

December 9, 2016

Re: Frequently Asked Questions About Right to Work

1. Does the Union Security Clause still apply in the event Right to Work (RTW) passes?

No. RTW laws prohibit union security agreements, or any other agreement that governs the extent to which a union can require employees' membership, payment of union dues, or fees as a condition of employment, either before or after hiring.

2. Can I operate my company non-union and if so, can I pay lower wages?

Right to Work has no effect or impact on whether a company can operate as union or non-union, thus that is one of the misleading aspects about RTW laws.

If currently represented by a union, the employees would have to file a decertification petition and vote. Under the National Labor Relations Act (NLRA), an employee, group of employees or others acting on behalf of the employee(s) can file a petition alleging that a substantial number of employees assert that their current union no longer represents them (decertification petition). Once the petition is filed, a majority of the eligible employees may then vote to rescind the authority of the union. The vote is conducted by a secret ballot and is known as a decertification election.

3. Under RTW, can employees opt not to pay dues, and if they choose not to pay dues, are they still covered by the collective bargaining agreement?

Yes. If a union is elected by a majority of employees in a properly defined unit, the union is obligated to fairly represent all of the employees in that unit, even those who choose not to pay dues.

4. What does a union have to provide to a non-dues paying member?

Employees who have and exercise a choice not to pay any dues will nonetheless receive all the protections and benefits of the labor agreement that is negotiated, administered and enforced by the union such as wages, fringe benefits, etc.

5. Under RTW law, are pension, welfare and training contributions still paid for every hour worked whether employee is union or not?

Yes. Even if the employee is a non-dues paying member, he or she is still eligible to receive benefits set forth in the collective bargaining agreement such as wages, seniority, vacations, pensions and health insurance. If the union offers some “members only” benefits only then might the employee be excluded from those benefits.

6. What changes should be made in the collective bargaining agreement if RTW becomes law?

Missouri’s currently has five RTW bills proposed. House Bills 42 and 131, as introduced, carves out an exception for collective bargaining agreements and any other type of agreement between employers and labor organizations entered into prior to the effective date of the proposed law. Those agreements entered into prior to the effective date of the RTW law (assuming it passes and the exception remains intact) would remain unchanged by the law, unless and until they are renewed or extended. Any new agreement reached *after* the proposed effective date, or any renewal or extension of an existing agreement, would then be subject to the proposed RTW law, if passed. Therefore, if RTW passes in Missouri, any new, renewed or extended agreement would need to be revised to exclude union security clauses, including agency shop union security arrangements.

Conversely, House Bill 91 and Senate Bill 19, as introduced, do not include the exception for agreements entered into prior to the proposed law’s effective date.

Additionally, Senate Bill 21 addresses RTW in the context of public employees.

7. What impact could RTW have on the viability/stability of union trust funds and how could that impact contractors?

It is unclear at this early stage what the impact would be on trust funds if RTW were to pass, however it is possible that RTW and its prohibition on union security clauses could cause a decline in dues-paying union members, thus impacting the viability and stability of trust funds. It is possible that a union may not seek to renegotiate a contract at the end of a term, simply because of the financial strain presented by a decrease in dues-paying members. If the union doesn't renegotiate its contract and simply walks away at the end of a contract, then withdrawal liability is triggered and the contractor would be facing a large payment to the fund as it "withdraws" from the plan. Similarly, if employees vote to decertify a union as their bargaining representative, withdrawal liability is triggered in that instance as well.

8. In addition to RTW legislation, are there any indications that the legislature is taking steps that will impact prevailing wage?

Yes. There are currently eight bills pre-filed that pertain to prevailing wage law in Missouri. House Bill 44 prohibits prevailing wage on projects eligible for housing tax credits when in a Governor-declared disaster area.

House Bill 78 allows any public body to opt out of the prevailing wage law for the construction of public works when the contract awarded is less than \$750,000. House Bill 132 is identical.

House Bill 79 proposes to amend the prevailing wage law by adding a section that permits school districts to opt out of prevailing wage with respect to construction and maintenance of educational facilities. House Bill 133 is identical.

House Bill 104 repeals Missouri's prevailing wage law. Senate Bill 20 is identical.

Senate Bill 29 modifies the definition of "construction" for purposes of Prevailing Wage laws. It also modifies the definition of "maintenance" for purposes of Prevailing Wage laws to include repairs to restore existing facilities to a previous state or condition or to improve the utility or enhance the appearance of existing facilities when the size, type or extent of the existing facilities is not changed or increased. Maintenance work would also include any improvement that does not exceed the original cost of the facility.