

UNIONS: Unlocking the Mystery of Right-to-Work Laws

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Practices: Employment, Labor & Benefits

When companies select a site to locate in the United States, one of the considerations is union avoidance. Many companies want to locate in an area in which union organizing will be less than in other areas. Therefore, one of the first questions companies ask is whether a state has a right-to-work law. What are these laws and do they really decrease the chance of union organizing? These questions and answers may help dispel some myths:

Q: Which states have a right-to-work law and which states do not have these laws?

A: 24 states have right-to-work laws. The most recent states to enact right-to-work laws are Michigan and Indiana. Most right-to-work states are located in the western and southern parts of the United States, from Idaho south to Arizona, North Dakota to Texas and Arkansas east through the south to Virginia.

Q: What is a right-to-work law?

A: A right-to-work law is a law passed by a state rather than the federal government. It is a law that prohibits companies and unions from having a provision in a union contract requiring union membership as a condition of employment with the company. Such a provision is unlawful under state law.

Q: How does the right-to-work law change federal law?

A: Federal law states that if a union achieves bargaining rights on behalf a company's employees, the union represents all of the employees of a company in an identifiable group or "unit." The union contract that is then executed applies to all employees in the unit. Under federal law, the union and the company have the option of negotiating a provision called a "union security clause." Such a provision benefits the union because all employees in the unit must become members of the union and maintain their membership in the union. For example, employees must pay dues and follow the union's internal rules. If an employee does not pay dues and does not follow the union's internal rules, the union may lawfully ask the company to terminate the employee. The company must comply with the union's demand to terminate the employee. If the company does not terminate the employee, the union may sue the company under the National Labor Relations Act. The National Labor Relations Board will order the company to terminate the employee.

In a state with a "right-to-work" law, the law prohibits such a provision. Under this law, unions and companies may negotiate a contract, if the union wins support from the employees. However, the union and company may not negotiate a provision requiring union membership of employees in the union. Further unions may not demand that companies terminate employees who do not pay dues or who do not follow the union's rules.

Q: Does the right-to-work law weaken unions?

A: Yes. One of the most important union rules is to comply with the union's order to strike. When the union orders the employees to strike, the employees must strike. If the employees do not strike, they violate a union rule. Unions can issue a monetary fine against the employee for violating union rules including refusal to strike. In addition, the union can ask the company to terminate the employee. In the case of a company located in a right-to-work state and with a union contract that does not have a union security provision, the union cannot force the employees to strike. The union is weaker because a number of employees will not strike. When workers do not withhold their labor during a strike, the strike ceases to be an economic weapon against the company. The union's bargaining position will be weaker.

Q: How often do unions use the economic weapon of a strike?

A: Not as often as years ago. Unions have found other ways to apply economic pressure on companies to strengthen its bargaining position.

Q: What effect does a right-to-work law have on union organizing?

A: Historically, unions have not been as active in right-to-work states. This is because unions grew in the steel, auto and heavy manufacturing industries located in the northern states, called the "Rust Belt." In addition, agricultural workers – located mostly in the southern and western states – are excluded by federal law from organizing into a union. In addition, unions in a right-to-work state know that not all of the employees will support a strike, although the union must represent all of the employees covered by the union contract. Within the last year, Indiana and Michigan have passed right-to-work laws. There have been no definitive studies regarding the effect of these new laws on union organizing in Michigan and Indiana.

Q: Can unions still be active and organize workers in right-to-work states?

A: Yes. If the employees are angry with management, the employees can seek union representation.

Q: Are there steps companies may take to avoid unions?

A: Yes. Our firm can do a study of government documents to determine the level of activity of unions in areas within a particular locale. This will provide information about unions' activities and success rates in the particular area. More critical are the policies and the treatment of the employees by an employer. Fair and equitable employee policies and treatment provided by companies will more likely result in employees who are satisfied and happy with their employment. Companies should adopt and implement union avoidance policies and strategies, including training of the supervisors who are the front-line defenders.