



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

**GENERAL GUIDANCE ON THE RIGHTS AND DUTIES OF PUBLIC-SECTOR
WORKERS AND EMPLOYERS AFTER JANUS**

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31* overruled many decades of established law relating to the funding of public-sector unions that serve teachers, police, firefighters, and other public employees. Not surprisingly, the decision has generated confusion about the rights of Maryland's public-sector workers under Maryland's labor and collective bargaining laws. In *Janus*, the Supreme Court held that public employees who choose not to join a union may no longer be compelled by their employers to pay fair-share agency fees to their exclusive bargaining representative absent the employee's affirmative consent. Thus, absent consent, public employers may no longer deduct fair-share agency fees from the wages of their non-union-member employees. However, the Supreme Court's ruling does not change the existing rights of public employees under Maryland's labor and collective bargaining laws or the existing relationships between public-sector unions and their members. The purpose of this guidance is to provide initial information about the *Janus* decision and to reiterate the existing protections for public-sector workers in Maryland.¹

The Effect of the Janus Decision

Although the *Janus* decision provides that public employers may no longer deduct fair-share fees (also known as service fees) from the wages of a non-union-member employee absent the employee's consent, *Janus* does not override existing agreements between a union and its members to pay union dues. In other words, the decision in *Janus* does not alter any pre-existing obligation of a public employer to deduct dues from union members and does not require unions to obtain new proof of membership or authorizations to deduct dues from employees who had already joined the union.

¹ This guidance applies to State employees and employers covered by the State Labor Relations Act, *see* Md. Code Ann., State Personnel and Pensions §§ 3-102, and to public school employees and employers covered under Title 6 of the Education Article. At least some of the information, however, will apply to other public-sector employees and employers as well.

Eligible public-sector employees who are not currently union members may join by contacting the union that serves as the exclusive representative for their bargaining unit and following the instructions given for becoming a voluntary dues paying member.

Public-Sector Employee Rights

Under Maryland's collective bargaining laws, many public-sector employees have statutory collective bargaining rights, and *Janus* does not change or impair those rights.

For example, eligible State government employees covered by the State Labor Relations Act (including eligible employees of State colleges and universities) have the right, among other things, to:

- Form, join, support, or participate in any employee organization. *See* Md. Code Ann., State Personnel and Pensions (“SPP”) § 3-301(a)(1).
- Be fairly represented by their exclusive representative, if any, in collective bargaining. SPP § 3-301(a)(2).
- Engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection. SPP § 3-301(a)(3).
- Be free from employer interference, restraint, or coercion in the exercise of their rights under Title 3 of the State Personnel & Pensions Article, as well as to be free from other unfair labor practices. SPP § 3-306(a).

Local public school employees have similar rights to:

- “Form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions.” Md. Code Ann., Educ. (“ED”) §§ 6-402(a), 6-503(a).

The First Amendment also provides public sector employees with the right to freely associate—including the right to form, join and belong to unions, and to discuss the advantages of joining. This right is separate and distinct from Maryland's collective bargaining laws, and provides an additional layer of protection for public-sector employees who wish to engage in lawful union activity.

Recent Legislation to Provide Public-Sector Unions with Access to Employees

During the 2018 legislative session, the General Assembly enacted amendments to Maryland's public-sector labor laws to guarantee exclusive bargaining representatives access to employee orientation and employee contact information.

For example, after October 1, 2018, State employers must:

- Permit exclusive representatives to attend new employee programs, such as orientation and training, and to address new employees in attendance for at least 20 minutes. Employers must encourage new employees to attend the portion of the program designated for the employee organization (but may not require such attendance). SPP § 3-307.
- Provide an exclusive representative with the following information about an employee in the bargaining unit it represents within 30 days after the employee begins: name, position classification, unit, position identification number, home and work addresses, home and work telephone numbers, and work email address. An employee organization also may request this information for all employees in its bargaining unit once every 120 days (unless a more frequent timeframe is negotiated). SPP § 3-208; *see also* § 3-2A-08 (higher education employees). Current law, before the amendments go into effect, allow unions to obtain some of this information, on request, twice a year.

Similarly, as of July 1, 2018, local school employers must:

- Provide exclusive bargaining representatives with access to “new employee processing.” ED §§ 6-407.1(a)(1)(i), 6-509.1(a)(1)(i).
- Provide an exclusive representative with the following information about an employee in the bargaining unit it represents within 30 days after the employee begins (or by the first pay period of the month after the date of hire): name, position classification, home and work site addresses, home and worksite telephone numbers, personal cell phone number, and work e-mail address. Employers are also required to provide this same information at least once every 120 days (unless a more frequent time frame is negotiated). ED §§ 6-407.2(a)-(b), 6-509.2(a)-(b).

With some exceptions, the Maryland Public Information Act otherwise precludes the government from disclosing to third parties certain personal information about public-sector employees, including—for example—their home addresses. *See, e.g.*, Md. Code Ann., Gen. Provisions § 4-331.

Maryland’s State Labor Relations Boards

The State of Maryland has three labor relations boards that resolve disputes arising under the State’s collective bargaining laws (including unfair labor practice complaints):

- The State Labor Relations Board has jurisdiction over the principal departments within the Executive Branch and various other agencies and departments. *See* <http://laborboards.maryland.gov/state-labor-board/>.

- The State Higher Education Labor Relations Board has jurisdiction over Maryland's institutions of higher education, including the constituent institutions of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College. *See* <http://laborboards.maryland.gov/higher-education-board/>.
- The Public School Labor Relations Board has jurisdiction over county boards of education and the Baltimore City Board of School Commissioners. *See* <http://laborboards.maryland.gov/566-2/>.