



TRANSFORMING LABOR

*A Comprehensive, Nationwide Comparison
and Grading of Public Sector Labor Laws*



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Transforming Labor: A Comprehensive, Nationwide Comparison and Grading of Public Sector Labor Laws

December 2017

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In the last six years, Americans have seen an unprecedented sweep of public sector labor reforms across several states. Wisconsin, Michigan, Indiana, West Virginia¹—and most recently, Kentucky² in January 2017—have all become right-to-work states. Missouri also passed right-to-work in February 2017, yet, a successful ballot initiative requires voter approval of the law in November 2018.³ Right-to-work states, including Missouri, now outnumber forced-union states 28 to 22.

Despite unions routinely filing lawsuits against right-to-work laws, most recently in West Virginia, Wisconsin, and Kentucky, the courts continue to uphold the legality of the reforms. Simultaneously, other states have strengthened the parameters of collective bargaining, increased the transparency of union contract negotiations, prohibited using taxpayer resources to fund the collection of union dues, and created stronger protections for individual workers who do not want to be union members.

The reforms are even more remarkable given the largely inert nature of public sector labor law. At the national level, the National Labor Relations Act of 1935 (NLRA) governs most private sector unions. By contrast, public sector labor law, which provides collective bargaining privileges for state and local government workers, is set at the state level. In crafting their laws, the vast majority of states drew their statutory language and scope from the NLRA.⁴ Several provisions—such as how a union becomes (and remains) the official representative of all workers in a school or city office—have stayed untouched for 40 to 50 years.

During this time, basic individual freedoms, such as the freedom of association or freedom of speech, have been undermined by various labor laws and practices. Given the new momentum to reclaim these rights for public sector employees, this report outlines and examines public sector labor law across 11 measures that fall broadly into two categories: impact on taxpayers and impact on government workers.

¹ AP, “West Virginia’s top court clears ‘right-to-work’ law,” USA News, September 15, 2017, <https://www.usnews.com/news/best-states/west-virginia/articles/2017-09-15/west-virginia-top-court-clears-right-to-work-law>.

² Reid Wilson, “Ky. Governor signs right to work law,” *The Hill*, January 8, 2017, <http://thehill.com/homenews/news/313251-ky-governor-signs-right-to-work-law>.

³ Summer Ballentine, “New Missouri right-to-work law suspended,” *Springfield News-Leader*, August 18, 2017, <http://www.news-leader.com/story/news/politics/2017/08/18/new-missouri-right-to-work-law-suspended/581153001/>.

⁴ Seth D. Harris *et al.*, *Modern Labor Law in the Private and Public Sectors: Cases and Materials* (New Providence: Matthew Bender and Company, 2013), 71.

Public Sector Labor Laws	
Measures that impact taxpayers and government budgets	Measures that impact individual workers' rights
Legality of collective bargaining	Union certification (installing, affirming, or removing a union)
Scope of collective bargaining	Opt-out windows
Union release time	Exclusive representation/agency fees
Legality of worker strikes	Paycheck protection
Binding arbitration	Right-to-work
Union contract negotiation transparency	

To outline each state's practices—as seen in the full 50-state table at the end of this brief—we combed through state-level laws, administrative codes, and regulations relating to public sector collective bargaining. Where no law or statutory provision existed on issues such as release time, opt-out windows, or payroll deduction of union dues, we examined local- and state-level labor agreements and used the designation “written in union contracts” to show how such matters are addressed at the negotiating table.

This approach allows policymakers to go beyond right-to-work status, revealing a wider spectrum of reforms that guarantee greater protections of individual workers' freedom of association, shield taxpayers from overspending, and can produce budget savings. This analysis allows even highly graded states to see untapped areas for reform and improvement.

States earned grades based on the following rubric:

- **A+:** These states prohibit collective bargaining for some or all classes of government workers, a feature that highly impacts both taxpayers and workers. Seven states received this highest grade. Virginia, North Carolina, and South Carolina have a blanket prohibition on collective bargaining for all public sector workers. Georgia outlaws collective bargaining for teachers; Tennessee outlaws collective bargaining for police and firefighters; Texas outlaws collective bargaining for teachers and most government workers except police and firefighters; and Indiana prohibits collective bargaining for state workers.
- **A:** States earning this grade are right-to-work and have limited collective bargaining. Wisconsin and Iowa, which recently passed a package of union reform laws,⁵ are the only states that meet this standard.

