INSTITUTE FOR THE AMERICAN WORKER

Backgrounder: Senator Hawley's PRO Act Lite

Senator Josh Hawley's proposed "framework" for reforming America's private-sector labor law is, in reality, a repackaged and slimmed down version of the radical left's *Protecting the Right to Organize ("PRO") Act* and *Warehouse Worker Protection Act* ("WWPA"). Instead of proposing meaningful reforms to protect the American Worker—by leveling the playing field between unions and business—it does the opposite at every turn. This "Pro Act Lite" may be a slimmed down version of Big Labor's original, but it still packs the same harmful consequences.

Below is a chart showing that every single one of his framework's proposals are already part of the *PRO Act* or *WWPA*.

Hawley's Pro Act Lite	Pro Act Section	WWPA Section	Is this Provision New?
Forcing Initial First Contracts	Sec. 107		NO
Banning Employer Meetings on Unionization	Sec. 104		NO
Establishing "Ambush" or "Quickie" Elections	Sec. 105		NO
New Civil Penalties + Private Right of Action	Sec. 109		NO
One-Sided Notice Postings	Sec. 104		NO
Ban on Productivity Metrics and Standards		Sec. 201	NO
Resurrecting the Failed Ergonomics Standard & First-Aid Provider Standard		Sec. 301	NO

As legislation from this framework is formally introduced, this I4AW backgrounder and additional resources will be updated with relevant details. Visit https://I4AW.org/Resources/Pro-Act-Lite-Roundup for updates

Forcing Initial Union Contracts

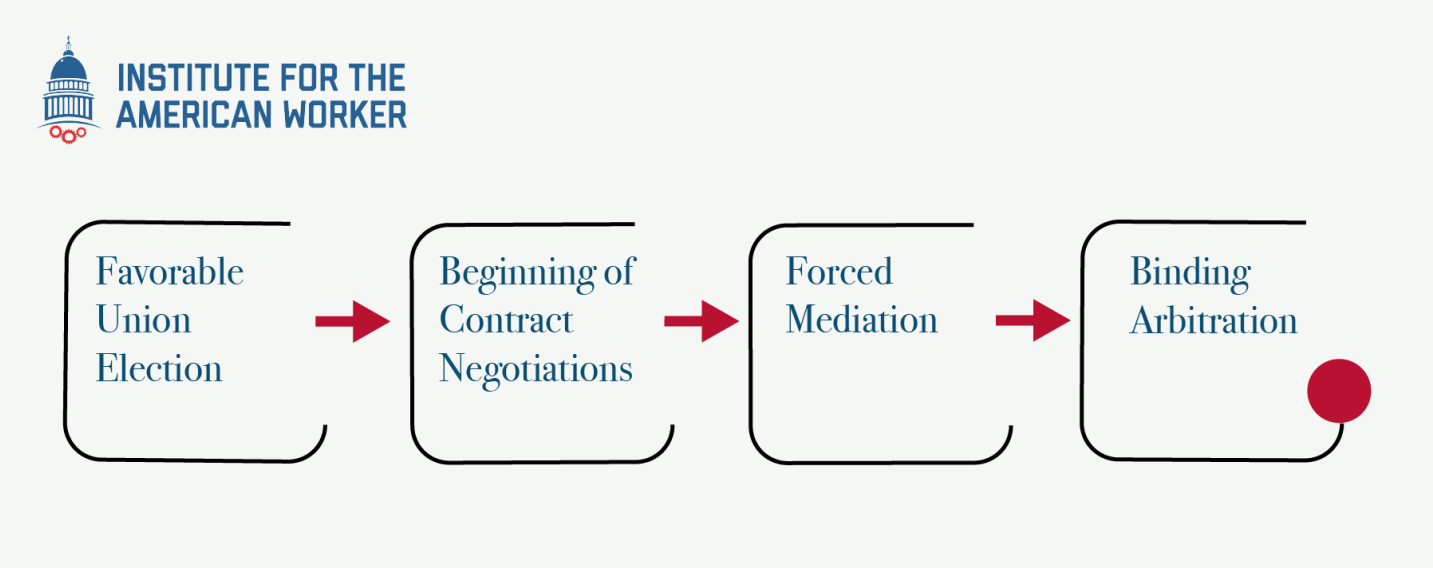
Legislative Status: "Faster Labor Contracts Act", S.844

