

Electronic Alert

Volume 21, Issue 11

June 4, 2018

Public Employers: *Janus* Is Coming, Are You Ready?

By Kyle Abraham & Nicole Elgin

The U.S. Supreme Court is expected to rule on the *Janus v. AFSCME* decision any day. If the decision is consistent with expectations, public sector employers will need to take immediate action. Specifically, public sector employers will likely need to change pay deductions for their fair share payers as soon as the decision is released.

In *Janus*, the Court will decide whether fair share agreements for public sector employees are unconstitutional and in violation of the First Amendment. A fair share agreement is where an employee is covered by a collective bargaining agreement, but the employee declines to join a union. In such a case, the employee must still pay their “fair share” fee for the union to represent the employee in collective bargaining and other issues, and the union is required to represent the employee.

The Supreme Court is expected to rule that requiring an employee to pay their “fair share” fee violates their First Amendment rights to freedom of speech and freedom of association. If the Supreme Court issues such a ruling, public employers must immediately assess their policies, practices and procedures for deducting fair share fees. Otherwise, public employers run the risk of liability for unlawful deductions from pay.

Public employers would be wise to contact labor counsel in advance of the *Janus* decision and develop a plan before the Supreme Court issues its decision.

For questions on how to prepare for *Janus*, contact Kyle Abraham at kabraham@barran.com (503) 276-2132 or Nicole Elgin at nelgin@barran.com (503) 276-2109.