

DRAFT Public Employee Choice Act

Summary

Government unions are excluded from National Labor Relations Act (NLRA), and are instead subject to state and local laws governing collective bargaining. Many of these laws are "monopoly bargaining laws," meaning that even in states with right-to-work legislation—which bars payment of dues or fees as a condition of employment—employees are still forced to accept a union as their sole representative in the workplace. Similarly, unions are required to represent employees who do not wish to be represented. Employees do not have the right to negotiate their own contract or select someone outside their union to represent them in most grievances or disciplinary hearings with their employer.

This Act establishes the workers' right to opt-out of union representation and represent themselves, as well as allowing unions to forego representation of non-dues or fee payers. It does not change the rubric of collective bargaining in any other way except that, under the act, a worker has the choice to either remain in a union that has at one time achieved majority consent from the employees in the unit, or to represent themselves.

Model Policy

Section 1. {Short Title.} This Act shall be known as the Public Employee Choice Act.

Section 2. {Legislative Declarations.} This legislature finds and declares that:

- (A) An employer and employee should be free to contract on their own terms.
- (B) Monopoly collective bargaining laws violate this freedom.
- (C) As a result, it is against the public policy interests of this State/Commonwealth to impose monopoly collective bargaining laws on public employees who wish to represent themselves.

Section 3. {Definitions.} For the purposes of this Act,

- (A) "Employee organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.
- (B) "Public employee" means a person holding a position by appointment or employment in the government of this State, or any of its political subdivisions, including, but not limited to, public schools, and any authority, commission or board, or in any other branch of public service.

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(1) "Public employee" does not include employees whose jobs entail managerial, supervisory or confidential responsibilities.

(C) "Public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

(D) "Collective bargaining" means the performance of the mutual obligation of the representatives of the public employer and the labor organization designated as an exclusive bargaining representative to meet and bargain in good faith in an effort to reach written agreement with respect to wages, hours, and terms and conditions of employment.

(E) "Exclusive bargaining representative" means any employee organization that has been certified or designated by the [state official/agency] pursuant to the provisions of [insert applicable state labor law] as the representative of the employees in an appropriate collective bargaining unit to represent the employees in their employment relations with employers.

Section 4. {Public employee choice guaranteed.}

(A) Public employees shall have the right to independently represent themselves in their relations with the public employer.

(B) No provision of any agreement between an employee organization and a public employer, or any other public policy, shall impose representation by an employee organization on public employees who are not members of that organization.

(C) There shall be not more than one exclusive bargaining representative designated by the [state official/agency] pursuant to the provisions of [insert applicable state labor law] as the representative of the employees in an appropriate collective bargaining unit.

(D) No provision of any agreement between an employee organization and a public employer, or any other public policy, shall impose any wages or conditions of employment for members of an employee organization which are linked or contingent upon wages or conditions of employment to public employees who are not members of an employee organization.

Section 5. {Agreements in violation, and actions to induce such agreements, declared illegal.}

(A) Any agreement, understanding or practice, written or oral, implied or expressed, between any employee organization and public employer that violates the rights of employees as guaranteed by provisions of this chapter is hereby declared to be

93 unlawful, null and void, and of no legal effect. Any strike, picketing, boycott or
94 other action by an employee organization for the purpose of inducing or
95 attempting to induce an employer to enter into any agreement prohibited by this
96 chapter is hereby declared to be for an illegal purpose and is a violation of the
97 provisions of this chapter.
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99 **Section 6. {Coercion and intimidation prohibited.}**

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101 (A) It shall be unlawful for any person, employee organization, or officer, agent, or
102 member thereof, by any threatened or actual intimidation of an employee or
103 prospective employee, or an employee or prospective employee's parents, spouse,
104 children, grandchildren, or any other persons residing in the employee's or
105 prospective employee's home, or by any damage or threatened damage to an
106 employee' or prospective employee's property, to compel or attempt to compel
107 such employee to join, affiliate with, or financially support an employee
108 organization.
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110 **Section 7. {Penalties.}**

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112 (A) Any person who directly or indirectly violates any provision of this chapter shall
113 be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine
114 not exceeding(insert amount) or imprisonment for a period of not more than
115 (insert time period), or both such fine or imprisonment.
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117 **Section 8. {Duty to investigate.}**

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119 (A) It shall be the duty of the state attorney general to investigate complaints of
120 violation or threatened violations of this chapter and to prosecute any or all
121 persons violating any of its provisions, and to take all means at his or her
122 command to ensure its effective enforcement.
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124 **Section 9. {Prospective application.}**

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126 (A) The provisions of this chapter shall apply to all contracts or contract extensions
127 entered into after the effective date of this chapter, but no later than two years
128 hence.
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130 **Section 10. {Severability clause.}**

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132 **Section 11. {Repealer clause.}**