

114TH CONGRESS
1ST SESSION

H. R. 3514

To amend the National Labor Relations Act to strengthen protections for employees wishing to advocate for improved wages, hours, or other terms or conditions of employment and to provide for stronger remedies for interference with these rights, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2015

Mr. SCOTT of Virginia (for himself, Mr. POLIS, Mr. HINOJOSA, Mr. GRIJALVA, Mr. SABLAN, Mr. TAKANO, Ms. CLARK of Massachusetts, Ms. ADAMS, Ms. JUDY CHU of California, Ms. DELAURO, Ms. EDWARDS, Mr. ENGEL, Mr. FARR, Mr. GUTIÉRREZ, Ms. LEE, Mr. LEWIS, Mr. NADLER, Mrs. NAPOLITANO, Mr. NORCROSS, Ms. NORTON, Mr. PASCRELL, Mr. RYAN of Ohio, Ms. SCHAKOWSKY, Mr. SERRANO, Mrs. WATSON COLEMAN, Mrs. DAVIS of California, Mr. POCAN, Mr. DESAULNIER, Mr. BLUMENAUER, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BRADY of Pennsylvania, Mr. GENE GREEN of Texas, Mr. HONDA, Ms. KAPTUR, Ms. LINDA T. SÁNCHEZ of California, Mr. VAN HOLLEN, Ms. BONAMICI, Mr. JEFFRIES, and Ms. BROWN of Florida) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the National Labor Relations Act to strengthen protections for employees wishing to advocate for improved wages, hours, or other terms or conditions of employment and to provide for stronger remedies for interference with these rights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Workplace Action for
3 a Growing Economy Act” or the “WAGE Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The National Labor Relations Act (29
7 U.S.C. 151 et seq.) was enacted to encourage the
8 practice of collective bargaining and to protect the
9 exercise by workers of full freedom of association in
10 the workplace. Since its enactment in 1935, tens of
11 millions of workers have bargained with their em-
12 ployers over wages, benefits, and other terms and
13 conditions of employment and have raised the stand-
14 ard of living for all workers.

15 (2) Through acting collectively and bargaining
16 with their employers, workers who are unionized
17 earn 21.3 percent more than workers who are not
18 covered by a collective bargaining agreement. They
19 are 28.4 percent more likely to be covered by em-
20 ployer-provided health insurance and 30.9 percent
21 more likely to have employer-provided pensions. The
22 wage differential is even more pronounced for
23 women and people of color. Unionized African-Amer-
24 ican workers earn 24.6 percent more than African-
25 American workers who are not unionized, and union-
26 ized Latino workers earn 29.3 percent more than

1 their peers who are not unionized. Unionized women
2 earn 24 percent more than women who are not
3 unionized, and the wage gap between men and
4 women is much smaller at unionized workplaces.
5 The wage gains achieved through collective bar-
6 gaining benefit workers and their communities.

7 (3) Unions and collective bargaining ensure
8 that productivity gains are shared by working peo-
9 ple. The decline in the percentage of workers covered
10 by collective bargaining has contributed significantly
11 to skyrocketing income inequality and flat wages.

12 (4) As enacted in 1935, the National Labor Re-
13 lations Act (29 U.S.C. 151 et seq.) protects the
14 right of all workers to join together with their co-
15 workers to advocate for improvements in their pay,
16 benefits, and working conditions, regardless of
17 whether they seek representation by a union. The
18 law protects the right of workers to discuss issues
19 like pay and benefits without retaliation or inter-
20 ference by employers. However, the awareness of
21 workers regarding their rights under the law is lack-
22 ing, and many employers maintain policies that re-
23 strict the ability of workers to discuss workplace
24 issues with each other, directly contravening these
25 rights. Research shows that more than one-half of

1 workers report that their employers have policies
2 that prohibit or discourage workers from discussing
3 pay with their co-workers. These policies and prac-
4 tices impede workers from exercising their rights
5 under the law and impair their freedom of associa-
6 tion at work.

