



PENNSYLVANIA OFFICE OF ATTORNEY GENERAL JOSH SHAPIRO

GUIDANCE ON THE RIGHTS AND RESPONSIBILITIES OF PUBLIC SECTOR EMPLOYEES AND EMPLOYERS FOLLOWING THE U.S. SUPREME COURT'S *JANUS* DECISION

Public sector employees – police and firefighters, teachers, social workers, sanitation workers and many others – play a critical role in communities across the Commonwealth of Pennsylvania. They work hard each and every day to ensure public safety, protect public health, educate our children and provide other critical services to residents of Pennsylvania. Since the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31*, 585 U.S. ___ (2018), the Office of Attorney General has received numerous inquiries regarding the impact the decision has on Pennsylvania public sector employees and employers. This guidance will answer some of those questions and clarify that the decision changes few rights of employees or obligations of employers.

What is the *Janus* decision?

The *Janus* decision overturns prior Supreme Court precedent that public sector employees who decline union membership may be required through collective bargaining to pay a fair share agency fee.

What does the *Janus* decision change?

The only change under *Janus* is that, as of June 27, 2018, public sector employers may no longer deduct fair share fees from a nonmember's wages, without the nonmember employee's "affirmative consent." Nothing in the decision precludes employees who are nonmembers from becoming dues paying union members or consenting to continue to pay a fee to the union. All other rights and obligations of public sector employers and employees under state law remain unchanged.

Does the *Janus* decision authorize a public sector employer to require proof of union membership or change dues collection agreements?

No. The *Janus* decision does not impact any agreements between a union and its members to pay union dues or any negotiated payroll dues deduction provisions in collective bargaining agreements. Existing membership cards and other agreements by union members to pay dues must continue to be honored. Public employee unions are not required to produce dues authorization cards for members from whom the employer has previously deducted dues.

Does the *Janus* decision authorize a public sector employer to change unilaterally terms of a collective bargaining agreement?

No. An employer cannot unilaterally change the terms of a collective bargaining agreement or a binding past practice, such as demanding new dues authorization cards for payroll deductions from union members. The *Janus* decision does not require existing union members to take any action to continue to be a member in a public sector union.

Did the *Janus* decision affect collective action rights?

No. Public sector employees retain their statutory rights under Pennsylvania law to organize and join unions; to collectively bargain through representatives of their own free choice on questions of wages, hours and other terms and conditions of employment; and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection – or to refrain from doing so. Employees have the right to be free from threats, interference or coercive statements when exercising their protected right to engage in concerted activity.

After the *Janus* decision, can public employers interfere with public sector employees' collective action rights?

No. Public sector employers are forbidden from interfering in the formation, existence or administration of a union, discriminating against or terminating an employee based on union membership or activity, or refusing to bargain in good faith with the union.


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