



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

Attorney General Advisory:
Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees play a critical role throughout the state of Oregon. They work hard every day to ensure public safety, protect public health, educate our children, and provide other critical services to Oregonians.

The Attorney General issues this advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 US ___, 138 S Ct 2448 (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Oregon law to organize, to join unions, and to engage in collective action for mutual aid or protection under the Oregon Public Employee Collective Bargaining Act (PECBA). The Attorney General's Office issues this advisory to clarify those rights and to provide information on the issue of union dues and agency fees.

Collective Action Rights and Restrictions

- Under Oregon law, public sector employees maintain the right to:
 - Organize;
 - Form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations, ORS 243.662; and
 - Be free from interference, restraint or coercion when exercising their protected rights to engage in collective bargaining, ORS 243.672(1)(a).

- Public employers are prohibited from:

- Interfering with or assisting in the formation, existence or administration of any employee organization, ORS 243.672(1)(b);
- Discriminating in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization, ORS 243.672(1)(c); and
- Refusing to bargain collectively in good faith with the exclusive representative of the employees, ORS 243.672(1)(e).

Dues & Agency Fees

- The *Janus* opinion only applies to the payment of an agency service fee by individuals who decline union membership. The *Janus* decision does not impact any agreements to pay union dues between a union and its members to pay union dues. Existing membership cards or other agreements by union members to pay dues should continue to be honored.
- Under *Janus*, public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent. Employees who are nonmembers and paying agency fees as of the date of the opinion (June 27, 2018) may choose to become dues-paying union members.
- Employees may pay dues through a payroll deduction. Under state law, employees may authorize a payroll deduction by notifying their employer in writing. ORS 292.055.
- Public employers may not interfere with, restrain or coerce employees regarding union membership. ORS 243.672(1)(a).

Member Access & Information

- Many public sector unions have negotiated provisions allowing for the use of the employer's facilities and equipment for meetings, communication and administration of the collective bargaining agreement.
- Under PECBA and often in collective bargaining agreements, public employers are required to provide the collective bargaining representative with the names and contact information of any newly hired employees, in a timely manner.
- Public employees' personal information, including home addresses, is exempt from disclosure to third parties by their employer (with limited exceptions, including disclosure to collective bargaining representatives). See ORS 192.355(2)(a) and ORS 192.345(7).

Workers who believe their rights have been violated may contact their union or call the Employment Relations Board at 503-378-3807.