



WORKERS FOR
OPPORTUNITY



ALASKA
POLICY FORUM

Complying with the *Janus* Decision

A GUIDE FOR STATE PUBLIC OFFICIALS

THE RULING

On June 27, 2018, the Supreme Court of the United States ruled in *Janus v. AFSCME* that the collection of agency fees from public employees was an unconstitutional violation of their First Amendment rights and should cease immediately.

The court also held that employers need affirmative consent to collect dues from union members.

“[N]either an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment unless the employee affirmatively consents to pay.”

— *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018)

THE PROBLEM

Although many public employers have stopped collecting agency fees, they continue to collect union dues from employees who have not given affirmative consent or opted-in to union membership post-*Janus*.

Union dues are being improperly collected in violation of the U.S. Constitution.

See the solution on the next page >

THE SOLUTION

Government officials must stop collecting union dues from public sector employees until they have opted in to union membership and given affirmative consent for dues collection.

Affirmative consent must be dated after June 27, 2018 — the date of the *Janus* ruling. Workers could not waive constitutional rights they did not know they had, and their First Amendment rights must be protected. This is particularly pertinent in states without public sector right-to-work laws, as workers faced a compelled choice between union dues or agency fees.

States that had public sector employee right-to-work laws before *Janus*, should, at the very least, have evidence from employees of their choice to join or decline to join a union, dated after the date right-to-work for public sector employees was implemented.

CONSENT OPTIONS

An opt-in form may be provided to employees either online or in a paper form. To ensure that consent is freely given, union involvement in the distribution and collection process should be limited and forms should, therefore, be collected from the employee and verified by the employer directly.

CONSENT REQUIREMENTS

Consent may not be presumed and must be given freely and knowingly, and shown by clear and compelling evidence. As the ruling stated in its waiver requirement for non-members:

"[T]o be effective, the waiver must be freely given and shown by 'clear and compelling' evidence."

EVERYONE WINS

Affirmative consent for union dues honors the court's *Janus* decision, promotes worker freedom, and ensures constitutional protections and liberties are promoted.

For more information, contact **Workers for Opportunity** at the Mackinac Center for Public Policy by calling **989-631-0900** or emailing **info@workersforopportunity.org**.