



Changes to Missouri's Public Sector Labor Law Impacts Employers, Unions, and Employees

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A new law, making it easier for Missouri public employees to opt out of both union membership and paycheck deductions funding political advocacy work, goes into effect on August 28, 2018. The new law, a victory for public sector employers, effectively enacts "right-to-work" protections for public sector employers, despite the fact that voters rejected right-to-work generally for the state of Missouri (see [Missouri Right to Work is Overwhelmingly Rejected by Voters](#), Spencer Fane HR Solutions August 15, 2018). Therefore, public sector employers should review the new law and determine what steps need to be taken in order to comply with it upon the forthcoming effective date. (See [Full Text of Law Here](#)).

VOLUNTARY DUES DEDUCTIONS, ANNUAL DEDUCTION AUTHORIZATION RENEWALS, NEW ELECTION RULES, AND VOLUNTARY RECOGNITION OF UNIONS PROHIBITED

Missouri's Public Sector Labor Law (the "PSLL") continues to permit public employees to bargain collectively. However, the payment of "dues, agency shop fees, or any other fees" to a union by public sector employees must be voluntary and previously authorized in writing or electronically. Furthermore, all union dues authorizations must be renewed annually. The PSLL also makes employer-friendly changes to current State Board of Mediation rules on elections and prohibits voluntary recognition of unions by public sector employers.

PUBLIC SAFETY EMPLOYEES EXCLUDED FROM COVERAGE

Public safety employees (such as police, fire fighters, registered nurses and physicians) are excluded from the legislation, as are employees of the Missouri Department of Corrections. The new carve-out of public safety labor organizations and members will prevent State Board of Mediation certification elections for public sector firefighters, ambulance personnel, dispatchers, registered nurses, physicians, police officers, sheriffs and their deputies. Given the Missouri constitutional right to organize and bargain collectively, the excluded groups will likely need separate guidance on compliance challenges relating to elections and bargaining.

RIGHT TO MAKE "NECESSARY ADJUSTMENTS" TO THE ECONOMIC TERMS OF CBA IF (1) BUDGET SHORTFALL, (2) FAILURE TO BARGAIN RESOLUTION, AND (3) GOOD CAUSE SHOWN

The PSLL also includes new provisions which protect public sector employers in the event of a "budget shortfall." Specifically, public sector employers now have the right to unilaterally implement "necessary adjustments" to the economic terms of a collective bargaining agreement with a public sector union if (1) there is a budget shortfall, (2) the employer provides notice to the union of its intent to make the necessary adjustments and tries to bargain a voluntary resolution over the course of 30 days and (3) the employer shows good cause for the necessary adjustment.

OTHER CHANGES WORTH NOTING

The new PSLL is a comprehensive re-write of Missouri's public sector labor law which dramatically affects covered employers, unions, and employees. Although not exhaustive, the list below provides further details regarding the changes:

- Supervisory Employees: Supervisory public employees are prohibited from inclusion within the same bargaining unit as the public employees they supervise.
- Mandatory Recertification: All labor organizations that have previously been

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certified must be re-certified during the twelve-month period beginning on August 28, 2018, provided that any labor organization that has a labor agreement that expires after August 28, 2020 may be re-certified at any time prior to, but in no event later than, August 28, 2020. All subsequent re-certification elections shall take place every three years. Many unions have held exclusive representational rights for years, meaning the current employee members have never had the ability to vote on whether to be represented or not. The new re-certification features will fix this imbalance.

- Collective Bargaining Requirements: The exclusive bargaining representative, within 8 weeks of certification, is required to meet and bargain with the public body regarding wages, benefits, and other terms and conditions of employment. Labor organization representatives and employees are prohibited from being paid by a public body for time spent on union business, except in the case of using accrued paid time off and except for time spent handling grievances.
- Labor Agreement Requirements: Every labor agreement reached between a public body and a labor organization is required to: (1) reserve to management the right to hire, promote, assign, direct, transfer, schedule, discipline, and discharge public employees; (2) expressly spell-out certain prohibited labor organization conduct, such as striking, and specify that immediate termination is the penalty for an employee who violates the provision; (3) extend the duty of fair representation by a labor organization to public employees in any bargaining unit; (4) expressly prohibit labor organization representatives and public employees from accepting paid time from the public employer, other than that individual's accrued but unused paid time off, for time spent participating in labor relations activities; (5) inform public employees of their right to support or oppose labor organization activities; and (6) provide for the modification of economic terms by the public body, upon good cause, in the event of a budget shortfall.
- Civil Actions: If any labor organization or representative of a labor organization or any public body or representative of a public body has violated or is about to violate the provisions of the PSSL relative to certification, re-certification, decertification, and collective bargaining, then the Department of Labor and Industrial Relations ("DOLIR"), a public body, or any citizen of Missouri may bring an action in the county where the violation occurred, or will occur, for relief as may be appropriate. Such persons may seek damages, including reasonable attorney's fees.
- Unsuccessful Negotiations: If bargaining is unsuccessful, interest arbitration, binding interest arbitration and binding mediation are not available to resolve the dispute. Nothing in the legislation grants public employees the right to strike as a means of resolving issues with negotiations.

- Ratification : Tentative agreements reached during bargaining are not binding on either side. The labor organization must demonstrate that the agreement has been ratified by a majority of its members first, then the public employer can adopt the agreement as presented, or adopt in part and reject in part.
- Financial Disclosure Requirements for Labor Organizations and Employees : Each labor organization is required to adopt a constitution and bylaws and file them with the DOLIR, along with information relating to the membership and financial transactions of the organization. A financial report disclosing the financial condition and operations of the preceding year must be filed annually, and the reports must be made available to all of the members of the labor organization. Members of the labor organization are allowed to examine any books, records, and accounts necessary to verify the reports made by the organization.

KEY TAKEAWAYS

- The PSSSL implements sweeping changes that will impact public sector employers, unions, and employees.
- Public sector employers should review the PSSSL and consider seeking the advice of legal counsel to determine what steps may need to be taken to come into compliance with the law once it becomes effective.

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