

December 12, 2012

Michigan Becomes the 24th Right-to-Work State

Michigan Governor Rick Snyder yesterday signed two bills enacted by the Michigan Legislature which makes it unlawful for employees to be required, as a condition of continued employment, to become union members or pay any fees or dues to a union. Senate Bill 116 applies right-to-work ("RTW") provisions to private sector workers. HB 4003 precludes compelled union membership or the payment of any fees or dues by public sector employees to a union as a condition of employment, with the exception of police or fire department employees subject to interest arbitration under Act 312, and State Troopers.

After the new statutes become effective on April 1, 2013, the RTW laws will prohibit future collective bargaining agreements (including agreements extended after April 1, 2013) from including union security obligations commonly known as "Union Shop," "Agency Shop," or "Fair Share." An employer or union which violates either statute may face civil fines, private lawsuits, the payment of court costs, and attorney fees. In cases where an employee is unlawfully terminated in violation of the statutes, an employee may recover "damages" (likely lost wages, benefits and other exemplary and compensatory damages) and seek injunctive relief. All employers of unionized employees in Michigan must be aware, however, that dues check-off authorizations executed by employees, and check-off provisions in future collective bargaining agreements, may be enforceable notwithstanding enactment of the RTW laws.

This Butzel Long Client Alert will attempt to provide answers to the following questions about the new RTW statutes:

Q. I am a private employer covered by the federal National Labor Relations Act ("NLRA"). Why does a Michigan state law concerning collective bargaining apply to my business?

A. Section 14(b) of the federal National Labor Relations Act ("NLRA") permits the legislature of each state to determine to what extent a collective bargaining agreement may provide for compelled payments or fees to a labor organization.

Q. When do the RTW statutes go into effect?

A. The RTW statutes will apply to any collective bargaining agreement that takes effect, or is extended or renewed, after April 1, 2013 (the effective date of the statute). If an employer has a current labor agreement extending beyond that date, or reaches a new collective bargaining agreement prior to April 1, 2013, the RTW obligations will not become operative until such contracts expire.

Q. What do the RTW statutes prohibit?

A. The statutes make it unlawful to require an individual as a condition of employment to:

1. Become or remain a member of a labor organization;
2. Pay dues, fees, assessments, changes or expenses of any kind, or provide anything of value to a labor organization;
3. Pay to a charity or third party any amount in lieu of dues, fees or assessments charged to union members.

Q. Do the RTW statutes prohibit dues check-off provisions in collective bargaining agreements?

A. No, there is an important legal distinction between union security and check-off clauses in a collective bargaining agreement. Dues check-off provisions are common and lawful in RTW states. If an employee voluntarily signs a dues check-off authorization agreeing to pay monthly dues by payroll deduction, the National Labor Relations Board (“NLRB”) views that “contract” as a separate agreement between the employee and the union. The Michigan Employment Relations Commission (“MERC”) is likely to adopt the same analysis in the public sector. Employees only have the right to cease dues check-off pursuant to the conditions stated in the written check-off authorization, or as otherwise required by law. Under Section 302 of the federal Labor Management Relations Act, which may not apply to public sector workers, a dues check-off authorization cannot be irrevocable for a period of more than one year or the expiration date of a collective bargaining agreement, whichever is sooner.

What does this mean? Even after the effective date of the RTW statutes, if an employer agrees to dues check-off provisions in a collective bargaining agreement and an employee has signed a check-off authorization, both the employee and the employer may have a contractual obligation to continue to remit monthly dues to the union even if the employee seeks to exercise his/her rights under the RTW statutes. This will be an individualized determination concerning the employee based upon the language of the check-off authorization and applicable law.

Q. I am a public sector employer whose employees have not signed individual check-off authorizations. Can I check-off dues over the employee’s objections after the effective date of the RTW statutes?

A. No. Any practice of dues deduction for your employees was likely the result of labor contract language, not individual authorizations. Public sector employers who continue dues check-off in future collective bargaining agreements should secure individual authorizations from employees before continuing to deduct union dues.

Q. What sanctions do employers and unions face if they violate the RTW statutes?

- A.
1. Civil fines of \$500 (arguably, per violation);
 2. Civil lawsuits brought by employees damaged by the violation seeking damages, injunctive relief, court costs and attorney’s fees.
-

Q. If an employee in a bargaining unit decides, under the RTW statutes, not to become a union member, to withdraw from current membership, or to cease paying any fees or payments to a union, does the collective bargaining agreement apply to the employee?

A. Yes. Employees who choose to refrain from union membership or service fees under the RTW statutes remain in the bargaining unit, and receive the benefit of all contractual provisions including the negotiated wage and benefit structure, the grievance procedure, and arbitration. The union has a duty of fair representation under applicable law to all unit employees, even non-members/non-fee-payers.

Q. If a bargaining unit employee decides not to be a union member or pay dues and fees to a union under the RTW statutes, can the union prohibit the employee from taking part in internal union votes, such as elections for union officers or ratification votes for collective bargaining agreements?

A. Yes. Such votes are regarded as internal union matters, which labor organizations have an independent right to control.

Q. Can a union charge non-members special fees for grievance and arbitration representation?

A. In the private sector, the answer is clearly, no. The answer will be less clear for Michigan employers in the public sector.

Q. To what extent may employers advise employees of their rights under the new RTW statutes?

A. Generally, an employer has the right to truthfully advise employees of their rights under the law, particularly when such information is requested by an employee. Employers may commit an unfair labor practice by soliciting employees to withdraw from union membership, or by providing them undue assistance in doing so (for example, by typing out the employee's withdrawal letter and mailing it for the employee). Accordingly, employers should consult experienced labor counsel whenever they receive inquiries from employees about enforcing their new rights under the RTW statutes.

Q. Can organized labor force a voter referendum to repeal the RTW statutes?

A. We do not believe so. Article II, Section 9 of the Michigan Constitution does not permit voter referendums on statutes making appropriations to State entities. The RTW statutes appropriate \$1,000,000 each for fiscal year 2012-2013 to the Michigan Department of Licensing and Regulatory Affairs to implement the RTW statutes, and respond to public inquiries concerning the legislation. Repeal of the RTW statutes is likely to be accomplished only through legislative action, although this may well be the subject of future litigation.

If you have any questions about the impact of the RTW statutes, please do not hesitate to contact your Butzel Long attorney, or any member of any Labor and Employment Law Group.

Craig Schwartz

248 258 2507

schwartz@butzel.com

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

Attorney Advertising Notice - The contents of this e-mail may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

For previous e-news or to learn more about our law firm and its services, please visit our website at: www.butzel.com

Butzel Long Offices:

Ann Arbor
Bloomfield Hills
Detroit
Lansing
New York
Washington D.C.

Member:

Lex Mundi

Alliance Offices:

Beijing
Shanghai
Mexico City
Monterrey
