

## **Alert** | Labor & Employment



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### **Illinois Workers’ Rights Amendment Provides Employees Fundamental Right to Organize**

Heralded as a victory by unions and employee worker’s rights groups even before votes were confirmed, on Nov. 15, 2022, a majority of Illinois voters ushered in the Illinois Workers’ Right Amendment (IWRA). The IWRA is set to take effect once the Illinois State Board of Elections certifies the election results on Dec. 5, 2022.

The IWRA is somewhat novel and certainly one to watch, as the “new” Illinois protections may be viewed by some as impinging upon certain long-existing federal rights under traditional labor law jurisprudence.

Illinois now recognizes, as a *fundamental right*, the “right to organize and to bargain collectively through representatives of their own choosing for the purposes of negotiating wages, hours and working conditions...” through an Amendment to the Bill of Rights of the Illinois Constitution. This alone, however, does not change the overall labor landscape in Illinois, as the new language essentially mirrors rights that historically have existed under Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 (NLRA) (vesting employees with the right to “self-organization, join or assist labor organizations, bargain collectively through representatives of their own choosing and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection”).

More importantly, the IWRA is essentially a “blocking regulation,” i.e., a proactive preventative measure to shield against any other law being passed. Illinois has now preemptively declared unlawful any “law or ordinance” that “interferes with, negates or diminishes” these fundamental collective bargaining rights. IL

SJRCA 0011. The IWCA also specifically rejects the home rule exception, which would otherwise allow local municipalities or counties to try to pass “unblocking” legislation (for example, a majority of municipalities in Cook County essentially nullified a new county paid sick leave ordinance through such measures in 2017).

Many unionized workplaces in Illinois are “union shops,” where employees must belong to the union (or pay an agency fee) as a condition of employment. “Right To Work” laws make it unlawful for an employer and a union to enter into an agreement whereby payment of union dues or fees is a condition of employment. The IWRA on its face operates to block future state or local Right To Work laws in Illinois. Right to Work laws are traditionally welcomed by the business community and opposed by organized labor, and the IWRA seeks to block these laws in the state of Illinois.

Time will tell whether the IWRA survives scrutiny under the labor law preemption doctrine, and if it does, how that might affect employee rights under state and federal law.

In addition to watching developing law in this area, all employers are well taken to ensure that none of their policies, programs or practices violate the NLRA. And Illinois employers must now be even more vigilant to ensure compliance with the IWRA.

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