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Guidance Regarding Rights and Duties of Public Employees, Public Employers, and Public Employee Unions after *Janus v. AFSCME Council 31*

In every community in Illinois, public sector employees provide important services. Illinois law has long recognized the rights of these employees. Illinois Attorney General Lisa Madigan issues this Guidance to address the specific impact of the United States Supreme Court's recent ruling in *Janus v. AFSCME Council 31*, 585 U.S. ___ (2018), on public sector employees in Illinois.

The Court's decision in *Janus* overturned the long-established principle that public employees who decline union membership may be required to pay a fair share agency fee to support collective bargaining and other representational activities that the union is required to provide to employee members and non-members alike. Before *Janus*, the laws of 22 states, including Illinois, permitted unions to negotiate for the deduction of such agency fees. Under *Janus*, these fees cannot be collected from employee non-members without their affirmative consent.

Janus does not change any of the other rights and obligations regarding public and educational employment under Illinois law. Public employees retain their rights under Illinois law to organize and join unions, and existing collective bargaining agreements remain in effect. This Guidance affirms those rights and provides initial direction on union dues and agency fees in light of the *Janus* decision.

Payroll Collection and Dues Checkoff

Under *Janus* public employers may not collect agency fees from non-members without their affirmative consent.

- Employees who are not currently union members may choose to become dues-paying union members.
- Employees who continue to decline union membership can continue to pay agency fees if the union offers that option and the employee provides consent. Otherwise no agency fee may be deducted.

The *Janus* decision does not impact collection of union dues from union members or any preexisting arrangements regarding these dues. Employee union members' existing choices as to membership cards, payroll deductions, and other agreements must be honored.

- Under Illinois law, public and educational employees may pay dues through a voluntary payroll deduction negotiated by their exclusive representative.
- Nothing in *Janus* changes the validity of existing union member employees' prior authorization of dues deductions or requires existing union members to reaffirm their prior authorization.

Collective Action Rights

The *Janus* decision also has no effect on the existing collective action rights of public and educational employees in Illinois. Just as prior to the decision, after *Janus* Illinois law continues to protect the rights of public employees to:

- Self-organize;
- Form, join, or assist any labor organization;
- Bargain collectively through representatives of their own choosing; and
- Engage in other concerted activities.¹

Furthermore, public and educational employees may exercise any and all of these rights without interference, restraint or coercion from their employer.² Public and educational employers may not discriminate with regard to hiring, termination, or any other term or condition of employment in order to discourage union membership or support.³ Public and educational employers also cannot refuse to bargain collectively in good faith with the union as exclusive representative.⁴

Access to Member Information

Under the Freedom of Information Act, private information, such as home addresses, home telephone numbers, personal cell phone numbers and personal email addresses, is protected from disclosure to third parties.⁵

However, exclusive bargaining representatives of public employees are entitled to access names and addresses of union members pursuant to state law.⁶ Exclusive representatives of both public and educational employees may also be permitted access to similar information pursuant to collective bargaining agreements.

¹ 5 ILCS 315/6(a); 115 ILCS 5/3(a); *see also* 5 ILCS 315/10(a)(1); 115 ILCS 5/14(a).

² 5 ILCS 315/6(a), 315/10(a)(1); 115 ILCS 5/14(a)(1).

³ 5 ILCS 315/10(a)(2); 115 ILCS 5/14(a)(3).

⁴ 5 ILCS 315/10(a)(4); 115 ILCS 5/14(a)(5).

⁵ 5 ILCS 140/2(c-5) and 7(1)(b).

⁶ 5 ILCS 315/6(c).

Resources

Public employees or unions who believe that any of the above rights have been violated may contact the Illinois Labor Relations Board by calling 312-793-6400 (Chicago) or 217-785-3155 (Springfield), or by visiting <https://www2.illinois.gov/ilrb/Pages/default.aspx>.

Educational employees or unions who believe that any of the above rights have been violated may contact the Illinois Educational Labor Relations Board by calling 312-793-3170 (Chicago) or (217) 782-9068 (Springfield), or by visiting <https://www2.illinois.gov/sites/elrb/Pages/default.aspx>.

Illinois residents, public bodies, and school districts with additional questions about the Janus decision or other labor or employment concerns may also contact the Illinois Attorney General's Workplace Rights Bureau at 1-844-740-5076.