The Pro Act Lite would force union contracts on workers and employers—even allowing government bureaucrats with expanded authority to make these important employment decisions for workers in some instances. It would require negotiation on a contract to begin within days of the favorable union vote and provides that, if an agreement is not reached within mere months, the federal government will step in to engage in mediation and, eventually, binding arbitration.

Within 10 days of receiving a request to collectively bargain with a newly-recognized union, the parties must being bargaining collectively. If the employer and union do not reach an agreement on a first contract within 90 days of the beginning of bargaining—regardless of whether they are negotiating in good faith, and for any reason at all—federal government bureaucrats will intervene to require mediation. This would be an expansion of federal government authority into the private sector and likely necessitate a large increase in employees at the government's Federal Mediation and Conciliation Service (FMCS).

If mediation is also unsuccessful within mere weeks, a three-person arbitration panel chosen by the parties will be required to settle the dispute by a majority vote and the decision will be binding. If the parties fail to identify individuals to join the arbitration panel within two weeks, arbitrators chosen by federal government bureaucrats will impose a collective bargaining agreement on the workers, employer, and union.

The Pro Act Lite doesn't "support" initial union contracts, rather it could force one-size-fits-all contracts on workers by unelected government bureaucrats. Government-imposed agreements are anything but pro-American worker.



Banning Employer Meetings on Unionization

Legislative Status: Not Yet Introduced

The PRO Act Lite would prevent employers from holding mandatory meetings to discuss with their employees—during paid work hours—what unionization means for the workplace including the changing dynamic of the employer-employee relationship.

When faced with an organizing campaign, workers should have access to comprehensive information and the opportunity to make an informed, thoughtful decision regarding union membership. Unions can contact employees outside of the workplace, such as at home, during off-hours, or through other means of personal communication when engaging in an organizing campaign. Employer meetings with employees typically occur during working hours and are always compensated, similar to other workplace briefings or training sessions required by the employer. Prohibiting such employer-run meetings deprives workers of crucial information about the effects of unionization and places employers at a disadvantage. This creates an uneven playing field, as unions can freely contact employees at any time, while employers are constrained by wage and hour laws that limit communication to working hours. This is often the only opportunity for employers to have this discussion with employees—once unionized, employers are prohibited from engaging with employees directly regarding workplace related issues covered by the collective bargaining agreement.

American workers overwhelmingly support employer meetings on unionization—with 84 percent of those polled having a favorable or neutral view of the meetings, and only 12 percent expressing negative opinions.[1]

The Pro Act Lite does anything but make elections "fair." Instead of restricting employer speech and limiting workers' access to crucial information, meaningful legislation should trust workers to make informed decisions for themselves and their families by ensuring a fair, level playing field for both businesses and unions.

Establishing "Ambush" Elections

*The PRO Act Lite would significantly reduce the union election process timeframe—requiring a vote in fewer than 20 business days, cutting in half the average time between the filing of an election petition and the election and restricting workers' time to make an informed decision.**[2]***

Union elections should happen in a timely manner, but requiring a vote within 20 business days—called an "ambush" or "quickie" election— will harm American workers by limiting their ability to make a fully informed decision about whether or not to unionize. Unions can spend months working with select employees to unionize the workplace, providing other non-involved employees and the employer with very little time to carefully consider the implications of unionization.

Further, small businesses may not have the necessary in-house resources to fully understand the complex legal requirements regarding what they can and cannot do during an organizing campaign—including how to talk to employees. Meanwhile, unions are not required to keep any promises made during their organizing campaign[3]—while employers are severely restricted in what they can say.[4]

There is a significant difference between a "timely" election process and an ambush election. This truncated timeline, coupled with the restriction of an employer's ability to speak with its employees regarding what a union would mean for the workplace, leaves the employees without a full picture and ability to hear from both sides regarding what a unionized workplace means for them.

