



## LAW UPDATE LABOR AND EMPLOYMENT

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### SENATE BILL 846 AND CLAIMS ON COMPELLED UNION DUES

This is a follow-up to our previous updates on the *Janus* case and Senate Bill (SB) 866. As you will recall, on June 27, 2018, the Supreme Court in *Janus v. AFSCME* held that mandatory “agency fees” imposed on nonconsenting public sector employees (union fees collected from nonmember employees) are unconstitutional. As a result, public employers had to immediately cease agency fee deductions from nonconsenting public employees. Within hours of the *Janus* decision, California Governor Jerry Brown signed SB 866 into law and it became effective immediately. SB 866 was meant (and ultimately serves) as a buffer to the decision in *Janus* by amending and adding provisions to the Education and Government Codes. Those provisions made significant changes for public sector employers concerning payroll deductions, communication to employees regarding the right to join or support a union, access by unions to new employee orientations, and clarified that public employers cannot deter or discourage either employees or job applicants from joining or remaining members of the union.

Fast forward now to September 14, 2018, and Senate Bill (SB) 846. This Bill contains several sections that warrant review, although only Section 1 pertains directly to the *Janus* and SB 866 analysis. Because the Supreme Court in *Janus* ruled that compelled union dues are violative of the First Amendment rights of the non-union employee, there was a real concern that the ruling would trigger a landslide of “retroactive” lawsuits from employees demanding reimbursement of their compelled dues taken prior to the decision. In other words, *if the compelled fees are illegal now, they must have been illegal prior to the Supreme Court’s ruling as well.* SB 846 cures this fear by insulating public employers and public unions from liability for requiring, deducting, receiving, or retaining agency or fair share fees from public employees prior to June 27, 2018. It would also deny standing to sue for current or former public employees to pursue these claims or actions, including current claims, if the fees were permitted at the time and paid prior to June 27, 2018.

SB 846 is however limited to claims or actions under California law. Predictably, there have already been more than several single plaintiff and class action lawsuits filed in the federal courts since the decision in *Janus*. These suits allege various violations of federal law and provisions of the United States Constitution, as well as demand the return of millions (or potentially billions) of dollars in agency fees. The impact of SB 846 on these federal suits is yet to be determined. Moreover, because of the controversial nature of the *Janus* decision and SB 846, we may likely see further litigation in the California Supreme Court as well.

Please feel free to contact our labor and employment attorneys/negotiators with questions or concerns regarding *Janus* or any of the above information.

*-Eric K. Alford*

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