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## **Aug-22-18 Joint Guidance on the Rights of Public Sector Workers and Employers After Janus**

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-News Release-

## **Joint Guidance on the Rights of Public Sector Workers and Employers After *Janus***

On June 27, 2018, the United States Supreme Court issued its decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_ (2018). This advisory clarifies the rights of public sector employers and employees following that decision. While the *Janus* decision concluded that public sector employees who decline union membership are not required to make “agency fee” payments to public unions unless they provide consent, *Janus* does not otherwise determine the rights and obligations of New Jersey’s public sector employees and employers.

### ***Janus*, Union Dues, and Agency Fees**

For over 40 years, the payments that public sector employees who had declined membership made to unions were governed by *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Under *Abood*, states could—and New Jersey did—require these union nonmembers to pay “agency fees,” or a percentage of the union dues in return for the services the union provided them. As this guidance explains, *Janus* does not affect the union dues that members pay. *Janus* does, however, govern agency fees paid by union nonmembers.

The *Janus* decision does not speak to the rights of union members, which are still governed by the same New Jersey statutes and contracts:

- Public sector employees, including nonmembers who paid agency fees as of June 27, 2018, may still decide to become a dues paying union member. Union members may still choose to pay their dues through a payroll deduction. N.J.S.A. 52:14-15.9e. Nothing in *Janus* impacts any agreements between a union and its members to pay union dues.
- An employee may authorize a payroll deduction by notifying his/her employer in writing. N.J.S.A. 52:14-15.9e. This writing may be in the form of a signed union card, or an electronic writing, or a signature consistent with N.J.S.A. 12A:12-2.
- Existing membership cards or other agreements by union members to pay dues should be honored. While *Janus* states that employees must provide clear and affirmative consent before payments may be deducted, these signed

union cards, electronic writings, and signatures discussed above satisfy that requirement.

The *Janus* decision does speak to the rights of employees who *declined* union membership:

- Under *Janus*, public employers may no longer deduct agency fees from a nonmember's wages without first obtaining the employee's clear and affirmative consent. Public sector employers should cease taking agency fee deductions from current union nonmembers as soon as feasible, if they have not already done so.

## Other Rights of Public Sector Employees, Employers, and Unions

- *Janus* does not impact the ongoing constitutional and statutory rights of employees to, among other things, organize; form, join, or assist any employee organization for the purpose of negotiating collectively through representatives; and engage in lawful, concerted activities for the purpose of collective negotiations or other mutual aid or protection. J. Const., article I, cl. 19; N.J.S.A. 34:13A-5.3 et seq.
- Employees also have the right to be free from threats, interference, and coercion when deciding whether or not to join a union, and when exercising their rights to engage in concerted activity. J.S.A. 34:13A-5.4, 5.14.
- 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 negotiate in good faith with the union. J.S.A. 34:13A-5.4. Employers may not encourage or discourage an employee from joining, forming or assisting an employee organization. N.J.S.A. 34:13A-5.14.
- Public employers are required to provide the collective negotiating representative with the names and contact information of newly hired N.J.S.A. 34:13A-5.13.
- Employees have the right to keep their personal information protected from disclosure, with exceptions for collective negotiating representatives. J.S.A. 34:13A-5.13, 47:1A-1.
- Workers who believe their rights to join or form a union have been violated may contact the Public Employment Relations Commission. <https://www.state.nj.us/perc>





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