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Labor and Employment Alert: Kentucky Becomes a Right-To-Work State

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CLIENT ALERT | 1.11.2017

For the first time, Kentucky has both a Republican governor and Republican majorities in its House and Senate. In less than a week, Kentucky enacted three laws – House Bill 1 (the Kentucky Right to Work Act), House Bill 3 (repealing prevailing wage), and Senate Bill 6 (the Paycheck Protection Act) which are intended to – depending on which side you're on – improve the state's economic climate or eviscerate union influence.

Right to Work

With the passage of House Bill 1 on January 9, 2017, Kentucky became the latest state to enact a right-to-work law making it illegal to require employees to become or remain union members, pay union dues, or pay fair share fees in lieu of union dues as a condition of employment or continued employment. The law applies to all persons, firms, associations, corporations, public employers, public school employers, and public colleges, universities, institutions, and education agencies. The law further prohibits public employees from striking and prohibits local governments from enacting legislation that conflicts with these provisions. While the law is effective immediately, it does not apply to federal employees, to employees covered by the federal Railway Labor Act, or to any collective bargaining agreement entered into before January 9, 2017. A union, employer, or other person who violates this law is guilty of a misdemeanor, and an aggrieved person may bring a civil action for injunctive relief, damages, costs, and reasonable attorney fees. Kentucky is now the 27th state to have a right-to-work law, behind Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

Prevailing Wage

Kentucky's prevailing wage law required that contractors on certain public works projects pay wages equal to or greater than that of similar employees in the locality where the project was being built. This meant that union and non-union contractors would pay at the local union wage scale. Effective January 9, 2017, House Bill 3 repeals the prevailing wage law and also prohibits any local government from requiring an employer to pay an employee a certain wage or fringe benefit other than as determined by the employer.

Paycheck Protection

Finally, in Senate Bill 6, Kentucky enacted the Paycheck Protection Act. First, the law requires employees to affirmatively request union membership in writing. Second, the law prohibits employers from withholding union dues from union members' and nonmembers' paychecks without their annual written or electronic authorization. Third, unions are prohibited from making expenditures for political activities (i.e., lobbying, electoral activities, contributions to political candidates or parties, or any other political or legislative cause) unless those funds are maintained in a separate, segregated political fund that is not intermingled with union dues in any way. Contributions to the political fund must be voluntary and solicited independently from any other union solicitations.

Contact your Vorys lawyer if you have questions about Kentucky's new laws or about right-to-work or prevailing wage laws in general.