



Legal Lunchbox: The State of Unionization

June 12, 2023

12 p.m. to 1 p.m.

Presenter: Adam Childers, Crowe & Dunlevy

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Agenda

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|---------|---|
| 11:45 | Check-In and Grab Lunch |
| 12 p.m. | Introduction of Presenter/ Program Begins |
| 1 p.m. | Program Ends |



Legal Lunchbox: The State of Unionization

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12 p.m. to 1 p.m.

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Program Details

The Biden Administration is the most pro-union one the United States has seen in 50 years. With a majority of states (27) having right-to-work statutes, confusion exists as to what “right-to-work” actually is.

This CLE will provide attendees with information and clarification on the following:

- What right-to-work is and is not.
- What rights do employees and employers have when it comes to efforts to form a union in Oklahoma.
- Best practices for handling employee efforts at unionization in Oklahoma
- What is at-will employment and its relationship to right-to-work.
- Unionization efforts and trends across the country.

Presenter Bio

Adam W. Childers

Adam W. Childers serves as President and CEO at Crowe & Dunlevy, and is the chair of the firm's Labor & Employment Practice Group. He received his Bachelor of Arts degree in Political Science (1997) and his Juris Doctor degree (2000), both with honors, from the University of Oklahoma. He also attended the Summer Program at the Queens College at Oxford University in Oxford, England.

Adam is currently an Administrative Law Judge at the Oklahoma Department of Labor and a member of Phi Beta Kappa and the Order of the Barristers. Adam is also a member of the Oklahoma Academy for State Goals and he is a graduate of Leadership Norman's 2007 – 2008 class and OKConnect Class 2 (2012). In 2013, he was chair of the Oklahoma Bar Association Labor and Employment Section, after holding the positions of vice-chair in 2012, treasurer in 2011 and secretary in 2010. He also served as a member of the Board of Visitors for the College of Arts and Sciences at the University of Oklahoma, the Board of Governors of the Oklahoma County Bar Association Young Lawyers' Division and the Robert J. Turner Inn of Court.

The Best Lawyers publication selected Adam for inclusion in Best Lawyers in America 2016-2023 for Labor and Employment litigation, and named him Oklahoma City 2020 Lawyer of the Year for Employment Law – Management, and 2022 Lawyer of the Year for Labor Law – Management. He has been ranked in Chambers USA since 2011, including a Band 1 ranking for Labor & Employment law since 2021. Adam has achieved the BV peer review rating given by LexisNexis Martindale-Hubbell. Adam was listed as a "Rising Star" in the October 2008, 2010, 2011 and 2012 publications of Super Lawyers and in 2013-2020 he was listed as a "Super Lawyer" in employment litigation by the same publication.* In May 2009, Adam was selected as a member of The Journal Record's "Achievers Under 40 – Class VI."

Since joining Crowe & Dunlevy in 2000, Adam has successfully represented management in cases brought by employees under Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, Oklahoma's Workers' Compensation laws, the Fair Labor Standards Act, Oklahoma's non-compete and non-solicitation statutes and Oklahoma's Open Meeting and Open Records Acts.**

In addition to his litigation work for employers, Adam has handled Equal Employment Opportunity Commission and Oklahoma Human Rights Commission investigations as well as Oklahoma Employment Security Commission hearings. Childers has trial experience, both in jury and bench trials.

Adam is very involved in counseling employers who have questions about personnel decisions, ranging from how to properly terminate an employee to the proper procedures for garnishing an employee's paycheck. Adam has also crafted and revised employment policies for employee handbooks.

Building on his experience in oratorical skills that he gained as the college captain of the University of Oklahoma's Speech and Debate team, Adam is very active on the legal lecture circuit. Adam speaks to other lawyers, high level executives, human resource professionals and clients about the various nuances of the laws affecting the workplace. These speaking engagements have included discussions on the ADA, FMLA, ADEA, Title VII, FLSA, Oklahoma's Workers' Compensation laws, as well as strategies for keeping the workplace free of litigation.



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Legal Lunchbox: Right to Work Laws

Presented by: Adam W. Childers



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Adam W. Childers



- Trial lawyer and litigator in the firm's Oklahoma City office
- President & CEO of the firm
- Chair of the Labor & Employment Practice Group
- Chair of all Practice Groups at Crowe & Dunlevy
- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Adam W. Childers, or another licensed attorney.



Agenda Template



Introduction



Key Terms



Right to Work



Efforts & Trends



Best Practices





Key Terms

Right to Work Laws

- Laws that focus on employees' right to work without affiliating with unions or contributing financial support to unions
- Generally preclude employers and unions from negotiating a union security clause into a collective bargaining agreement that would otherwise be lawful under the NLRA



At-Will Employment

- Not a statute/regulation
- A legal doctrine based on common law
- Idea: employment relationship may be terminated by the employer or employee at any time, for any or no reason, as long as there are no discriminatory or otherwise illegal practices.
- This means employers generally do not need good cause to involuntarily terminate an employee



Collective Bargaining Agreement

- Contract between a union representing employees and the employer
- Sets the terms and conditions of employment
 - Wages
 - Working hours and conditions
 - Employee benefits
 - Grievance and arbitration procedures
 - Limitations on strikes
 - Union's rights and responsibilities
 - Management's rights and responsibilities



Agency & Union Shops

- Agency shops – where employees must pay fees or charges to a union to keep their jobs
- Union shops – where employees must join and maintain union membership to keep their jobs
- Both expressly prohibited in OK





Right to Work

National Labor Relations Act

- Defines and protects the rights of employees and employers to encourage collective bargaining and eliminate certain practices on the part of labor and management that are harmful to the general welfare.
- Defines rights of employees to organize and bargain collectively with their employers through representatives of their own choosing or not to do so



OK Const. Art. 23, § 1A.

- Prohibits requiring employees, as a condition of employment or continued employment, to:
 - Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
 - Become or remain a member of a labor organization;
 - Pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
 - Pay to any charity or other third party, in lieu of such payments, any amount equivalent to or pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
 - Be recommended, approved, referred, or cleared by or through a labor organization.





Efforts & Trends in Labor Relations

Biden Administration

- White House Task Force on Worker Organizing and Empowerment
- Protecting the Right to Organize Act
- Employee-focused NLRB
- New Labor Secretary
- NLRB Rulemaking – “blocking charge” rule



McLaren Macomb (2023)

- Issue: severance agreement containing broad confidentiality and non-disparagement provisions
- Claim: the provisions at issue unlawfully restrained and coerced employees in violation of NLRA Section 7 rights
- Held: separation agreements containing non-disparagement and non-disclosure provisions are unlawful under Section 7



McLaren McComb (2023)

- Not necessarily an outright ban – must be narrowly tailored
- Examples:
 - Trade secrets protections
 - Prohibitions against statements that are “maliciously untrue, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity”





Best Practices

Management Do's and Don'ts

- Management should ensure they do the following:
 - Refuse any request by the union to have organizing or recruiting activities on company premises during paid work time unless the state has a law prohibiting this restriction.
 - Review your non-solicitation policy regarding the use of your e-mail system and be sure you can enforce restrictions against employees using your e-mail program to send union messages.



Management Do's and Don'ts

- Management should not:
 - Promise benefits or pay increases to employees if they withhold support for the union.
 - Interrogate employees about their opinions on unionization or their union activities.
 - Threaten any action, such as disciplining an employee who engages in union organizing or closing a location or a plant if employees vote a union in.
 - Create an impression of surveillance of union activities by members of management.
 - Discuss any personnel policies or benefits of the company with union representatives.





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