

114TH CONGRESS
1ST SESSION

S. 2042

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 SENATE OF THE UNITED STATES

SEPTEMBER 16, 2015

Mrs. MURRAY (for herself, Ms. MIKULSKI, Mr. FRANKEN, Mr. WHITEHOUSE, Ms. WARREN, Mr. BLUMENTHAL, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

1 women is much smaller at unionized workplaces.
2 The wage gains achieved through collective bar-
3 gaining benefit workers and their communities.

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

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

1 tices impede workers from exercising their rights
2 under the law and impair their freedom of associa-
3 tion at work.

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

20 (6) The current remedies are inadequate to
21 deter employers from violating the National Labor
22 Relations Act (29 U.S.C. 151 et seq.). The remedies
23 and penalties for violations of the National Labor
24 Relations Act (29 U.S.C. 151 et seq.) are far weaker
25 than for other labor and employment laws, including

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

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

11 **SEC. 3. PURPOSES.**

12 The purposes of this Act are—

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

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

20 (3) to provide for penalties against employers
21 who violate the rights of employees to engage in col-
22 lective action, in order to act as a meaningful deter-
23 rent against violating the law; and

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

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

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

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

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

1 **“SEC. 12. CIVIL PENALTIES.**

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

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

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

9 “(1) state the findings of fact supporting such
10 determination;

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

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

20 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC LOSS
21 TO EMPLOYEES.—

22 “(1) IN GENERAL.—Any employer who commits
23 an unfair labor practice within the meaning of para-
24 graph (3) or (4) of section 8(a) or a violation of sec-
25 tion 8(a) that results in the discharge of an em-
26 ployee or other serious economic loss to an employee

1 shall, in addition to any remedy ordered by the
 2 Board, be subject to a civil penalty. Such penalty
 3 shall be in an amount not to exceed \$50,000 for
 4 each violation, except that the Board shall double
 5 the amount of such penalty, to an amount not to ex-
 6 ceed \$100,000, in any case where the employer has
 7 within the preceding 5 years committed another
 8 such violation.

9 “(2) CONSIDERATIONS.—In determining the
 10 amount of any civil penalty under this subsection,
 11 the Board shall consider—

12 “(A) the gravity of the unfair labor prac-
 13 tice;

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

18 “(C) the size of the employer.

19 “(3) PERSONAL LIABILITY.—If the Board de-
 20 termines, based on the particular facts and cir-
 21 cumstances presented, that personal liability is war-
 22 ranted, a civil penalty for a violation described in
 23 this subsection may also be assessed against any of-
 24 ficer or director of the employer who committed the

1 violation or had the authority to prevent the viola-
 2 tion.

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

9 (c) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
 10 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-
 11 NOMIC LOSS.—

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

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

23 (B) by striking “as it deems just and prop-
 24 er, notwithstanding any other provision of law:”
 25 and inserting the following: “to protect the

1 rights guaranteed by section 7, notwithstanding
2 any other provision of law. The district court
3 shall grant the relief requested unless the court
4 concludes that there is no reasonable likelihood
5 that the Board will succeed on the merits of the
6 Board's claim:".

7 (2) CONFORMING AMENDMENT.—Section 10(m)
8 of the National Labor Relations Act (29 U.S.C.
9 160(m)) is amended by inserting “under cir-
10 cumstances not subject to subsection (l)” after “sec-
11 tion 8”.

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

16 “(e) RIGHT TO CIVIL ACTION.—

17 “(1) IN GENERAL.—Any person who is injured
18 by reason of any violation of paragraph (1) or (3)
19 of section 8(a) may, in addition to or in lieu of filing
20 a charge alleging such unfair labor practice with the
21 Board in accordance with this Act, bring a civil ac-
22 tion in the appropriate district court of the United
23 States against the employer within 180 days of the
24 violation.

