

Right-to-Work: What Does It Mean for Michigan Employers?

December 7, 2012

Yesterday, Governor Rick Snyder and Republican legislative leaders announced that they would fast-track Freedom to Work legislation to make Michigan the 24th state to enact a right to work statute. By late last night, both the State House of Representatives and State Senate approved three bills, known as the Workplace Fairness and Equity Act. The Senate passed two bills covering both private and public sector employees, whereas the bill passed by the House only covers private sector employees. Reports indicate that the House will take up the Senate version of the bills next Tuesday, December 11, 2012, and the final bill will be presented to Governor Snyder next Wednesday for his signature.

In anticipation of the final legislation, here are some answers to frequently asked questions about right to work legislation. We will provide a more detailed analysis of the Workplace Fairness and Equity Act, should it become law.

Q: What is Right to Work?

A: Under Right to Work legislation, an employee cannot be required to join or financially support a union where the employer has a unionized workforce.

Q: Under what authority can Michigan implement Right to Work legislation?

A: 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."

Q: What is a "union security clause"?

A: A "union security clause" is a provision in a collective bargaining agreement that requires an employee to either become a member of the union or pay at least union "agency fees" (union dues minus deductions for union political expenditures, lobbying, public relations and organizing efforts) in order to remain employed.

Q: Who does the proposed Right to Work legislation affect?

A: Most private and public sector unionized employees in Michigan, with some exceptions. The Senate legislation, the version expected to become law, covers most public and private sector employees, excepting public sector police and fire fighter unions and State Police, as well as other categories of employees such as employees subject to the Railway Labor Act

Q: Does a union still represent employees who refuse to join or pay union dues?

A: Yes. A union still has the legal obligation to represent employees who refuse to join the union or pay union dues in collective bargaining and grievance and arbitration proceedings. If an employee does not join a union, however, the employee will not have the right to vote in union elections or for ratification of collective bargaining agreements.

Q: Which states currently have Right to Work statutes?

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A: Twenty-three states currently have Right to Work legislation, including: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

Q: What impact would the proposed Right to Work legislation have on current collective bargaining agreements in Michigan that contain a union security clause?

A: The Senate approved bill covering private employees will apply to collective bargaining agreements that take effect or are extended or renewed after the effective date of the legislation. The Senate's bill covering public employees will be effective on March 16, 2013.

Miller Canfield's Employment and Labor Group will continue monitoring the legislative process and provide updates on the Workplace Fairness and Equity Act as they become available. If you have any questions or need more information, please feel free to contact your Miller Canfield Employment and Labor Group attorney.