

Guidance for Public-Sector Employers and Employees in New York State

New York State has a long and important tradition of supporting the organized labor movement and the fundamental right of workers to organize. Public-sector employees play a crucial role in communities across New York State. Each day they work hard to ensure public safety, protect public health, and to provide other critical services to New York residents.

The Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31*, 585 U.S. ____, 138 S.Ct. 2448 (2018) on June 27, 2018. The *Janus* decision overturned decades of established law and practice relating to the right of a union to receive the payment of fair share agency fees from public-sector employees who decline union membership. As a result, there has been much confusion and this Guidance is intended to provide clarity to employers and employees. The only change under *Janus* is that public employers may not deduct agency fees from a non-member's wages, nor may a union otherwise collect agency fees from a non-member, without the non-member employee's affirmative consent. All other rights and obligations of public-sector employers and employees under state law remain unchanged. For example, unions have, in the past, presented dues deduction cards, or other similar evidence of union membership such as membership lists, to public employers and those employers previously collected union dues from its employees on that basis. The decision in *Janus* does not require a union to obtain new dues deduction cards or obtain other evidence of union membership or remove a public employer's obligation to collect dues from members of a union. Public employee unions are not required to produce dues authorizations cards for members from whom the employer has previously deducted dues.

Collective Bargaining

- Under New York law, the rights of public-sector employees to collectively bargain are unaffected by the decision in *Janus*. 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.
- Employees also continue to have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity.
- 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 a union.

Union 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 must be honored. The *Janus* decision only impacts the mandatory collection of an agency fee by individuals who decline union membership.
- Employees who are non-members and paying agency fees may choose to become dues paying union members.
- Employees may pay dues through a payroll deduction.

Member Access & Personal Information

- Under many collective bargaining agreements, and under Civil Service Law § 208, 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 (with limited exceptions).

Employees who believe their rights have been violated should contact their employer or their union.

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On June 27, 2018, the Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31* that overturned decades of established law related to a public-sector union's right to collect union fees from non-union members.

This Guidance is intended to provide clarity to employers and employees about this decision.

What did the *Janus* decision change?

Almost all existing rights and obligations of public sector employers and employees under state law remain unchanged. The only change under *Janus* is that public employers may not deduct agency fees from a non-union member's wages, nor may a union collect agency fees from a non-union member, without the employee's affirmative consent.

What is the definition of a public employer?

Under New York law, a public employer means: (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, or (vii) in the case of a county sheriff's office in those counties where the office of sheriff is an elected position, both the county and the sheriff, is designated as a joint public employer.

Do public-sector employees still have the right to unionize?

Yes. Under New York law, public-sector employees still have 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.

Can public employers interfere with public-sector employees right to unionize?

No. 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 a union.

What does this decision mean for union members?

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dues. Existing membership cards or other agreements by union members to pay dues must be honored. The *Janus* decision only impacts the mandatory collection of an agency service fee by individuals who decline union membership.

Does Janus affect current union members and the deduction of dues?

No. Historically, unions have presented dues deduction cards, or other similar evidence of union membership such as membership lists, to public employers, who collected dues from employees on that basis. The *Janus* decision does not require a union to obtain new dues deduction cards or obtain other evidence of union membership. Public employers still have an obligation to collect dues from union members.

What does this decision mean for non-union members?

Employees who are nonmembers and paying agency fees may choose to become dues-paying union members. Employees may pay dues through a payroll deduction. Employees who do not join the union cannot be required to pay fair-share fees.

Can public employers withhold union dues collected from union members?

No. New York State law requires public employers to transmit dues collected from union members to the union within 30 days of collection.

Will unions still know that public employers have hired new employees?

Yes. Under many collective bargaining agreements and New York law, 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.

Can public employers share the personal contact information of their employees?

Generally, no. 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 (with limited exceptions). Employees who believe their rights have been violated should contact their union.