⁵ William Petroski and Brianne Pfannenstiel, “Iowa House, Senate approve sweeping collective bargaining changes,” *Des Moines Register*, February 16, 2017, <http://www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/>

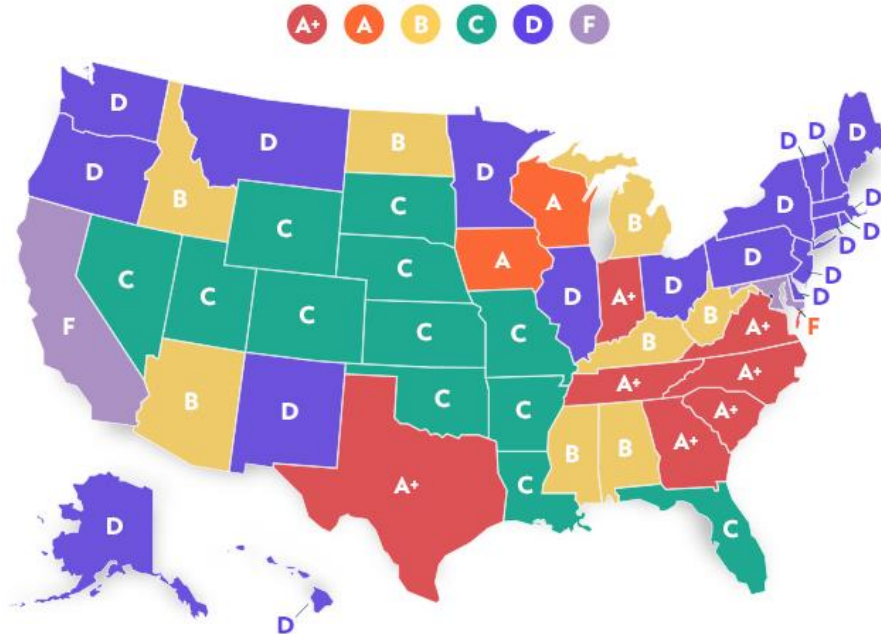
- **B:** These states are right-to-work and protect most taxpayers' and individual workers' rights either explicitly or by laws that are silent on issues such as the scope of collective bargaining, opt-out windows, release time, or how a union is certified. However, vague or non-existent laws also count against states because they often permit unions to gain certain workplace privileges through contract negotiations. Eight states meet this designation: Alabama, Arizona, Idaho, Kentucky, Michigan, Mississippi, North Dakota, and West Virginia.

- **C:** States earning this grade allow public sector collective bargaining, have union-friendly statutory provisions such as release time or the ability to close contract negotiations to the public, and have vague laws that allow unions to gain privileges through collective bargaining agreements. In these states, the law ends up protecting only some or few taxpayers' and individual workers' rights. Interestingly, both right-to-work and forced-union states fall into this category, highlighting the importance of creating explicit, defined protections in state law for both taxpayers and workers. Twelve states received this grade: Arkansas, Colorado, Florida, Kansas, Louisiana, Missouri (if right-to-work passes voter referendum), Nebraska, Nevada, Oklahoma, South Dakota, Utah, and Wyoming.

- **D:** States that earn this grade have collective bargaining that is either legal or required, often have some form of binding arbitration during contract negotiation impasses, and are forced union, actively limiting individual workers' rights. A whopping 19 states fall into this category, demonstrating how much work remains to be done in reforming public sector labor law.

- **F:** Two states, Maryland and California, earned an 'F'. Beyond being forced-union and leaving workers and taxpayers largely unprotected, they further allow wider bargaining over pension benefits and mandatory card check for many workers.

RANKING PUBLIC SECTOR LABOR LAWS



Beyond the grading system for states, our research uncovered broad national patterns:

- Twenty-four states legally *require* government agencies to bargain collectively with labor unions. An additional 20 states permit collective bargaining.
- Twenty-eight states provide for binding arbitration, either mandatory or at unions' request.
- Only *two states*, Wisconsin and Iowa, require incumbent government unions to go through any type of recertification election or process.⁶ In other words, most government unions across the country were originally certified in the 1960s or 1970s when public sector collective bargaining arose and have never faced an election.⁷
- Only two states allow multiple unions to negotiate compensation and work conditions for public sector workers. In Missouri, employers largely determine whether teachers and police officers—who are covered by case law rather than state collective bargaining

⁶ Wis. Stat. § 111.70(4)(d)3.b, <https://docs.legis.wisconsin.gov/statutes/statutes/111/IV/70/4/d/3/b>.

⁷ For a detailed example of this, see the Hawaii Labor Relations Board's April 2016 list of certified government unions. All but one gained certification in the 1970s: http://labor.hawaii.gov/hlrh/files/2013/05/2016-04-25-EMPLOYEE_ORGANIZATIONS-Public-Sector.pdf.

statute—may have multiple union representatives.⁸ Tennessee awards unions that earn 15 percent or more of employees’ votes proportional representation at the bargaining table.⁹ States overwhelmingly give a single union the designation of “exclusive bargaining representative” for all employees in a unit of similar workers.

- Ten states have some form of paycheck protection. Five states have full paycheck protection, which we define as a complete prohibition of the payroll deduction of union dues and political contributions. These states are Wisconsin,¹⁰ Iowa,¹¹ Michigan (for teachers and other public school employees),¹² Oklahoma (whose 2015 statute covers public school and state employees),¹³ and Indiana (which banned dues deductions for state workers by executive order in 2005).¹⁴

Union dues are implicitly political because they may fund ideologically partisan issues and independent expenditure committees, or SuperPACs.¹⁵ Alabama,¹⁶ Idaho,¹⁷ Kansas,¹⁸

⁸ *Independence-National Education Association v. Independence School District*, 223 S.W.3d 131 (2007) extended collective bargaining rights to public sector employees, effectively covering teachers and police. The 2012 cases *Coalition of Police v. Chesterfield*, 386 S.W.3d 755, and *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360, further established that government entities had a duty to bargain collectively. See also John Wright, "A Primer on Government Labor Relations in Missouri," *Show-Me Institute*, April 1, 2015, http://showmeinstitute.org/sites/default/files/201503%20A%20Primer%20on%20Government%20Labor%20Relations%20in%20Missouri%20-%20-%20Wright_o.pdf.

