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### *Michigan's New Right-To-Work Law And Non-Unionized Employers*

Michigan will become the 24th “right-to-work” (RTW) state effective March 27, 2013. Its new RTW law will make it unlawful to require an employee to become a union member or to pay fees or dues to a union as a condition of employment or continued employment.

This prohibition against compulsory union membership and financial support of a union will not take effect for any current collective bargaining agreement that expires after March 27, 2013 until after that expiration date. Similarly, it will not take effect for any collective bargaining agreement that is renewed or extended before March 27, 2013 until after the expiration of that renewed or extended agreement. Consequently, the RTW law’s prohibition against compulsory union membership and financial support of a union will be implemented over a period of several years.

The RTW law will have a direct, even if, due to the expiration dates of agreements, delayed, effect on unionized employers. But only approximately 17.5% of Michigan workers are unionized. For the employers of the 82.5% of Michigan workers who are non-unionized, the question is what effect, if any, will Michigan’s RTW law have on their ability to remain union-free in the future?

Michigan’s RTW law will have no direct effect on non-unionized employers for a basic reason: non-unionized employers have no collective bargaining agreements with unions.

The expectation is that the RTW law will generally weaken unions and thus lessen the risk of union organizing to non-unionized employers. If, in fact, unions weaken as a result of the RTW law, then a reduced risk of union organizing would be a positive, indirect effect of the RTW on non-unionized employers.

Paradoxically, however, the RTW law’s prohibition against compulsory union membership and financial support of a union may have a negative, indirect effect on non-unionized employers by permitting unions to improve their sales pitch to non-unionized employees. Employers have traditionally defended against union organizing campaigns, in part, by educating employees that if the employees selected a union, then the union would negotiate a union shop clause that would require all employees in the bargaining unit to join the union and to financially support the union in order to keep their jobs. Michigan’s RTW law, however, will eliminate the risk of compulsory union membership and financial support of a union. The RTW law will thus permit unions to entice non-unionized employees into signing union authorization cards and voting for a union with an offer of “no risk” unionization: an employee can support the union during the organizing campaign, but will not have to join the union or pay union dues if the employee is not satisfied with the collective bargaining agreement that the union negotiates with the employer. Stated alternatively, a union can promise to solve the employee’s reasons for dissatisfaction with the employer, but can also promise the employee that, under the RTW law, the employee will have the right to voluntarily decide whether to join the union and to pay union dues. Whether, in the new RTW environment, this “no risk” sales pitch will be an effective organizing tactic for unions is unknown at this time.

Another potential, negative, indirect effect of the RTW law on non-unionized employers concerns the possibility that unions may seek to organize “mini” or “micro” bargaining units. The current pro-union National Labor Relations Board

now authorizes representation elections in any bargaining unit sought by a union that the NLRB views as “appropriate,” even if the bargaining unit consists of only a single job classification or a small segment of the workforce. *E.g.*, *Specialty Healthcare*, 357 NLRB #83 (2011). In the new RTW environment, unions may seek to organize “mini” or “micro” bargaining units in which their support is concentrated with the expectation that employees in these small units will voluntarily become dues-paying union members, despite the RTW law. Successfully organizing and effectively representing a “mini” or “micro” bargaining unit may help a union demonstrate the value of union representation to other employees in the workforce whom the union can then seek to organize.

A further indirect effect of the RTW law on non-unionized employers is that employee handbook sections about unionization will need to be reviewed and potentially revised. Many handbooks contain language such as the following that addresses the issues of compulsory union membership and financial support of a union: “No Company employees have to join a union and pay union dues to keep their jobs at the Company.” The RTW law means that this kind of language is now inaccurate and obsolete, and a non-unionized Michigan employer should update its handbook section about unionization to eliminate this kind of language.

In addition, non-unionized employers, as a preventive measure, should review their programs for remaining union-free and their effectiveness. To remain union-free in the new RTW environment, an employer will need to continue to create a positive workplace in which employees view unionization as unnecessary. The employer will have to persuade employees that the value proposition for remaining union-free is preferable to the value proposition for unionizing in the new RTW environment with “no risk” of compulsory union membership and financial support of a union.

To summarize, Michigan’s new RTW law will have no direct effect on non-unionized employers. It may have the positive indirect effect of weakening unions and reducing the risk of union organizing to non-unionized employers. But the RTW law also may have potential, negative, indirect effects that may increase the risk of union organizing to non-unionized employers. Accordingly, even in the new RTW environment, non-unionized employers should treat how to maintain a positive workplace in order to minimize the risk of or to prevent unionization as a top organizational priority. That is because the RTW law will not change the basic facts of union organizing: an employer creates the conditions in which a union organizing campaign can start and succeed; a union election is a vote of confidence or no confidence in the employer and its management team; and an employer that loses a union election typically gets the union that it deserves.

If you have any questions about the impact of the RTW law, please contact the author of this Client Alert, your Butzel Long attorney, or any member of the Labor and Employment Law Group.

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