7 (5) Retaliation by employers against workers
8 who exercise their rights under the National Labor
9 Relations Act (29 U.S.C. 151 et seq.) persists at
10 troubling levels. Employers routinely fire workers for
11 trying to form a union at their workplace. In one out
12 of 3 organizing campaigns, one or more workers are
13 discharged for supporting joining a union. In fiscal
14 year 2014, the National Labor Relations Board ob-
15 tained reinstatement orders for 3,240 workers and
16 obtained backpay awards totaling \$43,800,000 for
17 workers who faced illegal retaliation for exercising
18 their rights. Discrimination for organizing hurts all
19 workers, but minorities in particular, as minorities
20 are more likely than Whites to seek to organize and
21 receive a larger wage premium from collective bar-
22 gaining.

23 (6) The current remedies are inadequate to
24 deter employers from violating the National Labor
25 Relations Act (29 U.S.C. 151 et seq.). The remedies

1 and penalties for violations of the National Labor
2 Relations Act (29 U.S.C. 151 et seq.) are far weaker
3 than for other labor and employment laws, including
4 the Civil Rights Act of 1964 (42 U.S.C. 2000a et
5 seq.). Unlike other major labor and employment
6 laws, there are no civil penalties for violations of the
7 law. Workers cannot go to court to pursue relief on
8 their own; they must rely on the National Labor Re-
9 lations Board to prosecute their case.

10 (7) In order to make the right to collective bar-
11 gaining and freedom of association in the workplace
12 a reality for workers, the National Labor Relations
13 Act (29 U.S.C. 151 et seq.) must be strengthened.

14 **SEC. 3. PURPOSES.**

15 The purposes of this Act are—

16 (1) to strengthen protections for employees en-
17 gaged in collective action to improve their wages,
18 hours, and terms and conditions of employment;

19 (2) to provide for stronger remedies for employ-
20 ees who face retaliation, discrimination, or other in-
21 terference with the legal right of the employees to
22 engage in collective action;

23 (3) to provide for penalties against employers
24 who violate the rights of employees to engage in col-

1 lective action, in order to act as a meaningful deter-
2 rent against violating the law; and

3 (4) to streamline the enforcement procedures of
4 the National Labor Relations Board to provide for
5 more timely and effective enforcement of the law.

6 **SEC. 4. STRENGTHENING REMEDIES AND ENFORCEMENT**
7 **FOR EMPLOYEES EXERCISING THEIR RIGHTS**
8 **AT WORK.**

9 (a) BACKPAY.—Section 10(c) of the National Labor
10 Relations Act (29 U.S.C. 160(c)) is amended by striking
11 “*And provided further,*” and inserting “*Provided further,*
12 That if the Board finds that an employer has discrimi-
13 nated against an employee in violation of paragraph (3)
14 or (4) of section 8(a) or has committed a violation of sec-
15 tion 8(a) that results in the discharge of an employee or
16 other serious economic loss to an employee, the Board
17 shall award the employee back pay and an additional
18 amount as liquidated damages equal to 2 times the
19 amount of such back pay, without any reduction (includ-
20 ing any reduction based on the employee’s interim earn-
21 ings or failure to earn interim earnings): *Provided fur-*
22 *ther,*”.

23 (b) CIVIL PENALTIES.—Section 12 of the National
24 Labor Relations Act (29 U.S.C. 162) is amended—

1 (1) by striking “SEC. 12. Any person” and in-
2 serting the following:

3 **“SEC. 12. CIVIL PENALTIES.**

4 “(a) VIOLATIONS FOR INTERFERENCE WITH
5 BOARD.—Any person”; and

6 (2) by adding at the end the following:

7 “(b) VIOLATIONS OF POSTING REQUIREMENTS.—If
8 the Board, or any agent or agency designated by the
9 Board for such purposes, determines that an employer has
10 willfully violated section 8(h), the Board shall—

11 “(1) state the findings of fact supporting such
12 determination;

13 “(2) issue and cause to be served on such em-
14 ployer an order requiring that such employer post
15 the notice described in such section and provide the
16 information to new employees described in such sec-
17 tion; and

18 “(3) impose a civil penalty in an amount deter-
19 mined appropriate by the Board, except that in no
20 case shall the amount of the fine exceed \$500 for
21 each such violation.

