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Unions Strike Back Through Amendments to Illinois Public Labor Acts

Illinois enacted new legislation in response to *Janus v. American Federation of State, County & Municipal Employees, Council 31,* 942 F.3d 352 (7th Cir. 2019), which found public sector "fair share" contract provisions to be unconstitutional. Effective December 20, 2019, P.A. 101-620 imposes several statutory obligations on public and educational employers, particularly with respect to dues deductions, information sharing, and a labor organization's access to its members.

The Act also contains several declarations by the Illinois General Assembly, including that employees who paid fair-share fees prior to the *Janus* decision (June 27, 2018) had no legitimate expectation of receiving that money back under any then-available cause of action. The legislature also presumes that employees who signed written membership or authorization agreements prior to June 27, 2018, were aware of and accepted those terms.

While fair share provisions remain impermissible, the Act creates significant new rights for unions and employer obligations under the Illinois Public Labor Relations Act (IPLRA), 5 ILCS 315/1, *et seq.,* and the Illinois Educational Labor Relations Act (IELRA), 115 ILCS 5/1, *et seq.,* as set forth below. In many respects, violations of the new requirements under the Act now expressly constitute an unfair labor practice. It is anticipated that there will be constitutional challenges to certain parts of this new law in the future.

Dues Deductions and Authorizations

Employers must make deductions for dues or other union payments in accordance with the terms of an employee's written authorization. Notably:

1. A union and employee can agree to "reasonable limits" on the right of the employee to revoke their authorization to deduct union payments. This can include a period of irrevocability that exceeds one year. (NOTE: An authorization that is irrevocable for one year, which may be automatically renewed for successive annual periods and contains at least an annual 10-day period when employees can revoke, is deemed "reasonable" under the Act.)

2. An employer *must* begin deductions no later than 30 days after receipt of an employee's written authorization and must send the deductions to the union no later than 30 days (for public employers) or 10 days (for educational employers) after making said deduction.

3. An employee requesting to authorize, revoke, cancel, or change a payroll deduction authorization *must* be directed to the union, not the employer.

4. If an employee alleges under state law that the union has unlawfully collected dues, the employer *must* continue to deduct the dues from the employee's pay and transmit dues to an escrow account, held by either the applicable labor board or the union. 5 ILCS 315/6; 115 ILCS 5/11.1.

Information Sharing Requirements

Employers now have an affirmative obligation to provide the union with the following information about bargaining unit employees:

1. employee's job title;
2. worksite location;
3. work telephone numbers;
4. home address (only under the IELRA);
5. identification number, if applicable;
6. any home and personal cellular telephone numbers on file;
7. date of hire;
8. work e-mail address; and
9. any personal e-mail address on file with the employer. 5 ILCS 315/6; 115 ILCS 5/3.

The information must be provided to the union in an Excel file or other editable digital file format. For IPLRA employers, unless otherwise agreed, this information must be provided at least once per month and upon request. 5 ILCS 315/6. For IELRA employers, this information must be provided within 10 calendar days from the beginning of every school term and every 30 days thereafter during the term. 115 ILCS 5/3. The same information must also be provided within 10 calendar days after hiring a *new* employee whose position is covered by a bargaining unit.

Information Sharing Prohibitions

The Act expressly *prohibits* employers from providing certain employee information to anyone other than the union, unless for purposes of conducting public operations or business or if required by the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq.* This employee information includes:

1. home address (including zip code);
2. date of birth;
3. home and personal telephone number;
4. personal e-mail;
5. union membership-, union identity-, and dues-related information; and
6. e-mails between a union and its members. 5 ILCS 315/6; 115 ILCS 5/3.

FOIA was amended accordingly, and the new exemptions can be found under FOIA §§7.5(*oo*) (for information prohibited from disclosure under the IELRA) and 7.5(pp) (for information prohibited from disclosure under the IPLRA). Notably, the majority of the information was already (and still is) exempt under FOIA as "private information" pursuant to §7(1)(b).

Unless the request is from the union, if an employer receives a request for this information, it must provide the applicable union (or

employee, if no union) with a copy of the request or written summary of any oral request as soon as practicable after receipt. An employer must also provide a copy of its response within five business days of sending the response.

Union Access to Employees on Employer Premises

Employers must provide unions "reasonable access" to employees on the employer's premises, provided such does not impede the employer's normal operations, in the following circumstances:

1. to meet with employees during the workday to investigate and discuss grievances and workplace complaints;

2. to conduct worksite meetings during lunch and other non-work breaks, and before and after the workday, to discuss contract negotiations, administration of the collective-bargaining agreement or other matters related to the union's duties;

3. to meet with newly hired employees for up to one hour within the first two weeks of employment; and

4. the use facility mailboxes and bulletin boards to communicate with bargaining unit employees, including for internal matters involving governance or business of the union. 5 ILCS 315/6; 115 ILCS 5/3.

Significantly, all the above are to be permitted "without charge to pay or leave time." The Act also provides that nothing limits the parties from agreeing to provide the union with greater access to bargaining unit employees, including through the employer's e-mail system.

E-Mail Policies

Among other things, this new law makes it an unfair labor practice for an employer to "intentionally" permit outside third parties to use its e-mail or other communication systems to engage in conduct that would interfere with or restrain, coerce, deter, or discourage employees from being members of a union, authorizing representation by a union, or authorizing dues or fees deductions to a union. (It is also an unfair labor practice for an employer to interfere with, restrain, coerce, deter, or discourage employees from being members of a union, authorizing representation by a union, or authorizing dues or fee deductions.) The Act also provides that an employer's defense to a charge is its good-faith implementation of a policy to block the use of its email or other communication systems for such purposes. This is one of the areas of the new law that may result in a constitutional challenge if a sender is blocked. The Act goes on to provide that employers must establish e-mail policies in an effort to prohibit use of its e-mail system to outside sources.

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