

117TH CONGRESS
2D SESSION

S. 4289

To prohibit an employer from terminating the coverage of an employee under a group health plan while the employer is engaged in a lock-out, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2022

Mr. BROWN (for himself, Mr. CASEY, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit an employer from terminating the coverage of an employee under a group health plan while the employer is engaged in a lock-out, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Locked Out Workers
5 Healthcare Protection Act”.

1 **SEC. 2. CONTINUATION OF COVERAGE UNDER A GROUP**
 2 **HEALTH PLAN DURING A LOCK-OUT.**

3 (a) IN GENERAL.—Section 8(a) of the National
 4 Labor Relations Act (29 U.S.C. 158(a)) is amended—

5 (1) in paragraph (5), by striking the period and
 6 inserting “; and”; and

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

8 “(6) to terminate or alter the coverage of an
 9 employee under a group health plan during the pe-
 10 riod that such employer is taking action to lock-out,
 11 suspend, or otherwise withhold employment from the
 12 employee in order to influence the position of such
 13 employee or the representative of such employee in
 14 collective bargaining prior to a strike.”.

15 (b) DEFINITIONS.—Section 2 of the National Labor
 16 Relations Act (29 U.S.C. 152) is amended by adding at
 17 the end the following:

18 “(15) The term ‘group health plan’ has the meaning
 19 given the term under section 607(1) of the Employee Re-
 20 tirement Income Security Act of 1974 (29 U.S.C.
 21 1167(1)).”.

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

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

1 **“SEC. 12. PENALTIES.**

2 “(a) VIOLATIONS FOR INTERFERENCE WITH THE
3 BOARD.—Any person”; and

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

5 “(b) CIVIL PENALTIES FOR UNFAIR LABOR PRAC-
6 TICES RELATED TO COVERAGE UNDER A GROUP HEALTH
7 PLAN DURING A LOCK-OUT.—Any employer who commits
8 an unfair labor practice within the meaning of section
9 8(a)(6) shall be subject to a civil penalty in an amount
10 not to exceed \$75,000 for each violation, except that, with
11 respect to such an unfair labor practice that coincides with
12 the discharge of an employee or that results in other seri-
13 ous economic harm to an employee, the Board shall double
14 the amount of such penalty, to an amount not to exceed
15 \$150,000, in any case where the employer has within the
16 preceding 5 years committed another violation of section
17 8(a)(6). A civil penalty under this subsection shall be in
18 addition to any other remedy ordered by the Board.

19 “(c) CONSIDERATIONS.—In determining the amount
20 of any civil penalty under subsection (b) or (d), the Board
21 shall consider—

22 “(1) the gravity of the actions of the employer
23 resulting in the penalty, including the impact of such
24 actions on the charging party or on other persons
25 seeking to exercise rights guaranteed by this Act;

26 “(2) the size of the employer;

1 “(3) the history of previous unfair labor prac-
2 tices or other actions by the employer resulting in a
3 penalty; and

4 “(4) the public interest.

5 “(d) DIRECTOR AND OFFICER LIABILITY.—If the
6 Board determines, based on the particular facts and cir-
7 cumstances presented, that a director or officer’s personal
8 liability is warranted, a civil penalty for a violation de-
9 scribed in subsection (b) may also be assessed against any
10 director or officer of the employer who directed or com-
11 mitted the violation, or had actual or constructive knowl-
12 edge of and the authority to prevent the violation and
13 failed to prevent the violation.”.

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