



Wisconsin Act 10: Everyone is asking "What Now?" but there is no need to panic

On September 14, 2012 a Dane County circuit judge ruled that Wisconsin Act 10 is unconstitutional as applied to city, county and school workers. Thus, the collective bargaining rights which were curtailed by Wisconsin Act 10 ("Act 10") for county, city and school employees theoretically return to the status which existed prior to the passage of Act 10.

In this decision, the court broadly invalidated Act 10 and held that the law violated workers' constitutional rights to free speech, free association, and equal representation under the law by capping union workers' raises but not those of their nonunion counterparts. The judge also ruled that the law violated the "home rule" clause of the state constitution by setting the contribution for City of Milwaukee employees to the city pension system rather than leaving it to the city and workers.

This ruling understandably causes great concern for employers at the city, county or school district level and leaves them asking: what now? Quite frankly, there are no clear cut answers to such questions as many issues remain unresolved and outstanding. Nevertheless, there is no need to panic.

First, there is a significant probability that the decision will be stayed pending appeal. As of September 18, 2012, the state has appealed the decision and has further sought a stay of the decision from the circuit court. Anytime a decision has such wide-ranging and significant effects a court is likely to grant that the decision of the circuit court be stayed while the appellate process takes place. The purpose of such a stay is to maintain

the status quo and avoid subjecting the citizens of Wisconsin to an ever-shifting legal landscape. The parties are required to complete their written submissions to the trial court by September 28, and a decision by the trial court should be forthcoming in early October. It should be noted that even if the circuit court does not grant the stay that the state may also seek a stay from the court of appeals. While it is not certain the precise date on which the stay will be determined, or the precise impact of any such stay, it should take place in the next few weeks.

Second, it seems more likely than not that the decision would eventually be overturned by the conservative leaning Wisconsin Supreme Court which already scolded one Dane County circuit court judge for invalidating the law previously. While no guarantees can be made, it seems more likely than not that the majority of the law will be upheld, though that process could take many months.

As to what action an employer should take at this point in time, some general guidance can be provided.

First, you should evaluate under what conditions your current collective bargaining agreement was entered into (i.e. - pre- or post- Act 10) and what the provisions of any such agreement are. When Act 10 went into effect, some employers had collective bargaining agreements in place that are still in effect today. Other employers have since entered into collective bargaining agreements where the only provision bargained over was the total base wages while certain changes were instituted regarding benefits, conditions of employment, and the like.

- If you still have a full collective bargaining agreement in place, the decision has little immediate impact on you as you should still be in full compliance with the pre-Act 10 state of the law. In addition, it is likely that a stay will be issued before you are obligated to engage in additional negotiations over your next contract. If such a stay is issued, Act 10 will remain in effect and you will be able to only negotiate over total base wages in your next agreement.
- If you are operating under an agreement that was entered into after the passage of Act 10 - and only total base wages were negotiable - your situation is more unclear. For example, it is unclear whether agreements entered into under a now unconstitutional law are still valid and enforceable. Our initial analysis suggests that the agreements are still valid and enforceable but such a question is likely to be unresolved prior to a

court ruling regarding the same.

- In the meantime, under either scenario, if a bargaining unit approaches you about negotiating, it would seem to be in the best interest of both sides to hold off on taking any action for a few weeks to see whether a stay is issued and what effect the stay will have. If the bargaining unit is willing to be reasonable, it would seem to be in everyone's best interest to conserve time and resources and simply wait a few weeks to see what the state of the law will be.
- If the bargaining unit demands to return to the table, and the employer would otherwise be obligated to do so under pre-Act 10 law, it would appear that the employer is obligated to do so prior to the issuance of a stay or other legal decision which relieves the employer of such an obligation. Refusing to return to the bargaining table could subject the employer to possible liability. Accordingly, do not outright refuse to return to the table. Nevertheless, you do have a right to be prepared for any negotiations and you can tell the union that you need at least three to four weeks to prepare for returning to the table. By then, we will know if the decision will be stayed.

While the recent ruling has caused employers great consternation, some clarity regarding the current state of the law should be issued in the coming weeks. At this time, taking a wait and see approach for the next few weeks would seem to be in everyone's best interest given the constantly shifting landscape. That being said, in the unlikely event that no stay is issued, employers will need to begin operating as though Act 10 never existed and will be forced back to the negotiating table. We will be providing further guidance when the ruling on a stay has been issued. Should you have any questions or concerns about how these recent developments impact your specific situation, please contact Ronald Stadler or Aaron Graf.

For more information or questions, please contact:

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