

Attorney General Advisory:
Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees—including firefighters, police, teachers, social workers, and sanitation workers—play a critical role in our communities and across Massachusetts. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services to our residents.

The Attorney General issues this Advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 U.S. ____ (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Massachusetts law to organize, to join unions, and to engage in collective action for mutual aid or protection under Chapter 150E of the Massachusetts General Laws. The Attorney General's Office issues this advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Massachusetts law, the rights of public sector employees are unaffected by the decision in *Janus*. These employees maintain the right to:
 - organize;
 - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
 - engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. M.G.L. c. 150E, § 2.
- Employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. M.G.L. c. 150E, § 10.
- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. M.G.L. c. 150E, § 10.

Dues & Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.
- Under *Janus*, public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018 may choose to become a dues paying union member.
- Employees may pay dues through a payroll deduction. Under existing state law, employees may authorize a payroll deduction by notifying his/her employer in writing. *See* M.G.L. c. 180, § 17A. This writing may be a signed union card, or an electronic writing, signature or voice recording consistent with M.G.L. c. 110G, § 2.
- Public employers may not threaten or coerce employees regarding union membership. M.G.L. c. 150E, § 10.

Member Access & Information

- Many public sector unions have negotiated for the right of their members to use the employer's email systems and its premises to engage in protected concerted activity.
- Under M.G.L. c. 150E, and under many collective bargaining agreements, public employers are required to provide, in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.
- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure to third parties (with limited statutory exceptions, including collective bargaining representatives). *See* M.G.L. c. 4, § 7 (26)(o); and M.G.L. c. 66, § 10.

Workers who believe their rights to join or form a union have been violated may contact the Massachusetts Department of Labor Relations at (617) 626-7132 or visit www.mass.gov/dlr.

Workers who believe their right to earned wages have been violated may call the AGO's Fair Labor Division Hotline, 617-727-3465.