Insights, News & Events

INDIANA ENACTS RIGHT-TO-WORK LEGISLATION: WILL THE REST OF THE RUST BELT FOLLOW?

Insights
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On February 1, 2012, Indiana Governor Mitch Daniels signed right-to-work legislation into law. Right-to-work laws prohibit anyone from forcing a person to join or support a union as a condition of employment. That is to say, they protect an individual's fundamentally American "right to work" without being forced to join, or pay any of their earnings, to any group. Right-to-work laws do not in any way prevent people from joining or paying dues to a union if they freely choose to do so.

Indiana is the first state in the so called "Rust Belt," a geographic area historically driven by large-scale manufacturing, to enact such legislation. Right-to-work measures are currently pending in Michigan, Missouri, and New Hampshire. Other Northeastern and Midwestern states have attempted to pass similar legislation, but have not been successful to date. Twenty-three states have enacted right-to-work laws, with Indiana being the first to do so in 12 years.

Unions claim that right-to-work laws depress area wages and benefits, although there is little support for this assertion. But employees in right-to work-states are less attractive to unions as targets for organizing—because they cannot be forced to join or pay money to a union. Consequently, right-to-work advocates argue that enacting such legislation makes a state more attractive to new businesses, which in turn, produces jobs. Should Indiana now see a marked increase in its ability to attract new businesses, neighboring states will be hard pressed to explain to their citizens why they have not enacted similar legislation.

SPECIFIC FEATURES OF INDIANA'S RIGHT-TO-WORK LAW:

Q: WHAT IS INDIANA'S RIGHT-TO-WORK LAW?

Ā: The new law prohibits anyone from requiring an individual, as a condition of initial or continued employment, to:

> **a. become or remain a member of a labor organization;**
> **b. pay dues, fees, assessments or other charges to a labor organization; or**
> **c. pay a charity or third party a dues equivalent.**

Any agreement between an employer and a labor organization that violates these prohibitions is unlawful and void.

Q: TO WHAT AGREEMENTS DOES INDIANA'S RIGHT-TO-WORK LAW APPLY?

A: The Indiana law applies only to labor agreements (either written or oral, express or implied) entered into, modified, renewed or extended after March 14, 2012. *The law does not affect agreements in effect on March 14, 2012*.

Q: WHAT ARE THE PENALTIES FOR VIOLATING INDIANA'S RIGHT-TO-WORK LAW?

A: A person who knowingly or intentionally violates these prohibitions commits a Class A misdemeanor. Employees whose employer violates, or threatens to violate, this law may file a complaint with the attorney general or prosecuting attorney of the county in which they are employed. The attorney general or prosecuting attorney must investigate and, where a violation is found, enforce this law.

Any person who is injured by a violation, or threatened violation, of this law may bring a civil action in state court. The court may award actual and consequential damages, a civil penalty of up to $1,000, equitable relief, attorneys' fees, litigation costs and such other relief the court deems appropriate.

Q: ARE ALL EMPLOYERS SUBJECT TO INDIANA'S RIGHT-TO-WORK LEGISLATION?

A: The new law does not apply to employees of federal, state or local governments, or employees covered by the Railway Labor Act.

WHAT INDIANA'S RIGHT-TO-WORK LEGISLATION MEANS FOR INDIANA EMPLOYERS

Right-to-work laws generally are good news for employers. Unions are hesitant to spend limited resources seeking to represent employees in states which prohibit

forced dues. Unions perceive right-to-work laws as encouraging what they call “free riders,” or employees who unions accuse of taking advantage of the supposed benefits of union representation without paying union dues.

Indiana employers should remain alert to signs of union activity and continue to regularly educate employees about the benefits of remaining union free. In an attempt to make life easier for unions, the NLRB recently endorsed micro-unit organizing. Under the new rules, unions may organize and represent very small groups of employees. Because it is easier to convince a few people to sign authorization cards and vote for a union than it is to convince hundreds, unions tend to be more successful winning elections among small groups of employees.

For the same reason, unions can be pretty confident that those small groups will join the union and pay dues. Ironically, the combination of the new right-to-work law and the NRLB’s new rules may make Indiana employers particularly likely to be targeted for micro-unit organizing. If Indiana employers are not careful, they could find themselves confronting dozens of different small unit organizing campaigns or managing dozens of small unit labor contracts, despite Indiana’s right-to-work law.

Fisher Phillips attorneys are ready to assist you if you have any questions about Indiana’s right-to-work law or would otherwise like to discuss how to best defend against an organizing campaign.

This Legal Alert provides an overview of a specific new state law. It is not intended to, and should not be construed as, legal advice on any particular fact situation.