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PRO Act Update: Inching Closer to Reality

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After campaigning for labor and employment reform, President Biden took office on January 20, 2021 with the hopes of fulfilling those promises. As such, both employers and employees anticipated to see widespread changes in federal labor and employment policies.

While many of these potential changes are still pending in Congress, the most notable ones are found in the **Protecting the Right to Organize Act (PRO Act).**

On March 9, 2021, The PRO Act was passed by the House of Representatives, and now the Act heads to the Senate for a vote. If the Act is ultimately passed and signed into law, it would bring about substantial changes to labor and employment law that the country has not seen in quite some time.

Some of the proposed changes found in the Act are as follows:

- Effectively overturn state “right to work” laws;
- Implement the more stringent “ABC test” which will make it more likely that independent contractors are deemed “employees” and thereby covered by the NLRA;
- Limit the ability of employers to contest union election petitions and allow unions to engage in coercive tactics long held to be unlawful;
- Restrict the ability of employers to obtain labor relations advice;
- Facilitate union organizing in micro-units;
- Redefine the definition of “supervisor” to include more frontline leaders as “employees” covered by the NLRA;
- Change the definition of “joint employment” and force businesses to alter their structures or face liability;
- Give employees the right to utilize employer electronic systems to organize and engage in protected concerted activity;
- Prohibit employers from using mandatory arbitration agreements with employees;
- Force parties into collective bargaining agreements via interest arbitration; and
- Expand penalties for violations of the NLRA.

How the PRO Act May Pass in the Senate

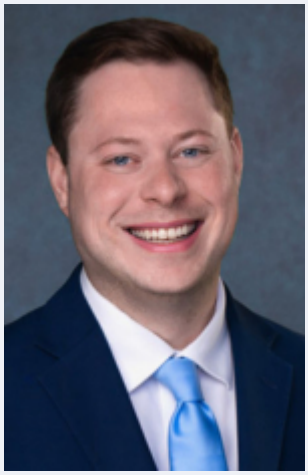
Normally, the passage of an Act would require support from 60 Senators to end debate on the issue and move to a vote. Without the support of 60 Senators, unlimited debate on the topic may continue and a vote would never occur. This is known as the “filibuster.”

However, Senator Majority Leader Chuck Schumer and other Senate Democrats have indicated that they plan to circumvent the filibuster by utilizing the “Nuclear Option,” which is a parliamentary procedure that allows the Senate to override the 60-vote rule to close debate, by a simple majority, rather than the supermajority normally required to amend the rules. As such, a simple majority in support of the Act would, in this case, be

enough to pass The PRO Act.

The Senate is currently comprised of a 50/50 split. **One of the key swing-votes, Senator Joe Manchin (D-West Virginia), has just come out in support of The PRO Act. If Senate Democrats are successful in utilizing the Nuclear Option, bringing the Act to a vote on the floor, and receiving a 50-50 vote on the passage of the Act, then Vice President Kamala Harris would act as the tie breaker. Vice President Harris has already voiced her support of the Act.**

If you have any questions about the PRO Act, please contact one of our labor & employment attorneys, or call 814-459-2800.



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