

Preempted: Wisconsin Law Offering Shorter Union Opt-Out Window Overturned

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Under the Labor Management Relations Act (LMRA), unions can make employees' authorizations for union dues to be deducted from their paychecks irrevocable for up to one year. But can a state enact a law that truncates that revocability period? According to a [recent ruling from the U.S. Court of Appeals for the Seventh Circuit](#), the answer is no. In 2015, Wisconsin passed a law that mandated employee union dues authorizations be revocable after 30 days – considerably shorter than the one year permitted by the LMRA. The International Association of Machinists challenged the Wisconsin law on grounds it was preempted by the LMRA. In a Sept. 13 ruling on the issue, the Seventh Circuit agreed with the union's argument and affirmed an injunction against that portion of the law that prevented it from going into effect. This is an interesting issue. Courts have ruled in many contexts that states can pass legislation that is more protective of employee rights than what is provided for under federal law. For example, the Fair Labor Standards Act sets federal minimum wage (currently \$7.25/hour), but many states have passed their own laws that require minimum wage to be higher (e.g., California currently has minimum wage set at \$11/hour). Similarly, many states have passed legislation regarding employee leave time that provides for leave times well above what is required under the federal Family Medical Leave Act, and those laws have not been found to be preempted. Arguably, offering employees more opportunity to revoke consent for dues being deducted from their wages is similar to these state laws in other contexts (i.e., it is an example of a state trying to afford more protection to employees), but the court found preemption nonetheless applied. It's possible the case could be appealed to the U.S. Supreme Court. Stay tuned.

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