



FREEDOM TO WORK: ANSWERS TO FREQUENTLY ASKED QUESTIONS

In December 2012, Governor Snyder signed into law two bills that make Michigan the nation's 24th Freedom to Work state. The new laws address both the public and private sectors. The following answers to frequently asked questions are limited to Public Act 348 of 2012 and its impact on the private sector.

What is the Freedom to Work law?

Freedom to Work ensures workplace fairness and equality by giving every employee the ability to decide for themselves if joining or financially supporting a union is the right choice for them.

The law does not prohibit labor unions or collective bargaining, as these rights are protected under state and federal law. Rather, the law specifies that an individual shall not be required as a condition of obtaining or continuing employment to:

- Refrain or resign from membership in or voluntary affiliation or financial support of a labor organization;
- Become or remain a member of a labor organization;
- Pay dues, fees, assessments or other charges of any kind or value to a labor organization;
- Pay to a charitable organization or 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.

Any contract or agreement entered into after the effective date of the bill in violation of these provisions is unlawful and unenforceable.

How can I find and read for myself the new law?

Public Act 348 of 2012, the law impacting the private sector, can be found at <http://www.legislature.mi.gov/documents/2011-2012/billenrolled/Senate/pdf/2011-SNB-0116.pdf>.

Public Act 349 of 2012, the law impacting the public sector, can be found at <http://www.legislature.mi.gov/documents/2011-2012/billenrolled/House/pdf/2011-HNB-4003.pdf>.

When does the law take effect and how does it impact existing collective bargaining contracts?

The law takes effect 90 days after the end of the legislative session (late March, 2013). However, there is a grandfather clause for existing collective bargaining contracts, meaning the law doesn't immediately invalidate existing collective bargaining agreements. Rather, the law only applies to contracts that take effect or are extended or renewed after the law's effective date.

My workplace is currently deducting union dues from employees' pay? Does the law impact this practice?

The law does not change any “dues check-off” agreement for the duration of any existing contract. Under any agreement that takes effect after the effective date of the Freedom to Work law, the employer may only deduct dues for those employees who choose to remain union members and authorize deductions or for those who elect to pay an “agency fee” but do not join the union.

To whom does the law apply?

Public Act 348 of 2012 applies to almost all private sector employers and employees in Michigan, with the exception of:

- Employers and employees subject to the Railway Labor Act (airline or railway industries);
- Individuals employed as agricultural laborers;
- Individuals employed as domestic caregivers (in home caregivers);
- Individuals employed by a parent or spouse;
- Individuals employed as executives and supervisors;
- Labor organizations and their officers and agents;
- Individuals employed on property over which the U.S. government has exclusive jurisdiction.

Public Act 349 of 2012 applies to public sector (government) employees, with the exception of state police troopers and sergeants protected under Article XI of the State Constitution and public police or fire department employees defined under Public Act 312 of 1969.

Who enforces Freedom to Work protections?

The law specifies the Michigan Department of Licensing and Regulatory Affairs will respond to all public inquiries regarding the law and inform employers, employees and labor organizations of their rights and responsibilities under the law. Additionally, the Act creates a private cause of action for individuals to enforce the Act under certain circumstances.

What happens when there is a violation of the law?

A person, employer or labor organization that violates the law is liable for a civil fine of up to \$500. Furthermore, if an individual is injured as a result of a violation (e.g., union dues wrongfully withheld), s/he may bring a civil action for damages and/or injunctive relief. A successful plaintiff may be awarded attorney fees and court costs.

How can a worker exercise his or her Freedom to Work rights?

At present, there are no procedures in place due to the fact that the Act will not become effective until late March 2013 and because it will only have prospective application to contracts entered into after the Act's effective date. One possibility is that any contracts negotiated after the Act's effective date will include mechanisms for its implementation.

Does Freedom to Work stop a union from organizing, or voting on whether there will be a union, at a workplace?

No, these rights are protected under the federal National Relations Act.

If an employee who is subject to exclusive representation by a recognized bargaining agent decides not to join a union or pay union dues, can the employee negotiate their own wages and benefits directly with his or her employer?

No, employees opting out of union membership/dues remain a member of the bargaining unit. Under federal law, a union must represent all individuals in a bargaining unit equally, without regard to whether individuals are members of the union. Therefore, any applicable bargaining agreement (including wages and benefits) will continue to apply to all members of that bargaining unit.

Should I communicate with my employees about their rights under the Freedom to Work law?

Employers are highly encouraged to consult with legal counsel prior to talking to employees about the impact of the Freedom to Work law on their workplace. This reduces 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.

Editor's Note: *While this overview is an attempt to shed light on various provisions of the Freedom to Work law impacting employers, it not intended to be a substitute for legal advice. If you have any questions regarding this article, please contact Wendy Block, Director of Health Policy and Human Resources, at wblock@michamber.com. Michigan Chamber members are also welcome to speak with the labor law attorneys at Bodman LLP at no charge by calling the Michigan Chamber Labor Law Hotline at 800-258-8010.*