



## Lobby Day Talking Points: The PRO Act

**The Bill:** The Protecting the Right to Organize (PRO) Act of 2021 ([S. 420/H.R. 842](#)), strengthens workers' rights to band together and seek improvements in the workplace, expands who is covered by the National Labor relations Act, and imposes tough new accountability measures on employers and corporate executives. The bill passed the House on March 9, 2021.

**Sponsors:** It was introduced in the Senate by Patty Murray (D-WA). It has been assigned to the Senate Committee on Health, Education, Labor and Pensions and has [46 co-sponsors](#).

### The PRO Act would make the following groundbreaking changes to U.S. law:

- **Create a private cause of action for workers to take their employers to court if they violate their right to engage in concerted activity with coworkers under the NLRA or retaliate against them for doing so.**  
NLRA rights attach to **all employees**, including those in nonunionized workplaces. Concerted activity protected by the NLRA can include sharing salary information, discussing working conditions on social media, or jointly asking a supervisor for safety improvements in the workplace. The new cause of action would allow workers to recover back pay, front pay, punitive damages and attorneys' fees, and the law explicitly extends the right to unauthorized immigrants.
- **Change the definition of "employee" under the NLRA to codify the "ABC test" so that workers are presumed to be employees and not independent contractors** unless the employer can prove **all three** of the following: a) the worker is free from the control and direction of the hiring entity in terms of how the work is performed, both contractually and in fact; b) the worker is performing work outside the normal course of the hiring entity's business; and c) the worker is customarily engaged in an independent trade or occupation similar to the type of work being performed.
- **Reverse the disastrous Supreme Court opinion in *EPIC Systems v. Lewis* by making it an unfair labor practice for employers to require workers to sign contracts giving up their right to participate in class or collective actions.**
- **Allow the National Labor Relations Board to impose civil penalties on employers** that commit unfair labor practices, and to impose penalties on individual corporate executives if they participated knowingly in the misconduct.
- **Ban "captive audience meetings" where workers have to listen to their employers deliver anti-union messages, and give workers and the NLRB (rather than the employer) control over the timing of union elections.**

## PRO Act Talking Points:

- The pandemic has shown how a lack of bargaining power in the workplace exposes front-line workers to unsafe and unjust conditions. The PRO Act will address this power imbalance by giving workers more tools with which to organize themselves and hold lawbreaking employers accountable whether or not they are part of a union.
- The PRO Act strengthens the law enforcement powers of the National Labor Relations Board, which plays a vital role in making sure that workers are treated fairly **in unionized and nonunionized workplaces alike**. But a single under-resourced agency can't possibly respond to every employer intimidation tactic everywhere in the country, which is why it's so important that the PRO Act also gives workers the right to go to court to enforce their rights themselves.
- Class and collective actions are a crucial force-equalizer. They allow individual workers to band together and achieve strength in numbers when their employer is harming many of them in the same way, such as by underpaying all female workers or failing to respond adequately to a workplace climate of racial harassment. In its 2018 opinion in *Epic Systems v. Lewis*, the Supreme Court said employers could require their workers to sign contracts that gave up these class and collective action rights. We must pass the PRO Act and undo *Epic Systems* so that workers again have a chance to collectively seek justice.
- Workers should have the ability to decide for themselves whether they want to join a union, without undue influence or coercion from their employer. The PRO Act would prohibit some of the unfair tactics employers have been using to skew the union election process and would ensure that workers can talk and organize with the dignity and humanity they deserve.