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Labor-Friendly "Workers' Rights Amendment" Passes in Illinois

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The Illinois Constitution Amendment 1 (commonly referred to as the "Workers' Rights Amendment") has received enough votes to secure its passage. Citizens of Illinois voted on the Amendment on November 8, 2022, but delays in tabulating the votes resulted in a formal announcement on November 16, 2022 of the Amendment's passage.

This labor-backed Amendment introduces several implications for Illinois employers. First, the Amendment is broader than the terms of the National Labor Relations Act in that it protects employees' right to organize and bargain "to protect their economic welfare and safety at work." The Illinois Legislature has not defined the term "economic welfare," but this term may function to extend rights to employees beyond those rights granted by the federal National Labor Relations Act ("NLRA").

The Amendment also allows employees to collectively bargain through representatives "of their own choosing," even if the employees otherwise are not members of a union. In other words, the Amendment allows employees to collectively bargain over the terms and conditions of their employment without doing so through a certified union.

Still, the Amendment also strengthens the position of unions by blocking Illinois from becoming a "right-to-work" state. Under "right-to-work" laws, states can mandate that no person be required to pay dues to a labor union, or join a labor union, as a condition of employment. The Amendment places a ban on:

> "any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment."

As a result, the Amendment effectively blocks any future enactment of a private sector "right-to-work" law in Illinois.

There exists the possibility that the NLRA preempts the Amendment, at least with respect to private sector employees. Courts may determine that the Amendment is preempted by the NLRA because the Amendment appears to: (1) expand topics of bargaining beyond those listed in the National Labor Relations Act; and (2) establish a right of all employees to bargain collectively. In fact, earlier this year, an Illinois Appellate court addressed this very question, but ruled that the matter was not yet ripe, as the Amendment had not yet been passed. Because the Amendment has now passed, this preemption argument is likely to resurface in a future legal challenge.

Illinois employers should stay abreast of the legal, and indeed political, responses to the Amendment's passing so as to navigate an increasingly labor-friendly Illinois.

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