



Labor & Employment @lert

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Illinois Poised to Adopt Constitutional Right to Unionize

Yesterday, Illinois voted on a constitutional amendment cementing workers' rights to form unions and collectively bargain. As of this morning, the vote is too close to determine whether the amendment passed, but we expect to see the final results in the coming days. With the approval of this amendment, the Illinois Constitution will state that employees have a "fundamental right to organize and bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work" and prohibit any law that "interferes with, negates, or diminishes the right of employees to organize and bargain collectively."

While it is unclear what the amendment's implication will be for Illinois workers, one concern for opponents is the breadth and uncertainty of its language. For instance, the amendment uses language with a robust history in the National Labor Relations Act (NLRA), such as "wages, hours, and working conditions," but it also includes undefined terms such as "economic welfare." Lawsuits were filed to remove this proposed amendment from the ballot, arguing the language was unconstitutional and preempted by the NLRA. For example, Cook County residents filed suit in April against the Illinois State Board of Elections under this preemption theory, arguing the amendment would provide workers with more collective bargaining rights than outlined in the NLRA by adding the undefined term "economic welfare" and failing to use language requiring "exclusive representation." The Illinois courts refused to remove the amendment from the ballot, reasoning that these challenges were inappropriate until the language was in effect. If the amendment passes, we expect to see more lawsuits on this

issue, not only challenging the legality of this language, but also litigating how these new, vague terms will be defined in the context of Illinois labor law.

The Illinois amendment is the latest in the recent wave of pro-unionization efforts around the country, a trend we expect to continue.

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