



Section-by-Section

COMMITTEE ON EDUCATION & THE WORKFORCE DEMOCRATS

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The Hon. Bobby Scott • Ranking Member

Workplace Action for a Growing Economy Act of 2017

Section 1. Short Title

The title of the bill is the *Workplace Action for a Growing Economy Act*, or the *WAGE Act*.

Section 2. Findings

The National Labor Relations Act (NLRA) was designed to encourage collective bargaining in the workplace, which ensures higher wages and better benefits to workers who exercise their freedom to join unions. However, many employers maintain policies that restrict workers' abilities to engage in activities protected by the NLRA, and the law lacks a credible deterrent for employers who retaliate against workers who exercise protected rights. The penalties for violating the NLRA are weaker than those for violating other labor and employment laws, and workers lack a private right of action to pursue relief on their own. Workers are frequently misclassified as independent contractors or supervisors, and thus excluded from the protections afforded to employees covered by the NLRA. Further, workers who form unions are frequently frustrated by delays in reaching a first collective-bargaining agreement.

Section 3. Purposes

The purposes of the WAGE Act are to strengthen protections for employees engaged in collective action, to expand coverage of the NLRA to more employees, to facilitate a process by which workers and employers can reach a first collective-bargaining agreement, to provide for stronger remedies for employees whose rights under the NLRA have been violated, to provide for penalties against employers who violate those rights, and to guarantee more effective enforcement of the NLRA.

Section 4. Strengthening Remedies and Enforcement for Employees Exercising Their Rights at Work

(a) *Backpay and liquidated damages.* The WAGE Act provides that, when an employee has been discharged or suffered serious economic harm in violation of the NLRA, the National Labor Relations Board (NLRB) shall award the employee backpay and “an additional amount as liquidated damages equal to 2 times the amount of such back pay, without any reduction (including any reduction based on the employee’s interim earnings or failure to earn interim earnings).”

(b) *Civil penalties.*

1. *Civil penalties for violations of posting requirements.* If an employer violates the WAGE Act by failing to post a notice or to inform new employees of their rights under the NLRA, then the NLRB shall order the employer to provide the information to employees and shall impose a civil penalty not to exceed \$500 for each violation.

2. *Civil penalties for violations causing serious economic harm.* If an employer commits a violation of the NLRA that results in discharge or other serious economic harm to the employee, then the employer shall be subject to a civil penalty not to exceed \$50,000, though the NLRB may double that penalty in any case where the employer has committed another such violation in the previous 5 years. In determining the size of such a penalty, the NLRB may consider the gravity of the violation, the impact of the violation on the employee, and the size of the employer. The NLRB may, under certain circumstances, hold an officer or director of an employer personally liable, and assess a civil penalty against them.
 3. *Joint and several liability.* The WAGE Act clarifies that an employer shall be jointly and severally liable for violations of the NLRA involving one or more employees supplied by another employer to perform labor within the employer's usual course of business.
- (c) *Injunctions against unfair labor practices involving discharge or other serious economic loss.* The WAGE Act requires the NLRB to seek temporary injunctive relief whenever an employer is charged to have unlawfully terminated an employee or significantly interfered with employees' rights under the NLRA. The district court shall grant this relief for the duration of the NLRB proceedings, unless the court concludes that there is no reasonable likelihood that the NLRB will succeed on the merits of its claim. This parallels a provision in the NLRA that requires the NLRB to seek temporary injunctive relief whenever a union is charged to have engaged in unlawful secondary boycott activity.
- (d) *Private right to civil action.* Any person may seek recourse for violations of the NLRA related to their right to join a union or engage in protected activity, by bringing a civil action in federal district court. The district court may award relief specified in Title VII of the Civil Rights Act, including backpay and reinstatement.
- (e) *Ensuring fair remedies for all workers.* The WAGE Act guarantees that employees cannot be denied backpay under the NLRA on the basis that the employee is an unauthorized alien under the Immigration Reform and Control Act.
- (f) *Remedying election interference.* In a representation election, when a majority of valid ballots have been cast in favor of the union, the NLRB shall issue an order requiring the parties to bargain. If a majority of valid ballots have not been cast in favor of union representation due to election interference by the employer, and a majority of employees in the voting unit have signed authorization cards designating the union as their representative, then the NLRB shall issue an order requiring the employer to bargain with the union.

Section 5. Modernization

- (a) *Prevention of unfair labor practices.* The NLRB shall promulgate regulations requiring employers to post and maintain notices to employees of their rights under the NLRA, and to notify each new employee of the information in the notice.
- (b) *Enforcing compliance with orders of the Board.* The NLRB's orders shall be self-enforcing, similar to orders of other federal agencies. If a party refuses to comply with an order of the NLRB, then the NLRB may initiate contempt proceedings in federal district court. A party that is adversely affected by an NLRB order may seek review before federal court of appeals within 30 days of the order being issued.

Section 6. Coverage

(a) Ensuring that employees are not wrongly classified as supervisors and denied protections of the NLRA. The definition of “supervisor” in Section 2(11) of the NLRA is clarified to require that the individual’s supervisory activities be executed for “a majority of the individual’s worktime.” The WAGE Act also modifies the list of supervisory activities in Section 2(11) to remove the individual’s authority to “assign” and “responsibly to direct” employees.

(b) Ensuring that employees are not misclassified as independent contractors and denied protections of the NLRA. The definition of “employee” under Section 2(3) of the NLRA is amended to clarify that an individual performing any service is an “employee” and not an independent contractor unless (1) the individual is free from the employer’s control in connection with the performance of the service, both under the contract for the performance of service and in fact; (2) the service is performed outside the usual course of the business of the employer; and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Section 7. Facilitating Initial Collective Bargaining Agreements

Once a union has been certified as the employee’s bargaining representative, the employer and union must commence bargaining within 10 days of the union submitting a written request. If the parties have failed to reach an agreement after 90 days of bargaining, or for additional periods as the parties may agree upon, then either party may request mediation facilitated by the Federal Mediation and Conciliation Service (FMCS). If the parties cannot reach an agreement 30 days after mediation is requested, or for additional periods as the parties may agree upon, then the FMCS shall refer the dispute to a tripartite arbitration panel. The findings of this panel shall be binding upon the parties for a period of 2 years, unless the parties mutually agree in writing to amend during such period.