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Right Here, Right Now: Indiana Passes Right-to-Work Legislation

By Todd Nierman and Brian Mosby

Indiana joins Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming as states where forced unionism is prohibited. Several other states are considering right-to-work legislation.

Summary of the Law

Indiana's Right-to-Work statute (House Bill 1001) took effect February 1, 2012. The statute prohibits a union and an employer from entering into an express or implied contract that requires an individual (not just an employee) to: (1) become a member of a labor organization; (2) pay dues or charges to a labor organization; or (3) pay to a charity or third party an amount that is equivalent to or a portion of dues that would be paid to a labor organization. Any written or oral contract that is "entered into, modified, renewed or extended" after March 14, 2012, is subject to these restrictions. The law does not prohibit so called "dues check off provisions" whereby employers agree contractually to deduct union dues from the paychecks of employees who voluntarily authorize such a deduction. Collective bargaining agreements between an employer and a union that are in effect prior to March 14, 2012, will remain valid for the remainder of their terms, including with respect to existing provisions that require the deduction of dues.

The statute provides aggrieved individuals a private right of action for actual or threatened violations. Successful plaintiffs can be awarded compensatory damages or liquidated damages up to \$1,000, whichever is greater, plus attorney's fees and costs. Additionally, injunctive relief is available. Private sector employers and labor unions alike are subject to the statute's prohibitions and penalties. The State of Indiana and its political subdivisions are not covered by the statute.

Practical Effect

Following last year's legislation limiting the collective bargaining rights of Indiana teachers, Indiana's Right-to-Work statute is another blow to Indiana unions. The law is not, however, an invitation for employers to ignore federal law or valid collective bargaining agreements. Indiana's Right-to-Work statute coexists with the National Labor Relations Act. It does not negate an employer's obligation to continue to recognize and bargain with an existing labor union. Nor is it

a license for employers to encourage employees to decertify existing unions. Most state laws, except for right-to-work laws and a few others, are preempted by the NLRA, and employers who ignore that fact may find themselves defending unfair labor practice charges before the National Labor Relations Board.

Importantly, employers with valid collective bargaining agreements entered into before March 14, 2012, must continue to honor the contractual mandates, including a dues mandate, until those contracts expire.

Given the publicity this law has received, employers will undoubtedly receive questions from employees. We encourage employers to be prepared to communicate lawfully to employees the timing of the new law, particularly where a collective bargaining agreement is in place, and the new choice employees will have. This communication needs to be crafted carefully, keeping in mind the fundamental message that once the contract expires, employees will not be required to authorize the deduction of union dues in order to continue employment. Employers should be mindful that the NLRB could take the position that the content of any communications regarding the effects of the new law must be negotiated with the union.

Employees who have been working under a traditional union security clause likely signed a form directing their employers to withhold union dues. Until that direction is voided, arguably it remains effective even under the new law. In addition, many employees are union members and, as such, are required to pay dues unless they resign their union membership. Again, this is where communication will be paramount. Employers will need to determine, with advice of legal counsel, whether under the new law employees who no longer want to pay dues must proactively revoke existing authorizations or whether all authorizations are deemed void without any employee action required. Employers will also need to be prepared to negotiate revisions to dues check off language in upcoming contract negotiations.

Indiana's Right-to-Work statute is certain to impact Indiana employers, union and non-union. How much and in what ways remains to be seen.

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