⁹ Tenn. Code Ann. § 49-5-605, <https://www.lexisnexis.com/hottopics/tncode/>.

¹⁰ Wis. Stat. § 111.70(3g), <http://docs.legis.wisconsin.gov/statutes/statutes/111/IV/70/3g>, Wis. Stat. § 111.845, <http://docs.legis.wisconsin.gov/statutes/statutes/111/V/845>.

¹¹ Iowa Code § 20.26, <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=20.26>; Iowa Code § 731.5, <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=731#731.5>.

¹² Mich. Comp. Laws § 423.210, [http://www.legislature.mi.gov/\(S\(40yc3ho3dgv5mcbcf54yh4n\)\)/mileg.aspx?page=GetObject&objectname=mcl-423-210](http://www.legislature.mi.gov/(S(40yc3ho3dgv5mcbcf54yh4n))/mileg.aspx?page=GetObject&objectname=mcl-423-210).

¹³ Okla. Stat. tit. 62 § 34.70.1, <http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=476351>.

¹⁴ State of Indiana, Executive Order 05-14, January 11, 2005, http://in.gov/governorhistory/mitchdaniels/files/EO_05-14_Complaint_State_Employees.pdf.

¹⁵ A portion of union dues may go toward political lobbying and ideological spending. For examples, view the “LM-2” financial reports for major national unions such as the National Education Association or the Service Employees International Union, filed with the U.S. Department of Labor pursuant to the Landrum-Griffin Act. In addition, an effectively unlimited amount of union dues may flow into SuperPACs following the 2010 U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission*.

¹⁶ Ala. Code 1975 § 17-17-5, <http://codes.findlaw.com/al/title-17-elections/al-code-sect-17-17-5.html>.

¹⁷ Idaho Code Ann. § 44-2004, <https://legislature.idaho.gov/idstat/Title44/T44CH20SECT44-2004.htm>.

¹⁸ Kan. Stat. Ann. § 44-808, http://www.ksrevisor.org/statutes/chapters/ch44/044_008_0008.html; Kan. Stat. Ann. § 75-4333, http://www.ksrevisor.org/statutes/chapters/ch75/075_043_0033.html.

Tennessee,¹⁹ and Utah²⁰ all prohibit unions from using taxpayer-funded government payroll systems to collect political contributions or funds to be used for political purposes. Additionally, Kentucky passed a version of paycheck protection that prohibits that automatic deduction of union dues and political contributions without authorization from members.²¹

- Only twelve states require union contract negotiations to be open to the public, without giving government agencies the option of going into executive session. They are Colorado (for public schools only),²² Florida,²³ Georgia,²⁴ Kansas,²⁵ Minnesota,²⁶ Mississippi,²⁷ Montana,²⁸ Nebraska,²⁹ Nevada,³⁰ North Dakota,³¹ Tennessee,³² and Texas.³³

Challenges to Labor Law Reform

Given the far-reaching impact of labor law reforms – whether full passage of right-to-work laws or piecemeal reform - such efforts encounter obstacles and strong resistance from public officials and union leaders. For instance, right-to-work efforts earlier this year were

¹⁹ Tenn. Code Ann. § 49-5-608, <http://law.justia.com/codes/tennessee/2014/title-49/chapter-5/part-6/section-49-5-608>.

²⁰ Utah Code § 34-32-1.1.(2), https://le.utah.gov/xcode/Title34/Chapter32/34-32-S1.1.html?v=C34-32-S1.1_1800010118000101.

²¹ KRS Chapter 336, <http://www.lrc.ky.gov/statutes/chapter.aspx?id=38883>; KRS Chapter 337 <http://www.lrc.ky.gov/statutes/chapter.aspx?id=38890>.

²² Colorado School Collective Bargaining Agreement Sunshine Act, C.R.S. 22-32-109.4 (2016) et seq., <http://www.lexisnexis.com/hotttopics/Colorado/>.

²³ Fla. Stat. § 447.605, <https://www.flsenate.gov/Laws/Statutes/2012/447.605>; Fla. Stat. § 286.011, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0286/Sections/0286.011.html.

²⁴ Ga. Code Ann. § 50-14-1, http://law.ga.gov/sites/law.ga.gov/files/imported/vgn/images/portal/cit_1210/62/49/186393706OMA_M_2012_Act_correctly_formatted.pdf.

²⁵ Kan. Stat. Ann. §§ 75-4317–75-4320a, http://kslegislature.org/li_2012/b2011_12/statute/075_000_0000_chapter/075_043_0000_article/.

²⁶ Minn. Stat. § 13D.01, <https://www.revisor.mn.gov/statutes/?id=13D.01>.