22 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC LOSS
23 TO EMPLOYEES.—

24 “(1) IN GENERAL.—Any employer who commits
25 an unfair labor practice within the meaning of para-

1 graph (3) or (4) of section 8(a) or a violation of sec-
2 tion 8(a) that results in the discharge of an em-
3 ployee or other serious economic loss to an employee
4 shall, in addition to any remedy ordered by the
5 Board, be subject to a civil penalty. Such penalty
6 shall be in an amount not to exceed \$50,000 for
7 each violation, except that the Board shall double
8 the amount of such penalty, to an amount not to ex-
9 ceed \$100,000, in any case where the employer has
10 within the preceding 5 years committed another
11 such violation.

12 “(2) CONSIDERATIONS.—In determining the
13 amount of any civil penalty under this subsection,
14 the Board shall consider—

15 “(A) the gravity of the unfair labor prac-
16 tice;

17 “(B) the impact of the unfair labor prac-
18 tice on the charging party, on other persons
19 seeking to exercise rights guaranteed by this
20 Act, and on the public interest; and

21 “(C) the size of the employer.

22 “(3) PERSONAL LIABILITY.—If the Board de-
23 termines, based on the particular facts and cir-
24 cumstances presented, that personal liability is war-
25 ranted, a civil penalty for a violation described in

1 this subsection may also be assessed against any of-
2 ficer or director of the employer who committed the
3 violation or had the authority to prevent the viola-
4 tion.

5 “(d) JOINT AND SEVERAL LIABILITY.—An employer
6 shall be jointly and severally liable under this Act for any
7 violations of this Act involving one or more employees sup-
8 plied by another employer to perform labor within the em-
9 ployer’s usual course of business, except for purposes of
10 subsection (e).”.

11 (e) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
12 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-
13 NOMIC LOSS.—

14 (1) IN GENERAL.—Section 10(l) of the National
15 Labor Relations Act (29 U.S.C. 160(l)) is amend-
16 ed—

17 (A) by inserting after “charged that” the
18 following: “an employer has engaged in an un-
19 fair labor practice within the meaning of section
20 8(a) that significantly interferes with, restrains,
21 or coerces employees in the exercise of the
22 rights guaranteed under section 7 and involves
23 discharge or other serious economic harm to an
24 employee or”; and

1 (B) by striking “as it deems just and prop-
2 er, notwithstanding any other provision of law:”
3 and inserting the following: “to protect the
4 rights guaranteed by section 7, notwithstanding
5 any other provision of law. The district court
6 shall grant the relief requested unless the court
7 concludes that there is no reasonable likelihood
8 that the Board will succeed on the merits of the
9 Board’s claim:”.

10 (2) CONFORMING AMENDMENT.—Section 10(m)
11 of the National Labor Relations Act (29 U.S.C.
12 160(m)) is amended by inserting “under cir-
13 cumstances not subject to subsection (l)” after “sec-
14 tion 8”.

15 (d) PRIVATE ENFORCEMENT.—Section 12 of the Na-
16 tional Labor Relations Act (29 U.S.C. 162), as amended
17 by subsection (b), is further amended by adding at the
18 end the following:

19 “(e) RIGHT TO CIVIL ACTION.—

20 “(1) IN GENERAL.—Any person who is injured
21 by reason of any violation of paragraph (1) or (3)
22 of section 8(a) may, in addition to or in lieu of filing
23 a charge alleging such unfair labor practice with the
24 Board in accordance with this Act, bring a civil ac-
25 tion in the appropriate district court of the United

1 States against the employer within 180 days of the
2 violation.

3 “(2) AVAILABLE RELIEF.—Relief granted in an
4 action under paragraph (1) may include any relief
5 authorized by section 706(g) of the Civil Rights Act
6 of 1965 (42 U.S.C. 2000e–5(g)) or by section
7 1977A(b) of the Revised Statutes (42 U.S.C.
8 1981a(b)).