New Civil Penalties + Private Right of Action

The Pro Act Lite would create significant penalties for employers that violate the National Labor Relations Act and allow trial lawyers to take workers' cases to federal court 60 days after filing with the National Labor Relations Board.

The PRO Act Lite framework would create steep new penalties for businesses that run afoul of the *National Labor Relations Act* (NLRA) and allow for a private right of action in federal court. These new civil penalties can be levied not only against the business, but also personally against directors and officers of the company. But no similar penalties could be levied against labor unions or union officers should they commit offenses likewise.

In addition, if the National Labor Relations Board does not act within 60 days after a charge is filed with the Board, an aggrieved employee can bring a civil action in federal court against their employer. While on its face, a private right of action seems beneficial to workers, it creates a perverse incentive for frivolous or opportunistic lawsuits, leading to costly and time-consuming litigation for both the worker and the employer. Workers may find themselves in complex legal battles that are not in their best interest yet encouraged by opportunistic third parties. Of note, the PRO Act Lite would not allow the same private right of action for charges against a union.

Rather than fostering an environment that helps employers understand and comply with their legal obligations, particularly small businesses or those without in-house legal counsel—especially in the context of "ambush" elections, where employers are given little time to grasp these requirements. Instead, the Pro Act Lite prioritizes trial lawyers over workers.

One-Sided Notice Postings

The Pro Act Lite would require a notice posting at the workplace regarding some employee rights under the National Labor Relations Act.

On its face, a notice posting may seem harmless—and in fact, possibly helpful. But as always, the devil is in the details.

First, in 2011, NLRB issued a rule that would require all employers under its jurisdiction to have a notice posting in the workplace about the right to unionize. This was subsequently invalidated by two federal courts of appeals for exceeding its authority and violating employers' free speech, and NLRB decided not to appeal to the Supreme Court.[5]

Second, employees are already inundated with notice postings. For example, in California, for a non-agricultural workplace, there are more than a dozen required notice postings (federal and state).[6]

Third, the content of the poster is of utmost importance. The Board has a sample notice posting on their website that employers are free to post at their workplaces if they'd like, and is required of all federal contractors and subcontractors.[7] It provides the American worker only one side of their rights and fails to inform workers of their right to *refrain* from collective bargaining activities.[8] This lack of transparency and balance prevents workers from making fully informed decisions about unionization, potentially skewing their understanding of the rights available to them. Coupled with the ban on employee meetings on unionization, the Pro Act Lite undermines the very transparency it claims to champion for the American worker.

Ban on Productivity Metrics and Standards

The Pro Act Lite would prohibit some workplace productivity quotas or metrics in warehouse distribution center workplace and would prohibit the use of performance targets or standards over short increments of time. It would also make the use of certainquotas a violation of employees' rights under the NLRA.

This framework would go far beyond prohibiting so-called unsafe work speed quotas—it would effectively prohibit all warehouse workplace metrics and productivity standards. Productivity metrics provide valuable insights into a business's operations. They can be used to ensure safety and efficiency are going hand in hand. Depriving businesses of these metrics, especially small businesses, will harm their ability to compete, protect their workers, and expand. Moreover, these metrics can help workers advance in their careers, promoting merit-based success, as they provide quantifiable proof of workers' strong performances in the workplace.

Resurrecting the Failed Ergonomics Standard + First Aid Provider Standard

The Pro Act Lite would require the Department of Labor's Occupational Safety and Health Administration to resurrect a failed standard on ergonomics in the workplace and require all warehouse employers have a person available at all times to provide first aid at each warehouse.