²⁷ Miss. Code §§ 25-41-1–25-4-17, [http://www.ethics.state.ms.us/ethics/ethics.nsf/PageSection/A_meetings_meetings_law/\\$FILE/Open%20Meetings%20Act_3.29.16.htm?OpenElement](http://www.ethics.state.ms.us/ethics/ethics.nsf/PageSection/A_meetings_meetings_law/$FILE/Open%20Meetings%20Act_3.29.16.htm?OpenElement).

²⁸ Open Meetings, Mont. Code Ann. § 2-3-203, <http://leg.mt.gov/bills/mca/2/3/2-3-203.htm>; *Great Falls Tribune v. Great Falls Public Schools*, 841 P.2d 502 (S.C. MT 1992), <https://filenet.mt.gov/getContent?vsId=%7B79DADF40-5F6C-4432-A0F5-084DCD7F4262%7D&impersonate=true&objectType=document&objectStoreName=PROD%20OBJECT%20STORE>.

²⁹ Neb. Rev. Stat. §§ 84-1408, 84-1410, <http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=84>.

³⁰ Nev. Rev. Stat. § 288.153, <https://www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153>.

³¹ N.D. Cent. Code § 44-04-19, <http://www.legis.nd.gov/cencode/t44c04.pdf>; *Dickinson Ed. Ass'n v. Dickinson Public School Dist. No. 1*, 252 N.W.2d 205 (N.D. 1977).

³² Tenn. Code Ann. § 8-44-201, <http://law.justia.com/codes/tennessee/2010/title-8/chapter-44/part-2/8-44-201>.

³³ Tex. Bus. & Com. Code § 174.108, <http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm>.

blocked in New Hampshire, despite the governor's support and a majority Republican legislature. Right-to-Work opponents successfully enacted a two-year prohibition on the introduction of similar legislation.³⁴

Missouri demonstrates the continued resistance to reform even after right-to-work is approved by public officials. Before the right-to-work law went into effect in August 2017, We Are Missouri – a coalition of in- and out-of-state unions and volunteers – initiated a ballot measure to overturn the law through voter referendum.³⁵ The initiative secured over 300,000 signatures, suspending the law until November 6, 2018, when voters will decide whether to repeal right-to-work.

Citizens, legislators, and public policy experts should also expect legal battles to determine the legality and nuances of new reforms. After Michigan passed a right-to-work law in 2012, the Michigan Education Association (MEA) quickly moved to enforce its “maintenance of membership” or opt-out clause for public school teachers who wanted to leave the union: The teachers could do so only in August. Many teachers were unaware of the obscure union resignation window and missed the opening. With the help of the Mackinac Center Legal Foundation, frustrated educators filed an unfair labor practice charge asserting that the MEA's opt-out window violated the state's right-to-work protections against forced union association.³⁶ In September 2015, the Michigan Employment Relations Commission ruled in favor of the teachers (a decision later upheld by the Michigan Court of Appeals), forcing the MEA to change its rules and bylaws.³⁷ Michigan teachers may now leave the union whenever they please, a major victory for educator freedom across the state.

A pending case in Kentucky seeks to overturn the state's right-to-work law on constitutional grounds. However, recent precedent from other states demonstrate the legality of right-to-work laws. The West Virginia Supreme Court overruled a circuit court injunction attempting to block the state's 2016 law, writing, “The unions have not directed us to any federal or state appellate court that, in over seven decades, has struck down such a law.”³⁸ Similarly, unions alleged Wisconsin's right-to-work law was unconstitutional in both federal and state court lawsuits. However, the Wisconsin Court of Appeals dismissed the lawsuit in September 2017, affirming a similar dismissal in the federal lawsuit from July.³⁹

³⁴ Kathleen Ronayne, “Right-to-work’ bill killed in New Hampshire,” *The Portland Press Herald*, February 16, 2017, <http://www.pressherald.com/2017/02/16/right-to-work-bill-killed-in-new-hampshire/>.

³⁵ Judy Ancel, “310,567 signatures block ‘Right to Work’ in Missouri,” *Labor Notes*, September 18, 2017, <https://www.sos.mo.gov/CMSImages/Elections/Petitions/2018-RO02.pdf>.

³⁶ Susan Romska's Charge Against the Saginaw Education Association and/or the Michigan Education Association, October 21, 2013, <https://www.mackinac.org/archives/2013/SusanMEACHarge.pdf>; *Michigan Education Association v. Susan Romska*, Michigan State Court of Appeals, November 10, 2015, [http://publicdocs.courts.mi.gov/coa/public/orders/2015/329431\(17\)_order.pdf](http://publicdocs.courts.mi.gov/coa/public/orders/2015/329431(17)_order.pdf).

³⁷ Mackinac Center, “Court of Appeals Denies MEA Request to Keep ‘August Window,’” November 13, 2015, <https://www.mackinac.org/21897>.

³⁸ *Morrisey v. West Virginia AFL-CIO*, 804 S.E.2d 883 (W. Va. 2017).

³⁹ Patrick Marley, “Wisconsin appeals court upholds ‘right-to-work’ law, dealing blow to unions,” *Journal Sentinel*, September 19, 2017, <http://www.jsonline.com/story/news/politics/2017/09/19/wisconsin-appeals-court-upholds-right-to-work-law-dealing-blow-unions/680684001/>.

