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United States Supreme Court Declares Fair Share Agreements Unconstitutional

This morning, the United States Supreme Court issued its anticipated decision regarding fair share agreements and the related deductions from the wages of public sector employees. (*Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.*) The Court determined that an “agency fee” or “closed shop” which compels payment to a union by public employees violates the First Amendment. It specifically stated that, “neither an agency fee nor any other payment to the union” may be deducted absent the affirmative consent of the public employee without violating the Constitution. According to the Court, in order to be effective, the waiver of the employee’s right to refuse to submit payment must be freely given and the consent to payment must be shown by “clear and compelling evidence.” The Court stated that, “Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.”

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Based upon this language within the opinion, we believe that the holding applies to the withholding of wages for both union dues and fair share fees. You should immediately cease withholding union dues and fair share fees for all public employees unless you have a signed authorization form or card from each specific employee allowing such a deduction. In our opinion, a list of authorized employees provided by a union does not demonstrate “clear and compelling” evidence. You may have previously been provided signed authorizations from the unions or individual employees who have affirmatively consented to have union dues deducted from salary. If you have not previously received these signed authorizations, however, we advise that you request the authorizations from the unions and cease withholding such payments until you receive the signed authorizations. Lastly, if you receive a written request from a union member to cease withholding union dues and/or fair share fees, it is our opinion that you should do so immediately.

We realize that the payroll schedules will differ from employer to employer, and for different bargaining units within the same employer, we can help to navigate these issues at your request.

Attorneys in our Flossmoor (708-799-6766) and Oak Brook

Published June 27, 2018

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(630-928-1200) offices stand ready to assist with any questions you may have.