



# INSTITUTE for the American Worker

## Employee Rights Act Backgrounder

Bill name: Employee Rights Act (ERA)

Sponsored by Sen. Tim Scott (R-SC), [S. 3889](#)

Sponsored by Rick Allen (R-GA), [H.R. 7194](#)

The Employee Rights Act (S. 3889) boosts the rights of workers and modernizes federal labor laws. The legislation allows employees to receive merit-based pay raises outside of the wage scales set by their union's collective bargaining agreement, guarantees the right to a secret ballot in union elections, provides new privacy protections, allows workers to decertify a union more easily, provides legal clarity for small business owners and gig workers, and more. The ERA was introduced by Sen. Tim Scott (R-SC).

In a Wall Street Journal [op-ed](#), Sen. Scott said, "Some politicians are backing labor policies that benefit government regulators, union bosses and other special-interest groups. It's time to put workers back in the driver's seat." Scott said the Employee Rights Act "protects workers, supports small-business owners and encourages innovation."

### **Merit-based pay**

To that end, the Employee Rights Act includes a provision – similar to legislation called the [RAISE Act](#) – to amend the National Labor Relations Act (NLRA) and allow employers the ability to grant merit-based pay raises irrespective of the wage scales within a unionized workplace's collective bargaining agreement.

### **Right to a secret ballot**

The right to a secret ballot vote in union elections is also guaranteed. A secret ballot is critical to reduce the opportunity for workers to be exposed to union organizing intimidation tactics. But for far too long, some workers have been exposed to deceptive and coercive practices in union organizing campaigns that do not have secret ballot elections. A secret ballot vote avoids a union practice known as "card check," when workers may be pressed to sign a union card at their workplace, home, or in the community. The ERA also gives workers the right to a secret ballot vote before the union can go on strike – a needed change for workers as strike-vote rules vary from union to union and there is no federal standard.

### **Privacy protections**

Under current law workers do not have the option to opt-out of having their personal contact information given to an organizing union. The ERA would change that. Employees who don't wish to be contacted by a union could easily say no to their home address, phone numbers, and email address being shared with a union. Another provision in the ERA aimed to protect workers is to criminalize union threats of violence in an organizing campaign.

## **Legal clarity for small businesses, independent workers**

Gig workers and local franchise business owners would also benefit from the ERA. The bill provides clear definitions and legal clarity so independent contractors can continue to enjoy the flexibility they seek in the gig economy while also being able to receive workplace benefits such as health and retirement. And small business franchise owners would no longer have the legal threat of shifting “joint employer” standards threatening to destroy not only their business, but the franchise business model as a whole. For more on these provisions, see I4AW’s backgrounders on the [Modern Worker Empowerment Act](#) and [Save Local Business Act](#).

## **Union decertification**

For unionized employees that no longer support their union, they would have a clearer path to remove the union representation from their workplace. Those workers interested in decertifying their union would also have new rights under the National Labor Relations Act (NLRA), protecting them from union intimidation or coercion aimed at derailing a decertification vote. These new rights for workers are akin to those they have during a union organizing drive, when employers are prohibited from intimidation and coercion against workers supporting a union.

## **Union transparency**

Transparency is also key in this proposed legislation, which would require the Department of Labor to reinstate a 2020 rule known as “Form T-1,” a reporting and disclosure requirement to capture financial information pertinent to trusts in which a labor organization has an “interest” – information that has largely gone unreported.

**For a full rundown of the expansive Employee Rights Act, the bill text, and more visit [EmployeeRightsAct.com](https://EmployeeRightsAct.com)**

## Highlights of the Employee Rights Act of 2022

- Secret Ballot Elections – Guarantees workers the right to a secret ballot vote in union organizing elections
- Political Protection – Unions prohibited from using a worker’s dues for political purposes unless the worker gives prior approval
- Majority Vote of all Employees – Certifying a union would require the support of a majority of the workers rather than a majority of the votes
- Employee Privacy Protections – Employers could opt out of having their personal contact information shared with a union
- Decertification Coercion Prevention – Prohibits a union from using intimidation to dissuade workers from signing a decertification petition
- Secret Ballot Strike Vote – Workers would have the right to a secret ballot vote before a union could go on strike
- Criminalized Union Threats – Prohibits union organizers from using violence or threats to intimidate workers during organizing campaigns
- Union Decertification – Allows a majority of workers to withdraw recognition of a union within 90 days of a contract expiration
- Freedom From Union Violence Act – Removes a federal loophole that permits union violence that is “used to gain legitimate union objectives”
- [RAISE Act](#) – Allows employers the ability to grant merit-based pay raises pay wages irrespective of the wage scales within a unionized workplace’s collective bargaining agreement

- [Modern Worker Empowerment Act](#) – Makes being an entrepreneur easier by letting independent workers work for themselves. Redefines the FLSA's definition of “employee” as that determined by the common law test, harmonizing the definition of “employee” across federal statute for independent contractors and small businesses
- [Save Local Business Act](#) – Protects small business owners of franchises by amending the NLRA and FLSA to only consider a business a “joint employer” if it directly, actually, and immediately exercises control over employment decisions
- Benefits for Gig Economy Workers – Allows gig companies to offer benefits to independent contractors
- Tribal Labor Sovereignty Act – Excludes Native American tribes and tribal enterprises on tribal lands from the NLRA, just as other government bodies are exempt
- Codifying the 2020 Rule of OLMS on T-1 Trusts – Reinstates a reporting and disclosure requirement for union trusts
- Labor Organization Use of Personal Information – Prohibits unions from using a worker's personal data for anything other than a union organizing campaign
- Protects employee and employer religious freedoms when it comes to unionization

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