

THE IMPACT OF KENTUCKY'S NEW RIGHT-TO-WORK LAW ON EMPLOYERS

Effective January 7, 2017, Kentucky became the 27th “Right-To-Work” state.¹ The Kentucky Right-to-Work Act (the “Act”), prohibits employers and unions from requiring employees to join a union, pay union dues, or pay a union “agency fee” as a condition of employment or entering into an agreement that contains such a provision (i.e., “union shop” or “agency shop” provisions). In other words, an employee’s decision to join, or make payments to, a union must be completely voluntary.

Importantly, the Act does not apply to collective bargaining agreements entered into before the effective date of the law. Therefore, union and agency shop provisions contained in such collective bargaining agreements remain valid and enforceable for the life of the agreement. However, any new agreement or extension or renewal of an existing agreement entered into after the effective date is subject to the terms of the Act. Accordingly, employers should be prepared to negotiate changes in any union security provisions contained in future collective bargaining agreements so as to bring them into compliance with the Act.

The Act’s penalties apply equally to employers and unions, and a violation and/or threatened violation carries significant penalties. Any union, employer, or other person who directly or indirectly violates the Act could be subjected to civil penalties and criminal prosecution for a Class A misdemeanor. The Act also provides aggrieved individuals, such as someone denied employment for refusing to become or remain a union member, with a civil right of action for injunctive and monetary relief.

Once a new collective bargaining agreement is entered into, union employees will be free to resign from the union at any time without affecting their job status. Generally speaking, employers are prohibited from taking actions intended to influence an employee’s choice whether to become or remain a union member or undermine the union’s status as the employees’ collective bargaining representative. Notably, any collective bargaining agreement will continue to apply to all bargaining unit employees regardless of unit membership or the payment of union dues. Put another way, all bargaining unit employees – regardless of whether they join the union and/or pay union dues – will continue to receive the same benefits, and be subject to, the terms provided for in the contract (i.e. wages, benefits, seniority systems, grievance representation, etc). Employees who resign from the union, however, will no longer be able to vote for union officials or union contracts, or attend union meetings.

Employers should be aware that the Right to Work Act does not alter the validity of voluntarily signed dues check-off authorization forms, which can be irrevocable for a period of up to one year or through the termination date of the applicable collective bargaining agreement, whichever is shorter.² A dues check-off authorization can be and usually is also made

¹ On February 6, 2017, Missouri became the 28th state to enact a right to work law. Moreover, that same month, Congressman Joe Wilson (R-SC) and Congressman Steve King (R-IA) introduced a federal right to work law (H.R. 785).

² The Paycheck Protection Act, which was enacted contemporaneously, is consistent with current federal law governing dues check-off provisions and would likely be pre-empted by federal law to the extent that it might impose any restrictions beyond federal law.

automatically renewable if the employee does not revoke it during a defined yearly revocation period. While an employee may resign union membership at any time, an employee must also properly revoke his/her dues check-off authorization in accordance with its terms in order to avoid having dues withheld from his/her check. An employer must continue to honor a valid, unrevoked authorization. Thus, it is entirely possible that the employee could continue paying union dues if he/she withdraws from the union but does not revoke an existing authorization.

Employers may respond to questions from employees about discontinuing payment of union dues by explaining factually the proper procedures for revoking their authorizations, so long as the employer does not attempt to improperly influence the employee's decision or undermine the union's status as collective bargaining representative. In some circumstances, it may also be proper for an employer to provide strictly factual information to its employees as a group regarding the proper procedures for exercising their right to withdraw from the union and/or revoke a dues check-off authorization, so long as, in doing so, the employer does not attempt to improperly influence the employees' choice or undermine the union's status as their collective bargaining agent.

If you have any questions or concerns about how the Kentucky Right-to-Work Act will impact your organization, members of SKO's Labor, Employment, and Employee Benefits Group are available to assist and guide you through any potential issues your organization may encounter.