The Impact of Recent Reforms

Among the many budgetary reforms of Wisconsin's Act 10 of 2011 were provisions to limit collective bargaining for public sector workers to base wages and require employees to contribute more toward their health and pension benefits.⁴⁰ According to the MacIver Institute, state retirement savings alone amounted to \$3.36 billion from 2011 to 2016, and Milwaukee Public Schools alone saved \$1.3 billion in long-term pension liabilities.⁴¹ Wisconsin's example should demonstrate the enormous fiscal impact of collective bargaining, but it is important to note that even small changes in states with strong government unions can generate major savings for taxpayers.

In July 2011, Massachusetts passed municipal health insurance reform that allowed towns, cities, and school districts to go through an expedited bargaining process to change existing local health care plans or join the state's lower-cost Group Insurance Commission. If unions agree to a 30-day bargaining window, employees can net up to 25 percent of the resulting health insurance savings.⁴² By mid-2014, it was clear that actual savings had surpassed initial estimates: More than 250 local government entities had saved about \$250 million in health care costs in just three years.⁴³

New Jersey tackled a different aspect of collective bargaining: binding interest arbitration when unions and government agencies cannot agree to new contract terms. In January 2011, new state law placed a strict annual cap of two percent on how much police and firefighter base salaries can increase through an arbitrator's final, binding award. Critically, the definition of "base salary" itself was adjusted to include the additional, built-in contract costs of employees moving up steps in a salary schedule and of longevity increases. Three years later, the legally mandated task force set up to study the impacts of the reform found the annual salary increase awarded through arbitration averaged 1.92 percent under the new cap, compared to a 4.69 percent increase had previous contract terms continued.⁴⁴ In 2014, following the initial success of the cap in relieving strain on local budgets, New Jersey extended the limitation for another three years, until 2017.⁴⁵

⁴⁰ 2011 Wisconsin Act 10, <https://docs.legis.wisconsin.gov/2011/related/acts/10.pdf>.

⁴¹ Brett Healy, "Act 10 Saves Wisconsin Taxpayers More Than \$5 Billion Over 5 Years, MacIver Analysis Finds," MacIver Institute, February 11, 2016, <http://www.maciverinstitute.com/2016/02/act-10-saves-wisconsin-taxpayers-more-than-5-billion-over-5-years-maciver-analysis-finds/>.

⁴² Shira Schoenberg, "State Health Care Reforms Saves \$250 Million, Says Massachusetts Finance Secretary Glen Shor," *MassLive.com*, June 10, 2014, http://www.masslive.com/politics/index.ssf/2014/06/patrick_administration_report.html#incart_email

⁴³ Massachusetts Municipal Association, "Municipal Health Insurance Reform Yields \$247M in Savings," June 10, 2014, <https://www.mma.org/labor-and-personnel/13397-municipal-health-insurance-reform-yields-247m-in-savings>.

⁴⁴ Police and Fire Public Interest Arbitration Task Force, Final Report, March 19, 2014, <http://www.state.nj.us/perc/IATaskForceFinalReport.pdf>.

⁴⁵ Michael Linhorst, "Christie Signs Arbitration Cap on Raises for Police, Firefighter Unions," *NorthJersey.com*, June 25, 2014, <http://www.northjersey.com/news/christie-signs-arbitration-cap-on-raises-for-police-firefighter-unions-1.1040420>.

As part of the state's 2017 legislative union reform package, Iowa also instituted a cap on wage increases during arbitration – three percent or a percent equal to the cost of living increase – and instructed the arbitrator to consider the employer's ability to finance wage increases.⁴⁶

In Colorado, voters overwhelmingly approved a 2014 ballot initiative to open school district union contract negotiations to the public. Since then, local news outlets have been able to report regularly on the process of negotiations. However, as much as this reform is a triumph for government transparency, it also yields a cautionary note about how quickly unions and government officials find workarounds. Colorado's Open Meetings Law stipulates that "all meetings of a quorum or three or more members of any local public body, whichever is fewer" must be open to the public.⁴⁷ To get around this, some districts are holding smaller meetings with two officials. Thompson School District even dubbed the practice "two-by-twos," in which two union officials, the district superintendent, and one district negotiator, meet.⁴⁸

Washington passed a mild transparency measure, effective October 2017, requiring the posting of all state union contracts and modifications, as well as contract summaries including details such as compensation, benefits, and provisions for reopening the contract. Collective bargaining agreements for state workers that are pending approval in the Washington State Legislature must also be posted within 45 days of their submission to the office of financial management. Additionally, the legislation establishes a committee of public officials to consult on matters of collective bargaining and the state's ability to pay for the contracts.⁴⁹

Though unsuccessful with right-to-work and several legislative union reforms, Maine's Governor Paul LePage negotiated two public sector union contracts eliminating union fees as a condition of employment. In exchange for higher raises, the contracts no longer demand agency fees for executive branch employees covered by the Maine State Employees' Association, and corrections officers and mental health workers covered by the American Federation of State, County and Municipal Employees.⁵⁰

Conclusion

Major collective bargaining and government union reforms have passed in several states since 2011, changing the national landscape for public sector unions dramatically. However, several legal areas concerning government unions remain untouched. Most states, even those with right-to-work, do not limit the scope of collective bargaining or prohibit it for some classes of employees. Additionally, any union reform efforts to limit or prohibit certain activities should be explicit. Without explicit language, reforms can be easily undermined by litigation.

