



INSTITUTE for the American Worker

Labor-Related Items in Reconciliation Bill

Democrats at the House Committee on Education and Labor are pushing legislation to reshape federal labor policy using a fast-track procedural tool called “budget reconciliation.” In addition to spending trillions of tax dollars across the federal government, the bill is a veiled version of several parts of the Protecting the Right to Organize (PRO) Act.

The Reconciliation Bill would limit Americans' options to engage in flexible work through independent contracting, take away the ability of an employer and an employee to agree to resolve certain employment disputes out of court, put job creators on the hook for new, large civil penalties just like the PRO Act, including assessing directors and officers with personal liability and more.

Rep. Virginia Foxx (R-NC), the senior Republican on the Committee on Education and Labor, criticized the bill, saying, “The PRO Union Bosses Act was dead upon arrival in the Senate, so Speaker Pelosi and Committee Democrats are manipulating the legislative process to enact portions of that anti-worker legislation which hold job creators personally responsible through excessive financial penalties. Union bosses aren't held to the same standards.”

Bill Text: [House Education and Labor Committee to comply with the Reconciliation Directive included in Section 2002 of the Concurrent Resolution on the Budget for Fiscal Year 2022, S. Con. Res. 14](#)

UPDATE (9/13/21): The House Ways & Means Committee just released its [tax provisions for the reconciliation bill](#), which includes above-the-line deduction for union dues (Sec 138514, Page 738). A plain reading of the language shows the deduction will only go to union members, and does not include the forced “agency fees” paid by workers who decide against union membership in states without right-to-work protections.

Agency-fee payers are not considered union members even though they are forced to pay union fees; one important distinction is they do not have to pay for the political portion of union dues. Allowing a tax deduction for union dues- without also including language that allows deduction for agency fees- punishes workers who have chosen not to join a union and not to contribute money toward union politics, even though lobbying is non-deductible.

As the tax provision is currently written, the only way for non-union members to get the “union dues” tax write-off is to pay for union politics. [Click here to read the full text.](#)

Labor Provisions Inside the Reconciliation Bill as of September 10, 2021:

1. NLRB Electronic Voting (p. 115)

NLRB would receive \$350 million in additional funding, available until September 30, 2026. \$5 million of that funding "shall be for the implementation of systems to conduct electronic voting for union representation elections."

2. Financial Penalties on Employers under the NLRA (p. 119)

The reconciliation bill would allow the National Labor Relations Board (NLRB) to assess civil financial penalties on employers – up to \$50,000 for each violation and up to \$100,000 for repeat violations – if the Board determines an employer committed an unfair labor practice and would create a slate of newly prohibited activities, listed below. The new penalties tied to the new prohibitions could create divisions in the workplace, hamstringing job creators, and punish those seeking independent work.

During a markup of this legislation at the House Committee on Education and Labor, Rep. Burgess Owens (R-UT) offered an amendment to level the playing field by also making labor unions liable for civil financial penalties. Rep. Andy Levin (D-MI) called the Owens amendment "exceedingly harmful" and the amendment failed 21-28 on a party-line vote as part of an en bloc amendment. Rep. Diana Harshbarger (R-TN) offered an amendment to exempt small businesses from these new civil financial penalties, but it was defeated 21-28 on a party-line vote.

3. Permanently replace striking workers (P. 123)

This new prohibition would prohibit employers from hiring new, permanent workers to replace workers engaged in a strike. The National Labor Relations Act (NLRA) has previously allowed employers to hire new workers to ensure the "free flow of commerce." During a markup of this legislation at the House Committee on Education and Labor, Rep. Tim Walberg (R-MI) offered an amendment to remove this section from the bill. Walberg's amendment failed 21-28 on a party-line vote.

4. Lock out workers (p. 123)

Employers would be prohibited from locking out employees (stopping them from coming to work) prior to a strike by a union.

5. Misclassify an employee (p. 123)

The bill would add new penalties if an employer misclassifies an employee as an independent contractor or supervisor.

6. Stop employer meetings on unionization (p. 124)

Employers would be prohibited from requiring workers to hear their views on unionization during work hours when a union organizing campaign is taking place.

7. Enter into a class action arbitration agreement with an employee (p. 124)

This new prohibition would prevent employers and employees from entering voluntary agreements to resolve employment issues outside of court.

8. Financial Penalties under NLRA – Director and Officer Liability (p. 121)

The NLRB could also decide to assess the new civil penalties created in this bill against a director or officer of the employer if the board determines that a director or officer “directed or committed the violation, had established a policy that led to such a violation, or had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.” (p.121)

9. Union Neutrality for Direct Care Grant Recipients (p. 168)

A grant fund of \$1.48 billion is created to support the Direct Care workforce, with funds available through September 30, 2031. To be eligible to seek a direct care workforce grant, an entity must have “a plan for ensuring that the eligible entity will remain neutral in any organizing effort involving direct care workers served by the grant who seek to form, join, or assist a labor organizing.” (p. 170)

10. Increased Funding for Department of Labor (p. 114)

To reach the reported \$3.5 trillion price tag of the reconciliation bill, nearly \$2 billion in new funding would be given to the Department of Labor, divided between the agencies below. An increase of \$405 million for the Wage and Hour Division, available for its use to “carry out activities” until September 30, 2026, could be assumed as part of the Biden Administration’s effort to limit independent contracting and the gig economy.

- \$195 million for EBSA
- \$707 million for OSHA
- \$133 million for MSHA
- \$405 million for Wage and Hour Division
- \$121 million for Office of Workers’ Compensation Programs
- \$201 million for OFCCP
- \$176 million for DOL’s Office of Solicitor

Bill Status: The House Committee on Education and Labor voted on its portion of the reconciliation bill on Friday, September 10, 2021. It was approved on a party-line vote of 22-28.
