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# Update on Right-to-Work Legislation and Union Requests to Extend Agency Shop Via Letter of Agreement

By John L. Gierak, Andrew C. Richner / Dec 10, 2012

The Legislature is quickly moving legislation establishing Michigan as a Right-to-Work state for both private and public employees, with a final vote likely in the House this week to send bills on to the Governor for his signature.

Under current law, an employee who is in a bargaining unit represented by a union must either join the union and pay union dues, or elect not to join the union and instead pay an "agency fee" that is typically an amount substantially the same as the cost of union dues. Under current law, collective bargaining agreements can require employers to terminate the employment of those employees who refuse to pay dues or agency fees. The Right-to-Work legislation would allow an employee to choose whether to join the union and pay union dues or agency fees, without the penalty of discharge. The legislation will likely result in unions losing dues revenue since employees will be able to freely elect to join or not join the union.

We have been advised that the current plan is to send two bills to the Governor, one addressing private employees and the other public employees.

The Senate passed SB 116, for private employees, on a 22-16 vote, with four Republicans joining the Democrats in opposition. The Senate did not give the bill immediate effect, even though the Senate Republicans have the 2/3 majority (26) required to give a bill immediate effect. The Republicans do not, however, have the 2/3 majority in the House, so it would have been pointless to try to get the 2/3 majority vote in the Senate. As a consequence, as provided in the Michigan Constitution, the bills would take effect 90 days after the legislature adjourns *sine die* later this month (currently scheduled for Dec. 27). Thus, the law would take effect on March 28, 2013.

A duplicate bill for private employees, HB 4054, was passed by the House in a 58-52 vote (six Republicans joining all Democrats voting "No"), but a motion was made to reconsider the vote, and the bill remains in possession of the House. In light of the Michigan Constitution's requirement that a bill must be in possession of each house for five days before it can be passed, this bill is unlikely to be the bill sent to the Governor. HB 4054 could be used as an alternative to SB 116 should procedural issues arise with that bill.

The Senate also passed HB 4003 (22-4), which is expected to be the vehicle bill for public employees (except for police and fire employees, who are excluded from the law). Since this is a second House bill (thus already meeting the 5-day requirement), the House could have taken up the legislation yesterday and sent it along to the Governor by suspending House rules, but we have been advised that House Republicans wanted to avail opponents as few legal issues as possible, and opted to wait until this week.

The legislation applies only to agreements, contracts, understandings, or practices which are entered into, extended or renewed after the effective date of the acts, which again is likely March 28, 2013. This means that employees under current labor contracts, or new contracts executed before March 28, 2013, will not be impacted by the legislation until the contracts expire.

There is no need to rush into any decision in the face of this legislation, as the earliest the Right-to-Work legislation would go into effect is March 2013, as previously noted. This gives ample time to learn about the ramifications of the law and make a decision on any issue. If, however, you anticipate any union audit issues in the near future, and would like to try to plan for the implementation of the anticipated new legislation, please contact us directly.

If you have any questions on the matter, please contact your Clark Hill attorney.