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

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

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

22 (f) REMEDYING ELECTION INTERFERENCE.—Section
23 9(c) of the National Labor Relations Act (29 U.S.C.
24 159(c)) is amended—

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

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

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

13 “(5) DISMISSAL; BARGAINING ORDERS IN OTHER
14 SITUATIONS.—

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

22 “(B) SPECIAL RULES FOR EMPLOYER VIOLA-
23 TIONS OR INTERFERENCE.—In any case where a
24 majority of the valid votes cast in a unit appropriate
25 for purposes of collective bargaining have not been

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

19 “(C) OTHER ELECTION INTERFERENCE.—In
20 any case where the Board determines that an elec-
21 tion under this paragraph should be set aside, the
22 Board shall direct a rerun election with appropriate
23 additional safeguards necessary to ensure a fair elec-
24 tion process, except in cases where the Board issues
25 a bargaining order under subparagraph (B).”.

1 **SEC. 5. MODERNIZATION.**

2 (a) PREVENTION OF UNFAIR LABOR PRACTICES.—

3 Section 8 of the National Labor Relations Act (29 U.S.C.
4 158) is amended by adding at the end the following:

5 “(h) POSTINGS OF NOTICE.—

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

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

19 (b) ENFORCING COMPLIANCE WITH ORDERS OF THE
20 BOARD.—

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

23 (A) by striking subsection (e);

24 (B) by redesignating subsection (d) as sub-
25 section (e); and

1 (C) by inserting after subsection (c) the
2 following:

3 “(d) ENFORCING COMPLIANCE WITH ORDERS OF
4 THE BOARD.—

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

12 “(2) APPLICATION OF THE BOARD.—If any per-
13 son or entity fails or neglects to obey any order of
14 the Board while such order is in effect, the Board
15 shall apply to the district court of the United States
16 in which the unfair labor practice or other subject
17 of the order occurred, or in which such person or en-
18 tity resides or transacts business, for the enforce-
19 ment of such order. The Board shall file in the court
20 the record in the proceedings, as provided in section
21 2112 of title 28, United States Code. Any person
22 that was a party to the underlying Board proceeding
23 may join in the proceeding initiated by the Board.

24 “(3) PROCEDURE.—If, after having provided a
25 person or entity with notice and an opportunity to

1 be heard regarding a request under paragraph (2)
2 for the enforcement of an order, the court deter-
3 mines that the order was regularly made and duly
4 served, and that the person or entity is in disobe-
5 dience of the same, the court shall enforce obedience
6 to such order by a writ of injunction or other proper
7 process, mandatory or otherwise, to—

8 “(A) restrain such person or entity or the
9 officers, agents, or representatives of such per-
10 son or entity, from further disobedience of such
11 order; or

12 “(B) enjoin upon such person or entity, of-
13 ficers, agents, or representatives obedience to
14 the same.

15 “(4) VIOLATIONS OF ORDERS BY THE BOARD.—

16 Any person or entity who willfully and knowingly
17 violates any rule, regulation, restriction, condition,
18 or order made or imposed by the Board under au-
19 thority of this Act shall, in addition to any other
20 penalties provided by law, be subject to a civil pen-
21 alty of not to exceed \$10,000 for each and every day
22 during which such violation occurs, commencing with
23 the effective date of any such rule, regulation, re-
24 striction, condition, or order. Such civil penalty may
25 be imposed by the Board or by a court in a pro-

1 ceeding initiated by the Board under this sub-
2 section.”.

3 (2) CONFORMING AMENDMENTS.—The National
4 Labor Relations Act (29 U.S.C. 151 et seq.) is
5 amended—

6 (A) in section 9(d), by striking “section
7 10(e) or 10(f)” and inserting “subsection (d) or
8 (f) of section 10”; and

9 (B) in section 10—

10 (i) in subsection (f), by striking “sub-
11 section (e) of this section” and inserting
12 “subsection (d)”; and

13 (ii) in subsection (g), by striking
14 “subsection (e) or (f) of this section” and
15 inserting “subsection (d) or (f)”.

○