



## The Resurgence of Right-to-Work Laws

Not to be confused with at-will employment, right-to-work laws are spreading again, so make sure you understand them.

July 21, 2017

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Twenty-eight states now have [right-to-work laws](#), which give U.S. workers a choice about whether to join a union and pay membership dues. In states without such legislation, employers and unions can agree to require workers in a bargaining unit to either join the union or pay certain fees within a specified time after their start date.

So what does this mean for HR professionals? The bottom line is that they need to monitor developments in the places where their organizations do business, employment attorneys say.

If you work in a state where a right-to-work law has recently passed, make sure you understand the parameters of the legislation and how it impacts current collective bargaining agreements (CBAs), says Jonathan Spitz, an attorney with Jackson Lewis in Atlanta.

If your business is in a place where these laws are being debated, keep your finger on the pulse of the workforce. It's a good idea to train managers on how to handle tension in the workplace when employees have conflicting views on the issue, says James Plunkett, an attorney with Ogletree Deakins in Washington, D.C.

### Renewed Interest

Prior to the mid-1940s, employers and unions could form agreements that required organizations to hire only union members. [The Labor Management Relations Act of 1947](#)—commonly known as the Taft-Hartley Act—outlawed these so-called closed shops. But federal law still permits union security agreements that force employees to either become members or pay certain fees.

For example, a CBA could state that employees must join the union or pay fees within 30 days of being hired. But states can ban such arrangements.

Seventeen states invoked the Taft-Hartley Act to put an end to these arrangements in the 1940s and 1950s by adopting right-to-work laws, and a few more followed suit over the next 50 years, mostly in the South and the West.

Then, starting in 2012, there appeared to be renewed interest in the topic. Since then, Midwestern states such as Michigan, Indiana and Wisconsin have approved right-to-work measures. West Virginia became a right-to-work state in 2016, and Kentucky and Missouri did the same in 2017.

The New Hampshire Legislature has debated such laws for years. Most recently, a bill passed the state Senate in 2017 but wasn't approved by the House of Representatives. A federal bill was also introduced in 2017—though the issue may not be a priority this year and similar measures have failed in the past.

Still, the national right-to-work discussion will continue, and there's a real possibility that the issue will gain traction, Spitz says.

## **Pros and Cons**

Federal labor law requires unions to represent all workers in a bargaining unit, even if they don't become members. That means that any benefits the union negotiates, such as lower health care premiums, extra vacation days or higher wages, will apply to everyone.

Labor organization leaders would likely say they face an economic disadvantage when dues payments are voluntary, says Steven Bernstein, an attorney with Fisher Phillips in Tampa, Fla.

Union representatives also argue that right-to-work laws promote "free riding," meaning that employees who don't pay their "fair share" of membership dues still reap the benefits of collective bargaining.

In states without right-to-work laws, employees can still opt to pay only agency fees, which are limited to the cost of collective bargaining activities and don't include expenses related to union lobbying and other political activities.

But some workers may have philosophical objections to union representation. "Employees argue that they shouldn't be forced to pay any fees to an organization they might abhor so that they can keep their jobs," Plunkett says.

That's why some employees support right-to-work laws: These laws give workers the freedom to choose whether they want union representation.

There are also economic arguments in favor of right-to-work laws, since company owners may consider state labor laws when deciding where they want to operate, Bernstein explains.

"Economics drive everything that happens," he adds. "When you poll Americans, on average they agree on the basic notion of having the freedom to choose in all aspects of their lives."

## **What's Next?**

Michigan workers—particularly in the auto industry—have a long history of supporting unions. "Ten years ago, people would have thought you were crazy if you said there would be right-to-work laws in places like Michigan," Spitz says.

But while collective power might appeal to older workers and those concerned about seniority, it may not resonate with Millennials, who tend to be independent-minded and want the freedom to make their own decisions, according to Bernstein.

Unions might not see their existing membership numbers plummeting, but they'll likely have to work harder to attract new hires, Spitz says.

## **HR's Role**

Start by finding out your obligations under any CBAs and state laws, Plunkett recommends. State legislation varies, but often it doesn't require any changes until current labor contracts expire.

If dues payments are automatically deducted from employees' paychecks through a dues checkoff authorization, be prepared to answer questions about how and when employees can revoke that authorization.

And, of course, keep monitoring developments at the state level. "Right to work is a state issue at present and probably will remain that way for the foreseeable future," Bernstein says. "I don't see this issue slowing down anytime soon."

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