" dues or an "agency fee" in lieu of full dues assessed to union members. After the effective date of the legislation, however, Michigan employees will have the right to refrain from paying any portion of assessed dues or an agency fee, unless the employee chooses to do so.