⁴⁶ Office of the Governor, "House File 291," February 17, 2017, https://www.legis.iowa.gov/docs/publications/LGE/87/Attachments/HF291_GovLetter.pdf.

⁴⁷ Colo. Rev. Stat. §24-6-402(2)(b), <http://www.lexisnexis.com/hottopics/Colorado/>.

⁴⁸ Sherrie Peif, "School Districts Across State Finding Ways to Skirt the Intent of Prop. 104," *CompleteColorado.com*, April 8, 2015, <http://completecolorado.com/pagetwo/2015/04/08/school-districts-across-state-finding-ways-to-skirt-the-intent-of-proposition-104/>.

⁴⁹ Senate Bill 5969, State of Washington 65th Legislature, July 7, 2017, <http://lawfilesexext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5969.SL.pdf>.

⁵⁰ Christopher Cousins, "Maine state union members vote to accept LePage's 'right to work' contract language," *Bangor Daily News*, August 31, 2017, <https://bangordailynews.com/2017/08/31/politics/maine-state-union-members-vote-to-accept-lepages-right-to-work-contract-language/>.

Shockingly, only Wisconsin and Iowa require unions to stand for workplace elections regularly. Requiring regular recertification votes will provide workers a greater voice in their representation. Union privileges such as opt-out windows, exclusive representation, payroll dues deductions, and release time are rampant in local and state union contracts across the country and have remained largely unchanged for decades.

One reform that would yield major protections for workers is removing the fossilized “exclusive representative” requirement, under which one union represents all workers in a bargaining unit. In response to eliminating this provision, public unions often cite the “free rider” problem, in which non-member workers ostensibly enjoy the benefits of union representation and collective bargaining clout without paying any dues. However, rather than forcing workers to pay agency fees for representation they do not want, lawmakers should allow government agencies to negotiate compensation and work conditions with both multiple unions and individual workers.

Finally, too few states mandate that union contract negotiations be open to the public, a tremendous oversight when personnel costs generally comprise the lion’s share of local and state budgets. While states have made extensive progress in public sector labor reform, many areas remain ripe for change in the coming years.

An online, interactive version of the 50 state table is available online:
http://www.commonwealthfoundation.org/state_labor_laws/

Glossary of Labor Terms

Agency fee: Also known as a “fair share fee.” The portion of dues an employee who is not a union member is required to pay the exclusive representative as a condition of employment. The fee is meant to cover the worker’s “fair share” of union representation and collective bargaining costs.

Agency shop: A workplace that imposes an agency fee arrangement on workers who are not union members.

Bargaining unit: The term for employees grouped together by similar type of position for the purposes of being represented by a union and collective bargaining.

Card check: The process by which a union becomes the official representative of workers by collecting authorization cards from a majority of workers in a bargaining unit. There are three types.

- *Mandatory card check:* A public employer is required to recognize a union as exclusive representative when presented with such a majority of employee signatures.
- *Optional card check:* A public employer may decline to recognize a union when presented with such a request, and instead ask the relevant state or local administrative agency for a workplace election.
- *Prohibited card check:* No form of card check authorization is permitted; unions may be certified only through secret ballot elections for workers.

Certification: The process by which a union becomes the official, usually exclusive, representative of workers in a bargaining unit. May occur through card check or election.

Collective bargaining: The formal process by which a union negotiates legally binding employee compensation and work conditions with a government agency.

Dues deductions: Also known as “dues checkoff.” The written authorization an employee gives an employer to conduct payroll deduction of union dues. In many states, workers may also authorize the payroll deduction of union political action committee contributions by unions.

Fact finding: Usually the second step in resolving a contract negotiation impasse. It involves a third party formally gathering detailed information such as comparable employee wages and benefits, the rate of inflation, and an employer’s ability to pay compensation increases. The fact finder then recommends non-binding solutions.

Free rider: Union term for workers who enjoy the benefits of collective bargaining and union representation without paying for them through union dues. The solution in non-right-to-work states is to make such a worker pay the union an agency fee or lose his or her government job.

Exclusive representative: The designation for the single labor union or employee organization that is permitted to represent all workers in a bargaining unit.

Interest arbitration: Usually the third step and/or last resort in resolving a contract negotiation impasse. It is the usually binding process by which a third party, or arbitrator, rules on final terms of a collective bargaining agreement when a union and employer have reached an impasse in negotiations.

Mediation: Usually the first step in resolving a contract negotiation impasse. A third party facilitates discussion between the employer and union in an attempt to help them reach a voluntary agreement.

Maintenance of membership: Also known as an “opt-out window.” The requirement that an employee who is a union member maintain that membership for the duration of a collective bargaining agreement, a year, or some other specified period. Resigning outside of the designated window is not allowed.

