

Michigan Becomes the 24th “Right-To-Work” State

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On March 27, 2013, the “right-to-work” bills, SB 116, now known as Public Act 348 of 2012 and HB 4003, now known as Public Act 349 of 2012, became effective. Also called Michigan’s “Freedom-To-Work” laws, the statutes make it unlawful to require private and public sector employees in unionized workplaces to pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative as a condition of employment.

Under Section 14(b) of the National Labor Relations Act (NLRA), a state may enact a law prohibiting union security clauses in union contracts. Section 14(b) provides, “Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.”

The laws apply to an “agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date,” March 27, 2013.

Public Act 349, pertaining to the public sector, amends Michigan’s Public Employment Relations Act (PERA) and specifically excludes public police and fire department employees who are eligible for Act 312 compulsory arbitration. Public Act 348 amends the federal Labor Mediation Act, and applies to most private sector employees in Michigan, with a few exceptions including employees covered under the Railway Labor Act.

Under Public Acts 348 and 349, employees retain the right to organize together to form, join, or assist labor organizations, to engage in lawful protected concerted activity for the purpose of collective negotiation and bargaining, and to bargain with their employers through representatives of their choice.

However, specifically, the laws prohibit any person by force, intimidation, or unlawful threats to compel or attempt to compel any employee to:

- Become or remain a member of a labor organization or otherwise affiliate with or financially support a labor organization or bargaining representative;
- Refrain from becoming a member of a labor organization or otherwise affiliate with or financially support a labor organization or bargaining representative; or
- Pay to any charitable organization or third party an amount in lieu of any portion of dues, fees or assessments, required of union members represented by a labor organization.

Moreover, any requirement that would violate the laws is a prohibited subject of bargaining. Public Acts 348 and 349 each appropriate \$1 million for fiscal year 2012-2013 to the Michigan Department of Licensing and Regulatory Affairs (LARA) to:

- Respond to public inquires regarding the Acts;
- Provide the Employment Relations Commission with staff and resources to implement the Acts;

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- Inform public employers, public employees, and labor organizations regarding their rights and responsibilities under the Acts; and
- Carry out any other purpose that is necessary to implement the Acts.

A person, employer, or labor organization that violates Public Act 348 or 349 is subject to a civil fine of not more than \$500. And a person who suffers an injury as a result of a violation or threatened violation of the act may bring a civil action for damages, injunctive relief, or both. In addition, an individual that prevails in such an action may recover reasonable attorney fees. Finally, the Michigan Court of Appeals has exclusive original jurisdiction over any action challenging the validity of the Acts.

Notwithstanding these new laws, a union is still legally required to represent employees that decline to join the union or pay union dues but who are part of the collective bargaining unit covered by the union contract. Among other things, this includes the requirement to represent such employees in collective bargaining and grievance and arbitration proceedings. However, in most union charters or constitutions, employees declining to join the union or pay union dues do not have the right to vote in internal union elections or for ratification of collective bargaining agreements.

Michigan joins Indiana, which enacted its own "right-to-work" statute on February 1, 2012, as the only Midwest states to have right to work laws. The other states with "right-to-work" laws include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming. Although the laws are similar in many material respects, there are some differences that should be considered by employers with a presence in one or more of these states.

Some have challenged the legality of the new laws, as well as the scope and meaning of some of the language therein. Accordingly, employers are encouraged to consult with their labor attorneys when considering whether and how the new laws will affect their workplaces. This is particularly important for those employers that will be entering into a new, extended, or renewed agreement, contract, understanding, or practice.