

LABOR STUNNER: MICHIGAN JOINS RANKS OF RIGHT-TO-WORK STATES

Insights

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The Michigan legislature voted on December 11, 2012 to pass controversial right-to-work legislation affecting private and public sector employees throughout the historically union-friendly state. The legislation, which was signed almost immediately into law by Governor Rick Snyder, is a striking blow to Michigan's organized labor movement, particularly in the automotive industry. The new laws are expected to take effect as soon as April 2013.

What Does Right To Work Mean?

Under the National Labor Relations Act, employers and unions may agree to require all employees who are covered by a collective bargaining agreement to join the union or pay the equivalent in union dues after thirty days from initial employment, whether they want to or not. But under Section 14(b) of the NLRA, individual states may outlaw such agreements, and many have done so. In these "right-to-work" states, union membership is voluntary.

Of course, even in states that have passed right-to-work legislation, unions can still represent employees and engage in collective bargaining, despite heated suggestions to the contrary by supporters of organized labor. Prior to Michigan, 23 states had enacted various forms of right-to-work legislation. Earlier this year, Indiana (another traditionally pro-labor Midwestern state) passed a right-to-work law.

Why It's Important

Proponents of right-to-work laws argue that forced unionism is inherently unfair. In America, they contend, employees should not have to contribute to any cause that they do not

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Reyburn W. Lominack, III

Partner

803.255.0000

personally agree with. Add to that the fact that many, perhaps most, union members in Michigan have never had the opportunity to vote on whether they even wanted union representation. This is particularly true in the automotive industry where forced union membership has been the rule for more years than most of the members have lived. These employees never had the opportunity to vote on union membership or the payment of dues, so forced unionism can certainly be said to violate their freedom of association rights.

Right-to-work supporters also advance an equally persuasive economic argument. Analyzing various statistics, the National Institute for Labor Relations Research has drawn a strong correlation between right-to-work laws and ensuing economic growth. According to a recent study, private sector (non-farm) employment grew by 3.7% from 1999 to 2009 in right-to-work states, while shrinking 2.8% in the remaining states. During that 10-year period, real personal income rose 28.3% in right-to-work states, while dropping 14.7% elsewhere.

These statistics plainly indicate that forced unionism states (i.e., states without right-to-work laws in place) are losing the economic development game. Consequently, it is not surprising that many of those states have been seriously considering right-to-work legislation to boost their troubled economies. But what is genuinely surprising is that states like Michigan, the birthplace of one of the largest unions in the country, the United Auto Workers, have joined in the movement.

Michigan, like many other heavily-unionized states, has experienced abysmal economic growth in the last decade, as automakers and their suppliers have struggled to keep up with competitors who operate in more employer-friendly states and overseas. While the auto industry bailout of 2009 – one of the most polarizing topics of the most recent presidential election – has served as a band-aid to limit the economic bleeding of many Michigan companies, unemployment rates in the state continue at well above the national average.

The Impact

The immediate impact of Michigan's new right-to-work laws is minimized somewhat by an important exception included in the legislation. As with the recent Indiana right-to-work law, the Michigan law applies only to agreements that take

effect or are extended or renewed after the effective date legislation in April of 2013. For future contracts, however, the impact will be substantial: public- and private-sector employees in the state will no longer have to pay union dues, or their equivalent, to hold certain jobs, and it will be unlawful for a collective bargaining agreement to include union-shop or mandatory dues check-off arrangements.

How organized labor – and particularly the United Auto Workers – will respond to this legislation remains to be seen, but a court challenge appears to already be in the works. In the meantime, the National Labor Relations Board continues to move full speed ahead with its decidedly pro-union agenda, routinely striking down employer policies that it construes as curtailing the rights of employees to engage in pro-union activities.

With right-to-work legislation taking effect in one of the most historically labor-friendly states, and the inability of federal pro-labor bureaucrats to accomplish legislative and regulatory changes, it is clear that unions will rely more heavily on the NLRB's decision-making power to assist them in organizing efforts.

For more information contact your regular Fisher Phillips attorney.

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