

Kentucky Becomes 27th Right to Work State; Legislature Repeals Prevailing Wage Laws

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On January 7, 2017, **Governor Matt Bevin** signed **House Bill 1 (HB 1)** into law and made Kentucky the 27th “right-to-work” state in the nation. Most notably, the new law, known as the **Kentucky Right to Work Act (RTW)**, prohibits requiring an employee to join a union and pay union dues as a condition of his or her employment. The law included an emergency provision and became effective January 9, 2017.

The newly-amended version of KRS 336.130 now states that no person employed by a public or private employer shall be required as a condition of employment or continuation of employment to:

- 1) Become or remain a member of a labor organization;
- 2) Pay any dues, fees, assessments or other similar charges of any kind or amount to a labor organization; or
- 3) Pay to any charity or other third party, in lieu of these payments, any amount equivalent to or pro rata portion of dues, fees, assessments or other charges required of a labor organization.

The secretary of labor will be charged with investigating any complaints of violations or threatened violations and may initiate enforcement of a criminal penalty. Any labor organization, employer or other person who directly or indirectly violates the statute shall be guilty of a Class A misdemeanor.

However, the new law does not cover all employers and employees in the Commonwealth. The Act states that the new laws shall not apply to:

- 1) Employers and employees covered by the Federal Railway Labor Act;
- 2) Federal employers and employees;
- 3) Employers and employees on exclusive federal enclaves;

4) Employers and employees where it would conflict or be preempted by federal law; or

5) Any agreement between employers and employees or labor organization entered into before the effective date of the Act.

It should be noted that while the Act does not apply to agreements before the effective date, it will apply to any new contract or an extension or renewal of any existing agreement entered into on or after the effective date.

Additionally, under a new section of KRS Chapter 336, a public employer or a labor organization representing public employees shall not deduct membership dues of an employee organization, association or union from the wages, earnings or compensation of a public employee without the express written consent of the employee. The consent must be given prior to any deductions, and consent may be revoked by the employee at any time with written notice to the employer.

In addition to passing RTW, the Kentucky Legislature also passed Senate Bill 6, known as the Paycheck Protection Act, which became effective on January 9, 2017. The Act, which only applies to agreements between employers and employees or labor organizations entered into on or after the effective date, prohibits withholding earnings from an employee for the purpose of paying union dues or other fees without the written or electronic authorization of the employee. Signing or refraining from signing the authorization shall not be made a condition of obtaining or maintaining employment. Furthermore, the Act prevents an employee from being enrolled as a member of a labor organization unless the employee affirmatively requests membership in writing.

Impact on Existing Collective Bargaining Agreements (CBAs)

It is important for an employer already a signatory to a collective bargaining agreement to note that the National Labor Relations Act (NLRA) Section 14(b) does not authorize RTW states to change the enforceability of signed dues authorization cards, as those are enforceable contracts between the union and an employee, so long as the card or form has a revocation window after one year.

Thus, while an employee in a RTW state has the right to cutoff payments to the union, and when they do so, they will not be subjected to union rules or discipline, resigning union membership does not revoke a previously signed dues authorization card, even if the employee felt coerced when they first signed the dues authorization card. Employees wishing to revoke dues authorization checkoff should review the card they originally signed to determine their window period for revocation.

Section 302 of the Labor Management Relations Act (LMRA) also states that no authorization for dues checkoff may be irrevocable for longer than one year. Accordingly, even though Kentucky's RTW law becomes applicable to new contracts entered into after January 9, 2017, it may take as much as a year before employees can lawfully stop paying dues and/or agency fees and then, if the checkoff authorization has an automatic renewal clause, only if they revoke their authorization card during any specified revocation window period.

An employer may lawfully advise employees of the manner and timing in which to rescind their union checkoff authorization or resign full status membership, if the following conditions are met: 1) the information is solicited by the employee; 2) the employer is addressing a contractual provision; and 3) the employer makes no threat or promise to the employees regarding their choice to resign or rescind the dues checkoff provision.

Repeal of Kentucky's Prevailing Wage Laws

The Kentucky Legislature also repealed prevailing wage laws with the passing of House Bill 3, which also was signed by Governor Bevin and became effective on January 9, 2017. As defined by the Kentucky Labor Cabinet, a prevailing wage is “the hourly base wage and fringe rate paid to workers, laborers and mechanics of each classification when working on public works projects that are estimated to cost more than \$250,000.”

The law states that the repeal of the prevailing wage requirements applies to any public works project for which bids have not been awarded as of the effective date. In the case of bids that have been requested but not awarded prior to the effective date, the public authority may elect to request a resubmission of bids to conform to the provisions of the amended statute.

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