

Union Friendly PRO Act Reintroduced in Congress: Seeks to Revolutionize Labor Law Throughout the U.S.

Labor & Employment Law Update

By Michael Hughes on February 8, 2021

The mis-named Protecting the Right to Organize Act (PRO Act) was reintroduced in the U.S. Congress on February 4, 2021. The PRO Act, which originally was introduced in 2019 and passed the House of Representatives in 2020, would completely change the landscape in the labor-relations world. You may recall that our recent blog post advised that reintroduction of the PRO Act likely was a priority of the Biden Administration and the revamped U.S. Congress.

Billed by Democrats as legislation to support workers' rights, the PRO Act is less worker-friendly than Union-friendly. If passed, the PRO Act would overhaul the National Labor Relations Act and make it easier for unions to organize more employees, remove most restrictions on union strikes and other union pressure tactics, weaken employers' ability to resist unionization, and provide massive fines and penalties on employers who violate the law. While the bill's wholesale passage in the Senate may be unlikely (unless Democrats move to eliminate the filibuster), many of its terms likely will find their way into other pieces of legislation.

Among the more drastic provisions of the proposed legislation are the following:

Organizing / Elections

- Expands which workers unions can organize (to include many who currently are considered independent contractors and supervisors)
- Erodes the secrecy of employee ballots and increases risk of fraudulent elections by giving the union the sole determination over the manner the election is to be conducted (mail ballot, electronic, off-site or on-site elections)
- Allows unions who lose elections, if they allege an unfair labor practice by the employer affected the election, to resort to an after-election card check to win representation rights

Collective Bargaining

- Bans all state right-to-work laws
- Provides for “interest arbitration” if the employer and union cannot quickly agree to terms of an initial collective bargaining agreement—meaning a slate of arbitrators would decide wages, benefits and other contract terms
- Allows “hot cargo” agreements, where unions can demand that employers do not do business with other, non-union companies
- Bans employers’ ability to withdraw recognition from a union, even upon evidence that all employees want the union out

Strikes / Picketing / Construction Sites

- Allows “secondary” strikes and boycotts, meaning the union can strike against employers/companies that it does not have a dispute with, in order to force them to stop doing business with non-union companies (this would allow ANY and ALL picketing at construction sites, without regard to reserved gates, effectively allowing unions to halt construction)
- Allows partial strikes, intermittent strikes, and slow-down strikes
- Allows strikes in jurisdictional disputes between rival unions
- Removes all time limits on picketing for recognition
- Bans employers’ ability to lockout employees, unless they go on strike first

Damages / Fines

- Civil fines up to \$50,000 for any unfair labor practice (doubled for repeat offenders)
- Requires employers to re-hire employees, pending resolution, if union alleges discharge was unlawful
- In discharge cases, in addition to back pay, would allow for front pay, liquidated damages (2x amount of back pay), consequential and punitive damages
- \$10,000 daily fine for non-compliance with an NLRB order
- PERSONAL liability for company directors and officers
- Provides employees with the right to sue employers in court, even if the NLRB dismissed their charge

As stated, currently it is unlikely that the PRO Act would overcome a senate filibuster by Republicans to be passed wholesale. We will monitor any developments in this legislation, or attempts to include certain aspects of the PRO Act within other legislation and keep employers informed on this blog. Please note, the Biden administration also is moving quickly to appease its labor union constituents in other ways. Aside from reintroduction of the PRO Act, on his very first day in office, President Biden fired NLRB General Counsel Peter Robb, whose term was not set to expire until November 2021. In his tenure, Mr. Robb pressed policies that labor leaders saw as too employer-friendly. The NLRB

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Acting General Council named by President Biden already has issued guidance overturning several policy provisions previously enacted by Robb. President Biden also nominated Boston Mayor, Marty Walsh, former head of the Boston Building and Construction Trades Council and Local Union President as Secretary of Labor. Mr. Walsh appears headed for confirmation.

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