



LAW UPDATE LABOR AND EMPLOYMENT

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Janus Update: U.S. Supreme Court

As previously reported, the Supreme Court of the United States heard oral arguments in *Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.* (No. 16-1466) on February 26, 2018. The Court will determine whether public employees can be compelled to pay agency fees. Constitutional law experts anticipate the Court will find mandatory agency fees to be unlawful. The Court is expected to issue its decision in June.

Preparation:

If the Supreme Court finds mandatory agency fees to be constitutional, school districts and county offices of education (hereinafter collectively “school districts” or “districts”) will not be required to make any changes. A finding that agency fees are unconstitutional, however, will likely require districts to discontinue agency fee deductions. The Court’s decision may provide additional guidance on district obligations with regard to agency fee payers and deductions.

Pending the Court’s decision, districts should update and/or create a list of agency fee payers. Additionally, payroll departments should develop procedures to discontinue agency fee deductions if (and to the extent) required by the Court’s decision.

Districts can also expect immediate demands to bargain the effects of the Court’s ruling on language in collective bargaining agreements providing for dues deduction and agency fees.

Association Communications:

CSEA, SEIU, and CTA sent letters to certain districts setting forth their respective opinions regarding the potential cessation of agency fee withholdings. Until the Court announces its decision, it is speculative to address districts’ obligations should mandatory agency fees be found unconstitutional. We are including a draft response for districts that choose to respond.

CSEA also sent a letter to some districts warning them in advance about communicating directly with unit members regarding the *Janus* decision and/or suggesting that unit members could drop their membership. Once the Court renders its decision and the legal implications are analyzed, districts should meet with the employee organizations for effects bargaining. In the meantime, if unit members ask about *Janus*, districts should refrain from substantive discussions and refer the members to their exclusive representative and/or the Public Employment Relations Board.¹

Finally, CSEA also sent a letter setting forth its legal opinion on how districts should respond to potential Public Records Act (“PRA”) requests that may be received as a result of *Janus*. It is recommended that districts continue working with counsel to meet legal obligations in responding to PRA requests.

We will provide a further update and recommendations following the Supreme Court’s decision.

—Timothy L. Salazar

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

¹Government Code Section 3550 prohibits districts from deterring or discouraging employees from becoming or remaining members of an employee organization.