

Insights, News & Events

FLORIDA INCREASES PUBLIC-SECTOR UNION TRANSPARENCY AND ACCOUNTABILITY WITH NEW LEGISLATION: 5 KEY TAKEAWAYS FOR EMPLOYERS

Insights
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The Florida Legislature passed SB 256 on April 26, which aims to promote greater public-sector union transparency and accountability and to provide paycheck protection for public-sector bargaining unit employees. SB 256, which amends the Florida Public Employees Relations Act (FPERA), is expected to be signed into law by Governor DeSantis, who has expressed support for the legislation. **[Editor's Note: Governor DeSantis signed SB 256 into law on May 9.]** You should note, however, that we can expect labor unions to mount legal challenges. **[Editor's Note: A federal court judge rejected the main labor challenge to this law on June 26, clearing it to take effect as scheduled on July 1. We are monitoring another lawsuit pending in Leon County that also attempts to block the law.]** If signed into law, here's what will change under the new legislation and the five key takeaways for Florida public employers.

Background

Unions seeking certification to represent public-sector employees in Florida are required to register with the Florida Public Employee Relations Commission (PERC) and renew their registrations annually. Once a union is certified to represent a bargaining unit by PERC through an election or employer voluntary recognition, the union is entitled to have membership dues and assessments deducted by the public employer from bargaining unit employees' paychecks when membership authorization forms (aka dues deduction cards) are signed by the employees and presented to the public employer.

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After being certified by PERC, the union remains the representative for the bargaining unit employees no matter how few join the union as dues-paying members, unless and until the union is decertified by the employees or the union disclaims interest in the bargaining unit.

In 2018, the Florida Legislature attempted to remedy this, in part, by requiring unions representing public school instructional employees to petition PERC for recertification if their number of dues-paying union members is less than 50% of the total number of bargaining unit employees. This proved ineffective, as the law did not clearly authorize PERC or the courts to enforce it.

What Will Change?

The FPERA amendments apply to all unions except those representing public safety bargaining units (law enforcement officers, corrections officers, or firefighters). Mass transit bargaining units may also be exempted if the employer petitions PERC and the amendments would jeopardize Federal Transit Administration (FTA) funding.

If SB 256 is signed into law, the following changes will take effect on July 1:

- Unions will be prohibited from having their membership dues and assessments deducted by the public employer from bargaining unit employees' paychecks. Employees remain able to pay dues and assessments directly to the unions, provided they submit membership authorization forms to the unions.
- Membership authorization forms will need to include specific enumerated financial and other information. Additionally, the forms must include in 14-point type a statement that is spelled out in the amendment notifying employees that Florida is a right-to-work state and that membership or non-membership is not required as a condition of employment.
- Bargaining unit employees will be allowed to revoke their union membership any time of the year and without identifying a reason.

The following additional changes will take effect on October 1:

- Unions will be required to disclose to PERC as part of their annual registration renewals the total number of bargaining unit employees and the total number of dues-paying union members. If the number of dues-paying union members is less than 60% of the total number of bargaining unit employees, then the union has to petition PERC for recertification and prevail in an election to continue to represent the bargaining unit employees. This repeals the 2018 amendment to Section 1012.2315, Fla. Stat. for public school instructional employees. Public employers and bargaining unit employees can now challenge the unions' renewal of their registrations.
- Unions will need to provide their members an annual audited financial report.

5 Key Takeaways for Florida Public Employers

1. For non-public safety bargaining units, employers should stop deducting union dues from employees on July 1. If you have existing contracts with dues deduction articles, make sure you review the contracts to determine what obligations, if any, arise under the contract when there has been a change in the law.
2. For mass transit bargaining units, you should be on the lookout for notification from the Department of Labor that the application of these changes will impact FTA funding. Upon receipt of such notification, you should immediately petition PERC for a waiver of the changes.
3. If you suspect that non-public safety bargaining units do not have 60% membership, request a copy of the union's registration filing from PERC. Consider filing a challenge to the unions' registration renewal where appropriate.
4. For employers with non-public safety bargaining units, expect more union elections and that you will be required to split the cost of the elections with the unions. Also, expect a possible uptick of solicitation and distribution activity in the workplace as unions attempt to meet the 60% membership threshold.
5. For public safety bargaining units, do not change your current practices based on this new legislation.

Conclusion

If you have additional questions about the potential changes on the horizon, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or any member of our [Labor Relations Practice Group](#). We'll continue to monitor the status of this legislation and any legal challenges and will provide updates as warranted, so make sure you are signed up for [Fisher Phillips' Insight System](#) to receive the latest news directly in your inbox.