

In Brief

January 2020

NEW YEAR, NEW CONTROVERSIAL EMPLOYER OBLIGATIONS UNDER THE PUBLIC LABOR ACTS

Illinois has enacted new legislation in response to the U.S. Supreme Court's *Janus* decision which found public sector "fair share" contract provisions to be unconstitutional. [Public Act 101-0620](#) imposes several statutory obligations on public and educational employers, particularly with respect to dues deductions, information sharing and a labor organization's access to its members. While fair share provisions remain impermissible, the Act creates significant new rights for unions.

This publication provides an overview of the amendments to the IPLRA and the IELRA. Given the significance of these changes, the firm plans to hold a Breakfast Briefing on this topic in February. More information on this briefing will be forthcoming.

Dues Deductions and Authorizations

Employers must make deductions for dues or other union payments in accordance with the terms of an employee's written authorization. Notably:

- A union and employee can agree to "reasonable limits" on the right of the employee to revoke their authorization to deduct union payments, including a period of irrevocability that exceeds one (1) year.
- An employer must begin deductions no later than 30 days after receipt of an employee's authorization and must send the deductions to the union no later than 30 days (for public employers) or 10 days (for educational employers) after making said deduction.
- An employee requesting to authorize, revoke, cancel or change a payroll deduction authorization must be directed to the union, not the employer.

- If an employee alleges under state law that the union has unlawfully collected dues, the employer must continue to deduct the dues from the employee's pay and transmit dues to an escrow account, held by either the applicable labor board or the union.

Information Sharing Requirements

Employers now have an affirmative obligation to provide the union with the following information about bargaining unit employees:

- Employee's job title;
- Worksite location;
- Work telephone numbers;
- Home address (only under the IELRA);
- Identification number, if applicable;
- Any home and personal cellular telephone numbers on file;
- Date of hire;
- Work email address; and
- Any personal email address on file with the employer.

The information must be provided to the union in an Excel file or other editable digital file format. For IPLRA employers, unless otherwise agreed, this information must be provided at least once per month and upon request. For IELRA employers, this information must be provided within 10 calendar days from the beginning of every school term and every 30 days thereafter during the term. The same information must also be provided within 10 calendar days after hiring a new bargaining unit employee.

The Act expressly prohibits employers from providing certain employee information to anyone other than the union or for purposes of conducting public

operations or business, including: home address, date of birth, home and personal telephone number, personal email, union-membership and dues-related information and emails between a union and its members.

Union Access to Employees and Employer Premises

Employers must provide unions reasonable access to employees on the employer's premises, provided such does not impede the employer's normal operations, in the following circumstances:

- To meet with employees during the workday to investigate and discuss grievances and workplace complaints;
- To conduct worksite meetings during lunch and other non-work breaks, and before and after the workday, to discuss contract negotiations, administration of the CBA or other matters related to the union's duties; and
- To meet with newly hired employees for up to one (1) hour within the first two (2) weeks of employment.

Significantly, all the above are to be permitted "without charge to pay or leave time".

Email Policies

Among other things, this new law makes it an unfair labor practice for an employer to permit outside third parties to use its email or other communication systems to engage in conduct that would interfere with, restrain, coerce, deter or discourage employees from being members of a union, authorizing representation by a union or authorizing dues or fees deductions to a union. The Act also provides that an employer's defense to a charge is its good faith implementation of a policy to block the use of its email or other communication systems for such purposes. We believe that this is one of the areas of the new law that may result in a constitutional challenge if a sender is blocked – we recommend that employers consult with legal counsel before revising policies or blocking senders. The Act goes on to

provide that employers must establish email policies in an effort to prohibit use of its email system to outside sources.

In addition to the above changes, FOIA was amended to include three new statutory exemptions, including information prohibited from being disclosed under the IELRA (FOIA Section 7.5(oo)), the IPLRA (FOIA Section (pp)), and the Illinois Pension Code (FOIA Section (qq)).¹

We anticipate that there will be legal challenges to certain parts of this new law in the future. Should you have any questions about compliance with this new law prior to our upcoming Breakfast Briefing, please contact any Robbins Schwartz attorney.

¹ The Act also amends the State Comptroller Act, the Fire Protection Act, and the Illinois Pension Code.