

## insights

**TYPES NOT MAPPED YET** January 25, 2017 | TTR not mapped yet | Cliff A. Godiner, Chuck M. Poplstein, Michael W. Duffee, Hope K. Abramov

# Missouri to join Right to Work ranks: Is the fight over or just warming up?

**Update:** The version of the bill passed on Jan. 26 by the Missouri Senate *does* contain a carve-out for current agreements, and would not apply to any contract in place as of the statute's effective date. However, the carve out would not apply to extensions or modifications entered into after the statute is effective. This could lead unions to seek extensions now, before the effective date. Employers may also see a more aggressive response from unions, as they strive to show members their supposed value. The General Assembly must now reconcile the two bills before sending the measure to Gov. Greitens.

Missouri stands poised to become the 28th state to enact a Right to Work law. On January 19, 2017, the Missouri House passed [HB 91](#), which prohibits forced unionism. The Senate is expected to pass the bill this week. Gov. Eric Greitens has made it clear that he will sign the legislation when it reaches his desk. Normally, new statutes in Missouri become effective in late August, but sponsors may be pushing to treat the law as an emergency bill that would take effect on Gov. Greitens' signature.

Federal law allows unions and employers to negotiate contractual provisions requiring employees to become union members as a condition of employment, i.e. to force employees to pay union dues and fees or be terminated. These provisions are commonly referred to as "union security" clauses. However, federal law also allows states to prohibit such provisions. State laws prohibiting union security clauses are commonly referred to as Right to Work laws. Of the eight states that border Missouri, only Illinois lacks a Right to Work law. (Kentucky became the last bordering state to enact Right to Work legislation [earlier this month](#)).

### Impact for existing contracts

Normally, Right to Work legislation contains a carve-out for existing contracts until they reach their stated expiration date. **The currently pending bill contains no such carve-out, which means, on its face, the law would apply to current agreements.** This may be a source of conflict: Unions were counting on such a carve-out to allow them to continue to collect forced dues while marshalling various political and legal counter attacks on the new law.

Legally, unions typically mount attacks on Right to Work legislation by asserting such laws violate "The Takings Clause" of the U.S. Constitution and/or similar provisions in the applicable state constitution. Such a challenge to Indiana's right to work law was rejected, for example, [by the 7th Circuit in 2016](#).

But unions continue to litigate these theories. Politically, there are already no less than 10 proposed ballot initiatives seeking to amend the Missouri Constitution to essentially state that unions be allowed to negotiate union security clauses and prohibiting the legislature from passing Right to Work legislation in the future. These initiatives, which are themselves being challenged in various court actions, would go to voters in November 2018. (An effort in 1978 to amend the Missouri Constitution in a pro-Right-to-Work manner was rejected by the voters).

### Immediate takeaways

The current legislation only impacts union security provisions. It does not impact dues check off provisions, which cannot be regulated by the states. The new law would not apply to airline and railroad employees governed by the Federal Railway Labor Act or to federal government employees.

Employers are encouraged to contact an attorney for guidance on how to react to the new law as challenges unfold.



For unionized employers, this may require guidance as to how to best address any workplace animosity that may develop as people drop their membership or deal with the topic in negotiations. For example, if a carve-out for existing agreements is ultimately inserted into the bill, unions may push to set longer term contracts in place.

For non-union employers, contrary to popular belief, Right to Work legislation does not make it harder for unions to organize your workforce and it can actually impair a common anti-union campaign theme (i.e. you will have to pay no matter what).

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