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CLIENT BULLETIN

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INDIANA ENACTS RIGHT-TO-WORK LAW

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Indiana has become the 23rd state to enact what is commonly known as **a right-to-work statute**. The National Labor Relations Act permits employers and unions to enter into "union security" clauses that require, as a condition of employment, employees to become members in good standing of the union. Much to the dismay of unions, however, Section 14(b) of the Act permits individual states to override this one aspect of federal law if that state has enacted a statute that prohibits "the execution or application of agreements requiring membership in a labor organization as a condition of employment." With the enactment of its statute, Indiana joins Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Arkansas, Mississippi, Texas, Oklahoma, Kansas, Nebraska, Iowa, South Dakota, North Dakota, Wyoming, Arizona, Utah, Nevada, and Idaho as "right-to-work" states.

The Indiana statute, signed into law on February 1 by Republican Gov. Mitch Daniels, goes into effect on March 14, 2012, and makes it a Class A misdemeanor for any person to require, as a condition of employment or continued employment, an individual to "(1) become or remain a member of a labor organization; (2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or (3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization." The statute further renders any agreement that would violate the statute "unlawful and void." Violations can result in liability for actual and consequential damages, liquidated damages up to $1,000, and attorney fees and costs incurred by the individual who suffered the injury.

Significantly, the statute applies only "to a written or oral contract or agreement entered into, modified, renewed, or extended *after* March 14, 2012." (Emphasis added.) Thus, existing collective bargaining agreements containing union security clauses do not automatically become unlawful. It is only when the agreement is modified, renewed, or extended that the union security clause becomes subject to challenge.

What is not entirely clear is whether the "enforcement" of an existing union security clause after March 14, 2012 would violate the statute. Although it appears to be the intent of the state legislature to exempt existing agreements, the statute treats acts directed at individuals (whether pursuant to contract or not) separately from contractual agreements, and does not explicitly authorize enforcement of an existing union security clause after March 14, 2012.

Should such situations occur, please contact your Constangy attorney for further guidance.

About Constangy, Brooks & Smith, LLP

Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A "Go To" Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 140 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit www.constangy.com.