9 “(3) ATTORNEY’S FEE.—In any action or pro-
10 ceeding under this subsection, the court may allow
11 the prevailing party a reasonable attorney’s fee (in-
12 cluding expert fees) as part of the costs.”.

13 (e) ENSURING FAIR REMEDIES FOR ALL WORK-
14 ERS.—Section 10(c) of the National Labor Relations Act
15 (29 U.S.C. 160(c)) is amended by striking “suffered by
16 him:” and inserting “suffered by such employee: *Provided*
17 *further*, That back pay shall not be denied on the basis
18 that the employee is, or was during the time of relevant
19 employment or during the back pay period, an unauthor-
20 ized alien as defined in section 274A(h)(3) of the Immi-
21 gration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any
22 other provision of Federal law relating to the unlawful em-
23 ployment of aliens:”.

1 (f) REMEDYING ELECTION INTERFERENCE.—Section
2 9(c) of the National Labor Relations Act (29 U.S.C.
3 159(c)) is amended—

4 (1) by redesignating paragraphs (4) and (5) as
5 paragraphs (6) and (7), respectively; and

6 (2) by inserting after paragraph (3) the fol-
7 lowing:

8 “(4) BARGAINING ORDER BASED ON MAJORITY OF
9 VOTES.—If the Board finds that, in an election under
10 paragraph (1), a majority of the valid votes cast in a unit
11 appropriate for purposes of collective bargaining have been
12 cast in favor of representation by the labor organization,
13 the Board shall issue an order requiring the employer to
14 collectively bargain with the labor organization in accord-
15 ance with section 8(d).

16 “(5) DISMISSAL; BARGAINING ORDERS IN OTHER
17 SITUATIONS.—

18 “(A) DISMISSAL.—If the Board finds that, in
19 an election under paragraph (1), a majority of the
20 valid votes cast in a unit appropriate for purposes
21 of collective bargaining have not been cast in favor
22 of representation by the labor organization, the
23 Board shall dismiss the petition, subject to subpara-
24 graphs (B) and (C).

1 “(B) SPECIAL RULES FOR EMPLOYER VIOLA-
2 TIONS OR INTERFERENCE.—In any case where a
3 majority of the valid votes cast in a unit appropriate
4 for purposes of collective bargaining have not been
5 cast in favor of representation by the labor organiza-
6 tion and the Board determines that the election
7 should be set aside because the employer has com-
8 mitted a violation of this Act, or otherwise interfered
9 with a fair election, and has not demonstrated that
10 the violation or other interference is unlikely to have
11 affected the outcome of the election, the Board shall,
12 without ordering a new or rerun election, issue an
13 order requiring the employer to bargain with the
14 labor organization in accordance with section 8(d) if,
15 at any time during the period beginning 1 year pre-
16 ceding the date of the commencement of the election
17 and ending on the date upon which the Board makes
18 the determination of a violation or other interference
19 under subparagraph (A), a majority of the employ-
20 ees in the bargaining unit have signed authorizations
21 designating the labor organization as their collective
22 bargaining representative.

23 “(C) OTHER ELECTION INTERFERENCE.—In
24 any case where the Board determines that an elec-
25 tion under this paragraph should be set aside, the

1 Board shall direct a rerun election with appropriate
2 additional safeguards necessary to ensure a fair elec-
3 tion process, except in cases where the Board issues
4 a bargaining order under subparagraph (B).”.

