



DLR Q&A RE: Janus v. American Fed. of State, Cty., & Muni. Employees

Department of Labor Relations Question and Answer Regarding Impacts of Janus v. American Federation of State, County, and Municipal Employees, Council 31

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DLR questions and answers

On June 27, 2018, [the United States Supreme Court decided the case of Janus v. American Federation of State, County, and Municipal Employees, Council 31](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf) (https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf), (Janus decision). The following is a Question and Answer (Q&A) created by the Department of Labor Relations (DLR) in order to assist those affected by the decision. This Q&A reflects the state of the law as of the issuance of the Janus decision. The statements and opinions expressed below represent the best judgment of the DLR at the current time. Not all of the issues, however, are fully resolved yet. The materials below do not carry the force of law and are not meant to be a substitute for your own legal counsel's advice. If you are unsure of your rights and obligations under the law or collective bargaining agreement, and or need further clarification regarding any of these answers, legal advice should be sought.

1. What does the Janus decision mean for public sector employees in Massachusetts?

The Janus decision makes it unlawful for public sector employers or unions to require that an employee who is not a voluntary dues paying union member to pay an agency fee to a union as a condition of obtaining employment or continued employment. This means that neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to such a payment. Under the Janus decision, agency shop arrangements contained in collective bargaining agreements are invalidated.

2. What is an agency fee?

An agency fee is a sum of money that an employee who chooses not to be a dues-paying member of a union pays to a union for activities related to the union's obligations as collective bargaining representative, such as negotiating contracts and representing employees in grievances and arbitrations. Previously, under [M.G.L. c. 150E, S 12](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter150E/Section12)(<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter150E/Section12>), it was lawful to require payment of an agency fee as a condition of employment pursuant to a collective bargaining agreement. Janus holds that agency fees may only be deducted from employees who affirmatively consent to pay them.

3. What is an exclusive bargaining representative?

The union recognized by the employer or certified by the Department of Labor Relations (DLR) as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining is the exclusive bargaining representative.

4. What is the difference between a bargaining unit employee and a union member?

A bargaining unit is a grouping or classification of employees that a union represents as the exclusive bargaining representative. A collective bargaining agreement defines which positions or classifications are part of the bargaining unit. Union members are members of the bargaining unit who choose to join and/or support the union that is the exclusive bargaining representative. Under the Janus decision, bargaining unit employees who are not union members cannot be required to financially support the union as a condition of obtaining or continuing employment.

5. When does the decision take effect?

The decision issued June 27, 2018 and is effective as of that date.

6. Am I subject to the terms and conditions of a collective bargaining agreement even if I choose not to be a member of the union or to pay agency fees?

Yes. Under M.G.L. c. 150E § 5, the terms and conditions of a collective bargaining agreement apply to bargaining unit employees, regardless of whether they join the union or pay an agency fee.

7. What steps do I need to take if I want to stop paying an agency fee?

The DLR recommends that you notify your employer and union in writing that you wish to cancel payment of agency fees. In some cases, however, the agency fee charge or withdrawal of agency fees from your paycheck may be automatically stopped without any action on your part.

8. What if I want to continue to pay an agency fee?

Under the Janus decision, if your union offers the option, you may choose to pay an agency fee. However, you must supply affirmative consent. You should contact your union to determine if and how this will be implemented.

9. Can my employer or union discriminate against me for choosing not to pay the agency fee?

No. Under M.G.L. c. 150E § 10(a)(3), it is unlawful for an employer to discriminate against an employee with regard to terms and conditions of employment in order to encourage or discourage membership in a union. This has not changed. Further, under M.G.L. c. 150E, § 5, a union must represent the interests of all employees without discrimination and without regard to employee organization membership. It is also a prohibited practice within the meaning of M.G.L. c. 150E, § 10(b)(1) for a union to violate its duty of fair representation to the bargaining unit employees it represents.

10. My employer continues deducting agency fees from my paycheck. What can I do?

The DLR recommends that you notify your employer and union in writing that you wish to stop paying agency fees. You may also inquire about filing a Non-Payment of Wage complaint with the Office of the Attorney General's Fair Labor Division at www.mass.gov/ago/wagetheft. To learn more about your rights under the state's wage and hour laws, please visit www.mass.gov/ago/fairlabor.

11. Does the Janus decision affect my right as a public employee to join the union?

No. The Janus decision merely says that agreements between employers and unions cannot require public sector employees to pay agency fees as a condition of their employment. The Massachusetts public employee collective bargaining law, M.G.L. c. 150E, still gives public employees at the state, county, and municipal levels the right to: (1) form, join, or participate in unions; (2) bargain collectively over terms and conditions of employment; (3) engage in other concerted activities for mutual aid and protection; and (4) be free from threats, interference, coercion, or discrimination when participating in any or all of these activities. Public employees also have the right to refrain from participating in these concerted activities.

12. I am already a union member. If I want to continue to be a member, do I have to pay my union dues?

Yes. The Janus decision does not change agreements between public employees and their unions regarding union dues. If you choose to be a member of the union, most, if not all, unions require the payment of membership dues. You should contact your union if you have any questions about your union dues.