

CLIENT NEWS BRIEF

New Law Aims to Protect Public Employers and Unions from State Lawsuits to Recover "Fair Share" Fees

A new law provides public employers and public sector unions with legal immunity under state law from claims to recover the deduction of mandatory agency fees, or "fair share" fees, collected before the United States Supreme Court issued its decision in *Janus v. AFSCME* on June 27, 2018. Senate Bill (SB) 846 is effective immediately.

Background

Prior to the *Janus* decision, the United States Supreme Court previously held that it was constitutional for public sector unions to collect agency fees from nonunion members to defray the cost of collective bargaining and other activities, so long as nonunion members were not required to pay for a union's political or ideological activities. In *Janus*, the United States Supreme Court overturned this precedent and held that public employees may not be compelled to pay fair share fees to public sector unions, as such fees violate the First Amendment. ([See 2018 Client News Brief No. 27.](#))

SB 846, which adds section 1159 to the Government Code, seeks to provide legal protection to public employers and public sector unions that relied on prior Supreme Court precedent and state law when deducting and collecting fair share fees. SB 846 provides that public employers and employee organizations are not liable under state law for "requiring, deducting, receiving or retaining" fair share fees from public employees if the fees were legally permitted at the time and paid prior to June 27, 2018. SB 846 states that this new statute clarifies current state law, and does not change it. In addition, Government Code section 1159 applies to claims and actions that are pending on the effective date of the statute, in addition to claims and actions filed after that date.

Takeaways

Since the *Janus* decision, employees aided by organizations opposed to agency fees have filed lawsuits seeking the return of the employees' fair share fees from the unions. As SB 846 is limited to claims or actions under state law, it does not impact lawsuits filed in federal court alleging a violation of federal law.

If you have any questions about SB 846, contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

September 2018
Number 54



Dulcinea Grantham
Partner and Co-Chair
Labor & Employment Practice Group
Walnut Creek Office
dgrantham@lozanosmith.com



Aria G. Link
Associate
Walnut Creek Office
alink@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.