

Right-to-Work 101

National Labor Relations Act

- Passed in 1935.
- Sets policies for formation and recognition of private sector unions.
- Establishes unfair labor practices for employers.
- Allows for “closed shops.” If you want to get hired and work at a unionized facility, you must be a member of the union.
- These closed shop arrangements became increasingly common through the 1940s.

Taft-Hartley Act

- Passed in 1947. Amended the NLRA in a number of ways.
- Outlaws “closed” shops.
- But does allow for “union shops.” Workers can be compelled to become union members within 30 days of hiring.

Agency Fees

- In practice, “membership” has been construed as payment of dues or fees.
- Thus, workers may opt out of union *membership*, but are still required to pay an “agency fee” to a union to maintain employment.
- The agency fee is intended to cover the cost of collective bargaining, contract administration, and adjustment of grievances.
- This is the law today in the private sector.
- *Janus* decision essentially applied right-to-work to all public sector workers

Right to Work

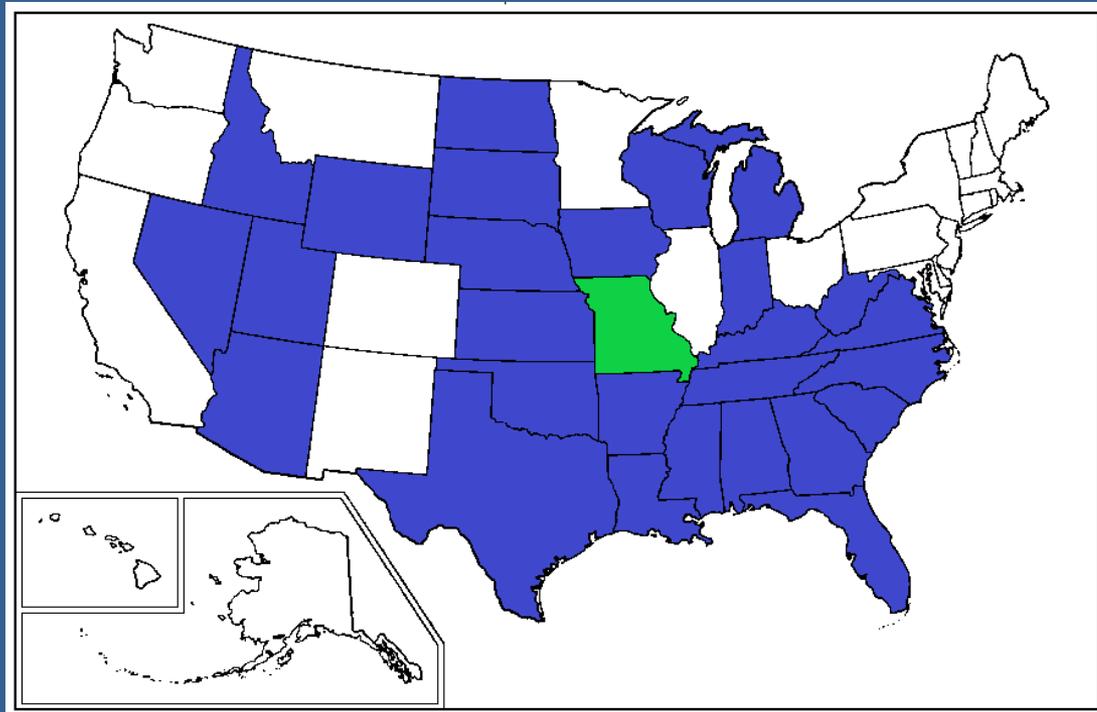
- However, under Taft-Hartley (Section 14(b) of the NLRA), states are authorized to pass right-to-work laws:
 - “Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.”

What Does Right-to-Work Mean?

- Right-to-Work is actually very simple: a worker cannot be required to pay union dues, fees, or assessments to keep their job.
- Many, but not all, statutes state this specifically.
- Employers must still recognize unions that win elections.
- Existing union contracts still apply.
- Employers must still bargain with unions over wages, benefits, work rules, pensions, etc.

States With RTW Laws

- Starting in 1947, states begin passing right-to-work. Currently 28 states have done so.
- However, Missouri's law subject to challenge.



What do Advocates Say?

- Employers are more likely to locate facilities in Right-to-Work states.
 - From 2001-2015, 10.2% growth in the number of firms in RTW states vs. 1.5% in non-RTW states.
- Right-to-Work states enjoy higher rates of private sector employment growth.
 - From 2001-2015, 26.7% growth in RTW states vs. 15.4% in non-RTW states.
- Right-to-Work states have lower unemployment rates.
 - Average annual rate lower every year since 2001.
- Right-to-Work states enjoy higher rates of personal income growth.
 - From 2001-2016 37.6% growth in RTW states vs. 28.5% growth in non-RTW states

What Do Opponents Say?

- Right-to-Work means “right-to-work for less.”
 - Union members tend to have higher weekly earnings, but evidence of a wage impact on a state’s overall workforce is inconclusive.
- Leads to declining union density, which means less bargaining power for workers.
 - Indiana: 8.9%
 - West Virginia: 11.0%
 - Michigan: 15.6%
 - Nevada: 12.7%
 - Georgia: 4.0%
 - South Carolina: 2.6%
- Creates a “free rider” problem—unions must still represent workers who aren’t paying fees.

Litigation

- Unions have repeatedly sued to block right-to-work laws.
- Two main arguments:
 - Right-to-Work is preempted by the National Labor Relations Act.
 - Right-to-Work is an unconstitutional “taking.”
- These arguments have been rejected by numerous state and federal courts, most recently in Indiana and Idaho.
- The Supreme Court ruled in a 1963 case that “membership” as stated in Section 14(b) is broader than its literal construction.

Questions?