Meet and confer: Refers to a more informal process by which an employer and union discuss compensation and work conditions. The terms of the resulting agreement are usually not legally binding, but in practice, the process is often very similar to collective bargaining.

Paycheck protection: The prohibition against government payroll deductions of political money for unions. Often refers only to employees’ direct political contributions, or political action committee money. However, it exists in full when government agencies are prohibited from collecting both union dues and political contributions on behalf of unions.

Release time: Also known as official time. The practice by which union officials receive time off from their government jobs to perform union business during work hours. It may occur with or without reimbursement from the union to the government entity. For long-term absences—such as a state teachers’ union president’s absence from the classroom for years—it occurs without loss of benefits or seniority.

Right to work: A protection that prohibits any employer-union arrangement wherein a worker can be forced to join a union or pay union dues or fees. There are now 26 right-to-work states.

Unfair labor practice: A union or employer violation of labor relations and collective bargaining law.

About the Author

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The authors would like to thank Fairness Center Paralegal and Research Associate Lindsey Wanner, Commonwealth Foundation Senior Policy Analyst Bob Dick, and Commonwealth Foundation Research Fellow Hunter Ahrens and Senior Fellow Colleen Hroncich for their contributions to this report.

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Alabama	Yes	Not outlined in law	Not outlined in law	Yes	Not outlined in law
Alaska	Yes, required	Salaries, fringe benefits, hours, work conditions	Optional card check	Yes	Written in union contracts
Arizona	Yes	Not outlined in law	Not outlined in law	Yes	Written in union contracts
Arkansas	Yes	Wages, other work conditions	Not outlined in law	Yes	Written in union contracts
California	Yes, required	Salaries, pension benefits, fringe benefits, hours, other work conditions	Mandatory and optional card check	Yes	Yes
Colorado	Yes	Wages, fringe benefits, hours, other work conditions	Mandatory card check for state workers	Yes	Written in union contracts
Connecticut	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Delaware	Yes, required	Wages, fringe benefits, hours, other work conditions.	Secret ballot election only	Yes	Written in union contracts
Florida	Yes	Salaries, pension benefits, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Georgia	Yes for firefighters; No for teachers	Wages, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts
Hawaii	Yes, required	Wages, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Yes
Idaho	Yes	Wages, hours, employment terms	Secret ballot election only	Yes	Yes
Illinois	Yes, required	Wages, fringe benefits, hours, other work conditions.	Optional card check	Yes	Written in union contracts
Indiana	Legal for all except state employees	Salary, wages, fringe benefits, hours	Optional card check	Yes	Written in union contracts
Iowa	Yes	Limited to base wages only, except for public safety workers	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Not outlined in law	Not specified	No	Partial: No collection of union political money	Yes	Legal for some
Written in union contracts	May be closed	Yes	No	No	Legal for some
Not outlined in law	Not specified	Not outlined in law	No	Yes	Legal for some
No	Not specified	Not outlined in law	No	Yes	Illegal
Written in union contracts	May be closed	Yes, once requested by law enforcement and firefighters	No	No	Legal for some
Written in union contracts	Must be open for schools; may be closed for other agencies.	No	No	No	Legal for some
Written in union contracts	No	Yes	No	No	Illegal
Written in union contracts	No	Yes, once requested	No	No	Illegal
Written in union contracts	Must be open	Not outlined in law	No	Yes	Illegal
Written in union contracts	Must be open	Not outlined in law	Not outlined in law	Yes	Illegal
Written in union contracts	May be closed	Yes, for police, firefighters, nurses and certain other white-collar workers.	No	No	Legal
Written in union contracts	May be closed	No	Partial: No collection of union political money	Yes	Illegal
Written in union contracts	No	Yes, once requested by law enforcement and firefighters	No	No	Legal for teachers
Not outlined in law	No	No	Yes, for state workers	Yes	Illegal
Yes	Partial	Yes, once requested	Yes	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Kansas	Yes	Salary, pension benefits, fringe benefits, hours, other working conditions	Varies	Yes	Written in union contracts
Kentucky	Yes	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Louisiana	Yes	Not outlined in law	Not outlined in law	Yes	Written in union contracts
Maine	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Maryland	Yes, required	Wages, hours, pension benefits, fringe benefits, other work conditions	Mandatory card check for teachers. Secret ballot election only for state and higher education workers.	Yes	Yes
Massachusetts	Yes, required	Wages, hours, fringe benefits, standards, productivity/performance, other work conditions	Mandatory card check	Yes	Written in union contracts
Michigan	Yes	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Minnesota	Yes, required	Wages, hours, fringe benefits, other work conditions	Optional card check	Yes	Yes
Mississippi	Yes	Not outlined in law	Not outlined in law	Yes	Not outlined in law
Missouri	Yes, required	Salaries, fringe benefits, other work conditions	Optional card check	No; some police and teachers may be represented by multiple unions	Written in union contracts
Montana	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Nebraska	Yes	Work conditions, grievances	Secret ballot election only	Yes	Yes