This framework would require the Department of Labor's Occupational Safety and Health Administration (OSHA) to issue two new workplace standards. The first would resurrect the failed ergonomics standard meant to prevent musculoskeletal disorders in the workplace.[9] The very first successful Congressional Review Act Resolution of Disapproval was used on the OSHA ergonomics standard—eliciting bipartisan support to invalidate the rule and preventing OSHA from issuing a substantially similar rule in the future, absent a directive from Congress.[10] The rule was rejected, because ergonomics is an extremely difficult area of workplace safety and health to regulate. It is a hazard that is not well defined, and remedies are speculative. Moreover, when a worker develops a musculoskeletal disorder is largely dependent on factors outside the control of the employer. It is nearly impossible to determine if a musculoskeletal disorder arose because of the workplace or outside activities. Attempting to regulate ergonomics in every workplace across the country would lead to massive compliance costs. In fact, in 2000, it was estimated this rule would amount in compliance costs of $4.5 billion for employers—amounting to $8.2 billion in 2024 dollars.[11] The president's signing statement of the joint resolution of Congress nullifying that rule called it "unduly burdensome and overly broad… in exchange for uncertain benefits."[12]

The second standard would require employers of warehouse distribution centers have a person adequately trained to render first aid to be readily available at each facility. Employers would also be required to provide employees occupational medicine consultation through a board-certified physician. While the details are sparse, this regulation would also likely be extremely burdensome and expensive to implement in many workplaces, especially for small businesses and those in rural locations.

Conclusion

Senator Hawley's PRO Act Lite offers no fresh solutions for labor law reform, instead simply repackaging provisions from the original PRO Act and WWPA. However, don't be misled by the shiny new presentation—the substance remains the same discredited ideas that failed to gain traction even when Democrats controlled the House, Senate, and White House in recent years.

If the framework were genuinely crafted with the best interests of American workers at its core, it would establish balanced timelines and processes for both certifying and decertifying unions, while also granting employees the ability to bring a private right of action against a union, not just their employer. This framework consistently tilts the scales in favor of Big Labor and trial lawyers, instead of putting the American worker first.

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Footnotes

[1] Polling Results for Employer Meetings on Unionization, Institute for the American Worker, https://i4aw.org/resources/polling-results-for-employer-meetings-on-unionization/.

[2] Union Petitions Spike in 2022 and 2023, Ogletree Deakins NLRB Data Tracking Shows, Ogletree Deakins (Feb. 16, 2024), https://ogletree.com/insights-resources/blog-posts/union-petitions-spike-in-2022-and-2023-ogletree-deakins-nlrb-data-tracking-shows/ ("average time to close after petition is filed . . . for 2022 through 2023 was sixty-three days").

[3] Glenn Spencer, *Do Unions Deliver on Their Promises*, U.S. Chamber of Com., https://www.uschamber.com/employment-law/unions/do-unions-really-deliver-on-their-promises.

[4] Interfering with Employee Rights (Section 7 & 8(a)(1), National Labor Relations Board, https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1 ("[an employer] may not . . . [p]romise employees benefits if they reject the union.").

[5] The NLRB's Notice Posting Rule, National Labor Relations Board, https://www.nlrb.gov/news-outreach/news-story/the-nlrbs-notice-posting-rule.

[6] Required Posters and Notices, State of California Department of Industrial Relations, https://www.dir.ca.gov/dlse/RequiredPosters.html

[7] Employee Rights Notice Posting, National Labor Relations Board, https://www.nlrb.gov/news-publications/publications/employee-rights-notice-posting.

[8] National Labor Relations Act, 29 U.S.C. § 157 (1947) ("Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the *right to refrain from any or all of such activities*…") (emphasis added.).

[9] 66 Fed. Reg. 20403 (Apr. 23, 2021), https://www.federalregister.gov/documents/2001/04/23/01-9957/ergonomics-program

[10] *Providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics*, Pub. L. 107-5 (2001), https://www.congress.gov/bill/107th-congress/senate-joint-resolution/6/text

[11] Inflation Calculator, Federal Reserve Bank of Minneapolis, https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator.

[12] Presidential Statement on Signing Legislation to Repeal Federal Ergonomics Regulations, 2001 Pub. Papers 269 (Mar. 20, 2001), https://www.govinfo.gov/content/pkg/PPP-2001-book1/pdf/PPP-2001-book1-doc-pg269-2.pdf

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