



Electronic Alert

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Public Sector Employers: No More Fair Share Fees!

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Today in *Janus v. AFSCME*, the Supreme Court found that a public employer's extraction of agency fees from nonunion members' wages violates the First Amendment. Specifically, "neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay."

Many anticipated today's decision, as we outlined in our previous [alert](#) on how employers should prepare for *Janus*. This decision overrules the *Abood* case, which for decades has allowed public sector unions to collect agency or "fair share fees" from those employees covered by the collective bargaining unit, but who elect not to become members of the union.

Writing for the majority opinion, Justice Alito explained that fair share fees are essentially an arrangement whereby public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes. Today's decision holds that "this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech" and that "fundamental free speech rights are at stake."

Public sector employers need to act immediately to ensure compliance with both the Supreme Court's decision and applicable state laws. Employers should review relevant contract language and any independent fair share fee authorization forms as soon as possible to determine who has or has not specifically consented to these deductions.

Because the Supreme Court found these wage deductions unlawful for nonconsenting employees, it could be a wage and hour violation to deduct fair share fees from those employees' wages as soon as your next paychecks go out. Supervisors also need to be cautioned in how to answer any questions from bargaining unit employees about today's decision, as they may inadvertently commit an unfair labor practice charge. Finally, under PECBA, upon request by either party, any fair share fee provisions in their collective bargaining agreements may also be reopened for negotiation.

For questions on how to address any fair share fee provisions in your contract, contact Kyle Abraham at kabraham@barran.com (503) 276-2132 or Nicole Elgin at nelgin@barran.com (503) 276-2109.