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Written in union contracts	Must be open	No	Partial: No collection of union political money	Yes	Illegal for teachers
Written in union contracts	No	No	Partial: No payroll deduction without authorization	Yes	Illegal
No	No	No	No	Yes	Legal for all except police/firefighters
Written in union contracts	May be closed	Yes, once requested	No	No	Illegal
Written in union contracts	No	Yes, for teachers and local agency employees once requested	No	No	Illegal
Written in union contracts	May be closed	Yes, once requested	No	No	Illegal
No	May be closed	Yes, for police and firefighters	Yes, for school employees	For all except most public safety employees	Illegal
Written in union contracts	Must be open	Yes, once requested by essential employees such as police and firefighters	No	No	Legal for teachers
Not outlined in law	Must be open	Not outlined in law	Not outlined in law	Yes	Illegal
Written in union contracts	May be closed	Written in union contracts	No	Yes	Illegal
Written in union contracts	Must be open	Yes, once requested	No	No	Legal for teachers and general government workers
Written in union contracts	Must be open	No	No	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Nevada	Yes	Wages, hours, other work conditions	Optional card check	Yes	Yes
New Hampshire	Yes, required	Wages, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts
New Jersey	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Written in union contracts
New Mexico	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
New York	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Written in union contracts
North Carolina	No	N/A	N/A	N/A	N/A
North Dakota	Yes	Wages, other work conditions	Not outlined in law	Yes	Not outlined in law
Ohio	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Oklahoma	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check for teachers. Secret ballot election only for other workers.	Yes	Written in union contracts
Oregon	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Written in union contracts
Pennsylvania	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Rhode Island	Yes, required	Wages, limited fringe benefits, other work conditions	Optional card check	Yes	Written in union contracts
South Carolina	No	N/A	N/A	N/A	N/A
South Dakota	Yes, required	Wages, some pension benefits, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Written in union contracts	Must be open	Only required for some public employees	No	Yes	Illegal
Written in union contracts	No	No	No	No	Illegal
Written in union contracts	May be closed	Yes, once requested by police and firefighters	No	No	Illegal
Written in union contracts	No	Yes, once requested	No	No	Illegal
Written in union contracts	May be closed	Yes, once requested by law enforcement, firefighters and some transit workers	No	No	Illegal
N/A	N/A	N/A	N/A	Yes	Illegal
Not outlined in law	Must be open	Yes, once put into contracts for teachers	No	Yes	Illegal for teachers
Written in union contracts	No	Yes, for essential employees such as law enforcement and firefighters	No	No	Legal for teachers and general government workers
Written in union contracts	May be closed	Yes, once requested by police and firefighters	Yes, for school employees and state workers	Yes	Illegal
Written in union contracts	May be closed	Yes, for public safety workers such as police and firefighters	No	No	Legal for teachers and general government workers
Yes	May be closed	Yes	No	No	Legal for teachers
Written in union contracts	May be closed	Yes	No	No	Illegal
N/A	N/A	N/A	N/A	Yes	Illegal
Written in union contracts	May be closed	No	No	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Tennessee	No for police/firefighters; "collaborative conferencing" permitted for teachers	Wages, fringe benefits, hours, work conditions	Secret ballot election only	No; unions awarded representation proportionally	Yes
Texas	Legal only for police and firefighters	Wages, hours, fringe benefits, other work conditions	Optional card check	Yes	Written in union contracts
Utah	Yes	Wages, hours, pension benefits, fringe benefits, other work conditions	Optional card check	Yes	Yes
Vermont	Yes, required	Salaries, fringe benefits, hours, other work conditions	Optional card check for teachers. Secret ballot election only for other workers.	Yes	Written in union contracts
Virginia	No	N/A	Secret ballot election only	No; workers may negotiate individually	Written in union contracts
Washington	Yes, required	Wages, some pension/fringe benefits, hours, other work conditions	Mandatory card check	Yes	Yes
West Virginia	Yes	Not outlined in law	Not outlined in law	No, workers may negotiate individually	Not outlined in law
Wisconsin	Yes	Limited to base wages only, except for public safety workers	Secret ballot election only. Annual recertification required.	Yes	Written in union contracts
Wyoming	Yes	Wages, hours, fringe benefits, work conditions	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Yes	Must be open	No	Partial: No collection of union political money	Yes	Illegal
Not outlined in law	Must be open	Yes, for public safety workers such as police and firefighters	No	Yes	Illegal
Not outlined in law	May be closed	Yes, for firefighters	Partial: No collection of union political money	Yes	Illegal for firefighters
Written in union contracts	May be closed	Yes, for judiciary employees; for teachers and municipal workers, if both negotiating sides submit to arbitration	No	No	Legal for teachers and municipal employees
Not outlined in law	N/A	No	N/A	Yes	Illegal
Yes, for port authority workers. Not outlined in law for others.	No	Yes, for police, firefighters, public transit and other uniformed personnel.	No	No	Illegal
Not outlined in law	Not specified	Not outlined in law	No	Yes	Illegal for teachers; not outlined for other workers
Yes, for public safety employees only	Partial	Yes, once requested by municipal and public safety workers	Yes, except public safety employees	Yes, except public safety/transit workers may pay fair share fee	Illegal
Not outlined in law	May be closed	No	No	Yes	Determined by contract

