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## Indiana's Right-to-Work Law: Frequently Asked Questions

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On February 1, 2012, Governor Mitch Daniels signed into law a bill that makes Indiana the nation's 23rd right-to-work state. Below are answers to frequently asked questions about the law. In addition, on Wednesday, February 22, Ogletree Deakins will host a webinar to discuss the law in greater detail. Registration information will be posted at <http://www.ogletreedeakins.com/>.

### 1. What does the law do?

In general, the law prohibits employers and unions from requiring individuals to pay union dues as a condition of employment. Specifically, the law makes it a Class A misdemeanor to require an individual, as a condition of employment, to do any of the following:

- Become or remain a member of a labor organization;
- Pay dues, fees, assessments, or other charges to a labor organization; or
- Pay to a charity or another third party an amount that is equivalent to, or a pro rata part of, dues, fees, or other charges required of a member of a labor organization.

### 2. To whom does the law apply?

The law applies to almost all private employers in Indiana. The law does not apply to employees or employers subject to the Railway Labor Act, such as those in the airline or railway industries, or workers employed on property over which the United States government has exclusive jurisdiction. The law also does not affect government employees.

### 3. When does the law take effect?

The law becomes effective immediately, but does not invalidate existing collective bargaining agreements. The law extends to all contracts entered into, modified, or renewed after March 14, 2012.

### 4. How does the law affect current collective bargaining agreements?

The law does not affect contracts in effect as of March 14, 2012. The law's provisions apply to such contracts once they expire, or if those contracts are modified, renewed, or extended.

## **5. What happens if someone violates the law?**

An employee may file a complaint that alleges a violation or threatened violation of the law with the Indiana Attorney General, the Indiana Department of Labor, or the prosecuting attorney of the county in which the individual is employed.

## **6. Can someone sue if the law is violated?**

Yes. If an individual is injured because of an actual or threatened violation of the law, that individual may bring a civil action in state court. A successful plaintiff can recover one or more of the following:

- The actual and consequential damages resulting from the violation or threatened violation, such as union dues wrongfully withheld;
- Liquidated damages (not to exceed \$1,000);
- Attorneys' fees, litigation costs, and expenses; and
- Declaratory or injunctive relief.

## **7. Does the law affect what an employer may tell its employees about unions?**

Yes, but each situation is unique. Without regard to whether an employer is in the midst of a union campaign or collective bargaining or if things are status quo, employers are encouraged to consult with labor counsel prior to making statements to employees about what the law may mean for their specific workplace. This should result in more consistent communications with employees, as well as reduce the risk of being accused of engaging in unfair labor practices under the National Labor Relations Act and/or breaching the terms of an existing collective bargaining agreement.

## **8. Does the law allow a unionized employer to decertify the union?**

No. The law does not change the legal process of decertification.

## **9. Does the law ban provisions in collective bargaining agreements that require employers to make payments to certain union-affiliated funds?**

No. The law has no effect on such payments, as the payments are being made by employers, not employees.

## **10. If an employee decides not to join a union or pay dues, does the collective bargaining agreement apply to the employee?**

Yes. The employee remains a member of the bargaining unit, and any applicable collective bargaining agreement continues to apply to the employee. The union can, however, prohibit the employee from voting in any internal union matters or ratification votes.

## **11. If an employee decides not to join a union or pay dues, does the union have to process the employee's grievances and represent the employee in arbitration?**

Yes. Under federal law, a union must represent all individuals in a bargaining unit equally, without regard to whether individuals are members of the union. Moreover, the union cannot charge non-members a fee for processing grievances.

**12. Does a unionized employer still have to deduct dues/assessments from employees' pay?**

Yes. The law does not change any "dues check-off" agreement for the duration of any existing contract. Under any agreement that takes effect after March 14, 2012, the employer will have to deduct dues only for those employees who choose to remain union members and who authorize deductions in the future.

**13. Does the law affect union-sponsored benefit plans?**

No. The law affects only the union security and related termination provisions. The law does not change eligibility for benefit plan participation, even for bargaining unit employees who drop their union membership.

**14. Do non-union employers have any new rights or obligations?**

No. However, if a non-union employer is organized by a union after March 14, 2012, the employer will be prohibited from negotiating language in the collective bargaining agreement that would require employees to join a union or pay union dues as a condition of employment.

**Additional Information**

Should you have additional questions about Indiana's right-to-work law, please contact the Ogletree Deakins attorney with whom you normally work, or the Client Services Department at 866-287-2576 or via email at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).

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