5 **SEC. 5. MODERNIZATION.**

6 (a) PREVENTION OF UNFAIR LABOR PRACTICES.—
7 Section 8 of the National Labor Relations Act (29 U.S.C.
8 158) is amended by adding at the end the following:

9 “(h) POSTINGS OF NOTICE.—

10 “(1) IN GENERAL.—The Board shall promul-
11 gate regulations requiring each employer to post and
12 maintain, in conspicuous places where notices to em-
13 ployees and applicants for employment are custom-
14 arily posted both physically and electronically, a no-
15 tice setting forth the rights and protections afforded
16 employees under this Act. The Board shall provide
17 to employers the form and text of such notice.

18 “(2) NOTIFICATION OF NEW EMPLOYEES.—The
19 Board shall promulgate regulations requiring em-
20 ployers to notify each new employee of the informa-
21 tion contained in the notice described in paragraph
22 (1).”.

23 (b) ENFORCING COMPLIANCE WITH ORDERS OF THE
24 BOARD.—

1 (1) IN GENERAL.—Section 10 of the National
2 Labor Relations Act (29 U.S.C. 160) is amended—

3 (A) by striking subsection (e);

4 (B) by redesignating subsection (d) as sub-
5 section (e); and

6 (C) by inserting after subsection (c) the
7 following:

8 “(d) ENFORCING COMPLIANCE WITH ORDERS OF
9 THE BOARD.—

10 “(1) IN GENERAL.—Each order of the Board
11 shall take effect 30 days from the date upon which
12 notice of the order is given, unless otherwise directed
13 by the Board. Each such orders shall continue in
14 force indefinitely or for the period of time specified
15 in the order, or until the Board or a court of com-
16 petent jurisdiction issues a superseding order.

17 “(2) APPLICATION OF THE BOARD.—If any per-
18 son or entity fails or neglects to obey any order of
19 the Board while such order is in effect, the Board
20 shall apply to the district court of the United States
21 in which the unfair labor practice or other subject
22 of the order occurred, or in which such person or en-
23 tity resides or transacts business, for the enforce-
24 ment of such order. The Board shall file in the court
25 the record in the proceedings, as provided in section

1 2112 of title 28, United States Code. Any person
2 that was a party to the underlying Board proceeding
3 may join in the proceeding initiated by the Board.

4 “(3) PROCEDURE.—If, after having provided a
5 person or entity with notice and an opportunity to
6 be heard regarding a request under paragraph (2)
7 for the enforcement of an order, the court deter-
8 mines that the order was regularly made and duly
9 served, and that the person or entity is in disobe-
10 dience of the same, the court shall enforce obedience
11 to such order by a writ of injunction or other proper
12 process, mandatory or otherwise, to—

13 “(A) restrain such person or entity or the
14 officers, agents, or representatives of such per-
15 son or entity, from further disobedience of such
16 order; or

17 “(B) enjoin upon such person or entity, of-
18 ficers, agents, or representatives obedience to
19 the same.

20 “(4) VIOLATIONS OF ORDERS BY THE BOARD.—
21 Any person or entity who willfully and knowingly
22 violates any rule, regulation, restriction, condition,
23 or order made or imposed by the Board under au-
24 thority of this Act shall, in addition to any other
25 penalties provided by law, be subject to a civil pen-

1 alty of not to exceed \$10,000 for each and every day
2 during which such violation occurs, commencing with
3 the effective date of any such rule, regulation, re-
4 striction, condition, or order. Such civil penalty may
5 be imposed by the Board or by a court in a pro-
6 ceeding initiated by the Board under this sub-
7 section.”.

8 (2) CONFORMING AMENDMENTS.—The National
9 Labor Relations Act (29 U.S.C. 151 et seq.) is
10 amended—

11 (A) in section 9(d), by striking “section
12 10(e) or 10(f)” and inserting “subsection (d) or
13 (f) of section 10”; and

14 (B) in section 10—

15 (i) in subsection (f), by striking “sub-
16 section (e) of this section” and inserting
17 “subsection (d)”; and

18 (ii) in subsection (g), by striking
19 “subsection (e) or (f) of this section” and
20 inserting “subsection (d) or (f)”.

○