Michigan "Right to Work" Law Soon to Be Repealed: What Should Employers Do?

Insights
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Michigan lawmakers have just approved bills that will repeal Michigan's 2012 right-to-work law for private sector workers, ushering in a new day for labor relations in the state. When the two bills are reconciled and final language approved, Governor Whitmer has indicated she will sign the final bill into law. "Right to work" laws actually prohibit employers from requiring that their employees pay union dues as a condition of employment. In light of this news, what should private sector unionized employers do?

[Ed. Note: The Governor signed this bill on March 24. It is expected to take effect next year, in March 2024, 90 days after the planned close of the state's legislative session.]

What Is "Right-To-Work"?

Before summarizing the situation, here's a brief summary of "right-to-work" laws for those unfamiliar with the concept or in need of a refresher. Right-to-work laws generally make it unlawful to require a person to be or become a union member, or to pay union dues, as a condition of initial or continued employment. The name comes from the idea that people should be allowed to work without having to financially support organizations or causes that they do not morally support.

Proponents of such measures believe that they create jobs by attracting new employers to a business-friendly environment. Union advocates, on the other hand, argue that union-represented employees should share the cost of union representation.

Right-to-work laws do not prevent people from joining or supporting unions, they just prohibit requiring them to do so. In other words, they do not block those who want to join or support a union, but simply allow employees to make an individual choice about membership and financial support.

Michigan Bucks the Trend

Recent years have seen a resurgence of right-to-work laws across the country, especially in the Midwest. Indiana started the flurry of right-to-work adoption in 2012 by becoming the 23rd right-to-work state in the country, the first state to enact such a law in 12 years. That set off a chain reaction for the next few years, as Michigan (2012), Wisconsin (2015), West Virginia (2016), Kentucky (2017), and Missouri (2017) also enacted right-to-work laws.

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But with Michigan's Senate approving a bill on March 14 and the House having done so last week, the state will now reverse the trend and jettison its right-to-work law. It is currently contained within Michigan's Employment Relations Commission Act – but not for long.

The statutory language approved by both sets of Michigan lawmakers state that neither ERCA or any local governmental law or policy can "prohibit or limit an agreement that requires all bargaining unit employees, as a condition of continued employment, to pay to the labor organization membership dues or service fees."

Once the two versions are harmonized and a final bill is presented to the Governor for signature, the right-to-work law will be officially repealed 90 days later.

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What Should Michigan Private Employers Do?

As a result, private sector unionized employers should review the union security clauses within their current collective bargaining agreements with their labor law counsel. You will need to determine if the repeal will have any effect on your operations.

Further, if you are in the process of or about to negotiate new CBAs, you should be prepared for the union to demand a union security clause requiring union membership as a term of continued employment. Note however, that "closed shop" clauses (i.e., *immediate* union membership is a requirement to be hired) are illegal under section 8(a)(3) of the National Labor Relations Act. For this reason, private unionized employers should work with labor counsel to ensure any such union security clause does not run afoul of the NLRA.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Detroit office or in our Labor Relations Practice Group.

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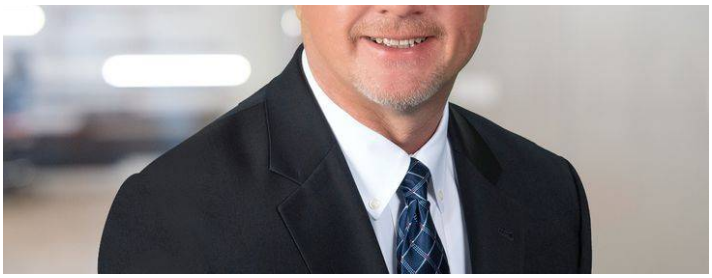

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