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GOVERNOR SIGNS BILL AFFECTING UNION MEMBERSHIP

On December 20, 2019, Governor Pritzker signed Senate Bill 1784 into law – creating Public Act 101-0620. Among other effects, the Public Act amends the Illinois Public Labor Relations Act and Illinois Educational Labor Relations Act to include provisions impacting union members' dues deduction authorizations. The Act, which took effect immediately, is the Illinois legislature's response to the United States Supreme Court's decision in *Janus v. AFSCME Council 31*. You will recall that, as a result of *Janus*, persons who are part of a bargaining unit represented by a public union – but are not union members – cannot be required to pay union dues or "fair share" fees to support benefits the non-members may enjoy from the union's

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

collective
bargaining.

The Public Act's most significant upshot is that it permits unions and union members to agree to "reasonable limits" on the right of union members to revoke their dues deduction authorizations. The Act provides that a dues authorization may include a period of irrevocability that exceeds one year. The Act also provides that a dues authorization that is irrevocable for automatically renewing one-year periods and contains at least an annual 10-day window for the employee to revoke the authorization, is deemed to be reasonable. Authorized payroll deductions of dues must remain in effect until: (1) the employer is notified that an employee revoked their deduction authorization in accordance with the terms of the authorization; or (2) the employee is no longer employed by the employer in the same union; however, if the employee is re-employed by the same employer within one year in a position represented by the same union, the dues deduction authorization is automatically reinstated. Therefore, a union member can resign from union membership at any time. But, if the member's resignation does not satisfy the requirements contained in his/her authorization

(e.g., it occurs outside of any stated window to revoke), the Act requires employer to continue making dues deductions until the employee "properly" revokes the authorization (e.g., submits a written revocation during the revocability window).

We believe that this portion of the Act can be challenged on constitutional grounds given the *Janus* decision. In the meantime, most employers affected by the Act will be faced with several predicaments if an employee resigns from a union but does not properly revoke his/her dues deduction authorization: (1) follow the Act and continue deducting dues; (2) refuse to continue deducting dues, which will likely result in an unfair labor practice charge per the Act; and/or (3) bargain with the union over "reasonable limits" on employees' right to revoke a dues authorization, which, if the limits are unfavorable to the employee, could result in a First Amendment lawsuit in which the employer could be named as a defendant.

Thankfully for employers, the Act states that a union must indemnify an employer for any damages and reasonable costs incurred for any claims made by employees for deductions made in good faith reliance on the union's information to the employer regarding dues deductions. This "hold-harmless" provision of the

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Act makes it a little more palatable for an employer to follow the law and continue dues deductions when required by the terms of an authorization. However, that would not preclude an employee from legally challenging the employer's continuing deductions. As stated above, that is not to say that an employer's other options are more pleasant.

The Act also:

- Prohibits various items of private information, as well as information concerning an individual's membership status in a union and deduction information, from being disclosed under the Public Labor Relations Act, Illinois Educational Labor Relations Act, Pension Code, and Freedom of Information Act.
- Prohibits employers from disclosing certain information about union members to third parties. The Act requires employers to provide the union with a written copy of a request for

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prohibited information
(or a summary of an oral request), and a copy of any response to the request
within five business days of sending the response.

- Requires employers to give unions a list of its members, along with extensive information about the members, once a month
unless another time frame is agreed to by the employer and union (before,
employers were obligated to furnish this list upon request).

- Requires employers to give the union extensive information about new hires no later than 10 calendar days from the date of the
union member's hire.

- Codifies the rights of union members, under certain circumstances, and "without charge to pay or leave time" of the
employee to: (1) meet during the workday to investigate and discuss grievances;

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> (2) meet during lunch and "other non-work breaks," and before and after the workday to discuss certain collective bargaining and internal union matters; (3) meet with newly hired employees for up to one hour either within the first two weeks of the hire's employment in the union, or at a later date and time if mutually agreed upon; and (4) use the employer's mailboxes and bulletin boards to communicate with union members regarding collective bargaining matters, grievance investigations and other workplace-related complaints, and internal union matters. This access to employees is to be "conducted in a manner so as not to impede normal operations."

The Act does not prohibit employers and their unions agreeing in a bargaining agreement to provide the unions with greater access to bargaining unit employees. Consequently, employers with bargaining agreements containing provisions that address any of these items in a more restrictive manner may find that those

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provisions are no longer enforceable.

If you have any questions or concerns regarding the Public Act's implications for your management/union relationships, please feel free to contact your attorney at Hauser, Izzo, Petrarca, Gleason & Stillman.