

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW SPECIAL ALERT July 2023

SENATE BILL 256, “PAYCHECK PROTECTION”

During the 2023 session, the Florida legislature passed [SB 256](#), also known as “paycheck protection.” Governor DeSantis signed the bill into law on May 9, 2023. The new law creates additional requirements for certain public-employee organizations (unions) that represent public employees in collective bargaining. SB 256 took effect on July 1, 2023. The Bill exempts unions that represent law-enforcement officers, correctional officers and firefighters.

On June 8, 2023 the Public Employees Relations Commission (PERC) met to discuss and approve the proposed [Membership Authorization Form](#).

On Monday, June 26, 2023 the Public Employees Relations Commission (PERC) voted to publish three proposed rules related to the exemptions in SB 256 (Ch. 2023-35, Laws of Florida) for law enforcement and firefighters. While the bill does not require rulemaking, there is uncertainty related to these provisions and the proposed rules are intended to eliminate any ambiguity in the legislation. These new rules will not be approved until several weeks after the July 1, 2023 effective date. It is possible, perhaps even likely, these rules will be contested as a matter of administrative law.

We’ve included the staff analysis of SB 256 below and links to the proposed rule language published in the Florida Administrative Register. The Commission received a request for hearing and scheduled for July 17, 2023, at 3:00 p.m.

EFFECT OF PROPOSED CHANGES – SB 256 ANALYSIS

Section 1

Amends s. 447.301, F.S., to require employees eligible for union representation to sign a membership authorization form in order to be a member of an employee organization beginning July 1, 2023. The form must be prescribed by the PERC and contain certain information and statements. A member of an employee organization must be allowed to revoke membership at any time upon the employee’s organization’s receipt of the written revocation. The PERC is granted rulemaking authority to implement the requirements of the membership authorization form and the revocation of membership. The requirement for a signed membership form, and the provisions relating to the revocation of membership do not apply to members of an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, probation officers, and firefighters. This section is effective upon becoming a law.

Section 2

Amends s. 447.303, F.S., to prohibit an employee organization from having a public employer deduct dues and assessments from a public employee's salary. However, an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, and firefighters continues to have the right to have its dues and assessments deducted and collected by the public employer from the salaries of those employees who authorize the deduction and collection of the dues and assessments. This section is effective July 1, 2023.

Section 3

Amends s. 447.305, F.S., to expand the information that must be submitted to PERC by an employee organization at the time of registration and renewal of registration. The current annual financial statement of the employee organization must be "audited" by an independent certified public accountant

This section requires an employee organization, at the time of its renewal of registration, to submit information regarding its membership and whether employees eligible for representation pay dues to the employee organization. If this information shows that less than 60 percent of the employees eligible for representation paid dues to the employee organization certified as the bargaining agent during its last registration period, the employee organization must petition PERC for recertification as the bargaining agent. This means the employee organization and the employer will share the cost of conducting an election. If the majority of the employees voting in this election choose to be represented by the employee organization, the employee organization retains its certification as the exclusive bargaining agent. Section 3 allows the public employer or a bargaining unit employee to challenge an employee organization's renewal of registration based on a belief that the application is inaccurate. If PERC finds the application is inaccurate or does not comply with the requirements of s. 447.305, F.S., the employee organization's registration and certification must be revoked.

This section grants PERC authority to initiate an investigation to confirm the validity of the information submitted in the registration or renewal of registration. The PERC may revoke or deny an employee organizations registration or certification if PERC finds that the employee organization failed to cooperate with the investigation intentionally misrepresented the information submitted on the registration or renewal. This section also requires each certified bargaining agent to provide its members an annual audited financial report and must notify its members of all costs of membership. The following provisions of this section do not apply to employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters:

- Requirement to submit information regarding membership and dues payments;
- Requirement that an employee organization must petition for recertification as the bargaining agent if fewer than 60 percent of its eligible members pay dues;
- Right of public employer or bargaining unit employee to challenge the accuracy of the renewal application; and
- Authority of PERC to revoke or deny a registration or certification based on the employee organization's failure to cooperate in an investigation.

Section 4

Amends s. 447.509, F.S., to expand the list of unlawful acts committed by an employee organization, its members, and agents to include:

- Offering anything of value to a public officer which the public officer is prohibited from accepting.
- Offering any compensation, payment, or thing of value to a public officer which the public officer is prohibited from accepting. A public officer is defined to include “any person elected or appointed to hold office in any agency.” This section is effective upon becoming a law.

Section 5

Amends s. 1012.2315, F.S., to repeal the current additional requirement on renewal of registration that applies only to employee organizations representing units of instructional personnel employees. This provision will no longer be necessary with the enactment of the process in s. 447.305 (section 3 of this bill) which applies to all employee organizations that do not represent law enforcement officers, correctional officers, correctional probation officers, or firefighters. This section takes effect October 1, 2023, to coincide with the effective date of the section 3.

Section 6

Reenacts s. 110.114, F.S., to incorporate by reference the modifications made to s. 447.303, F.S. Section 7 reenacts s. 447.507(6)(a), F.S., to incorporate by reference the modifications made to s. 447.303, F.S. Section 8 provides that the act shall take effect upon becoming a law, except as otherwise expressly provided in this act.

PUBLISHED EXEMPTION RULES

Notice of Proposed Rule

Department: Department of Management Services

Division: Public Employees Relations Commission

Rule No.: 60CC-1.104

Purpose: The purpose of the rule is to clarify the exemption from the requirement of public employees to complete an Employee Organization Membership Authorization Form, provided in subparagraph 6. of section 447.301(1)(b), F.S., as amended by chapter 2023-35, section 1, L.O.F. https://www.flrules.org/gateway/View_Notice.asp?id=27261964

Notice of Proposed Rule

Department: Department of Management Services

Division: Public Employees Relations Commission

Rule No.: 60CC-5.101

Purpose: The purpose and effect of the rule is to clarify the application of the statutory prohibition against, and authorization for, payroll deduction with respect to particular bargaining units. Rule clarifies exception in subsection (1) of section 447.303, F.S., as amended by chapter 2023-35, section 3, L.O.F. and authorization in subsection (2) of section 447.303, F.S., as amended by chapter 2023-35, section 3, L.O.F., to provide that dues and assessments may be deducted and collected by an employer only from the salaries of employees in a bargaining unit that includes public safety employees specified in the statute.
https://www.flrules.org/gateway/View_Notice.asp?id=27262158

Notice of Proposed Rule

Department: Department of Management Services

Division: Public Employees Relations Commission

Rule No.: 60CC-6.401

Purpose: The purpose and effect is to clarify a statutory exemption from certain registration renewal requirements as applying only to bargaining units that include public safety employees specified in the statutory exemption.

https://www.flrules.org/gateway/View_Notice.asp?id=27262352