

IRI INTELLIGENCE BRIEFING

NEWS AND DEVELOPMENTS AFFECTING THE WORKPLACE

FEBRUARY 2021

A New Era: The Time to Prepare is Now

President Biden wasted little time taking action on his pro-labor agenda and the impact to employers will be profound. From the immediate dismissal of the National Labor Relations Board (NLRB) General Counsel on day one, to a series of Executive Orders and the long-promised pro-labor legislation to follow, it's clear that this administration is willing to advance the causes of organized labor. The time is now for employers to prepare.

In our last Intelligence Briefing we highlighted key provisions of the PRO Act (Protecting the Right to Organize), which President Biden has publicly committed to passing and recommended that executives and government

relations teams educate themselves on the impact to their organizations.

That legislation was introduced in the Senate on February 4th. Highlights of the PRO Act are outlined below for your reference.

We have identified the next three actions we recommend in order to prepare your organization for what lies ahead. No longer should discussions about these threats remain confined to the executive suite, it is time to engage all leaders to maintain your culture, support your employees, and remain financially viable in 2021.

KEY COMPONENTS OF THE PRO ACT

Listed below are significant elements of the PRO Act that employers must know and be prepared to modify their existing strategies to address.

Provision in PRO Act	What This Means To Your Organization...
Card check	In contested elections, unions may be recognized by presenting a majority of signed authorization cards, even if employees didn't realize what they were signing
Expedited first contract bargaining and binding arbitration	If a first contract isn't reached within 90 days, a third-party arbitrator will decide on a contract that your organization will have to follow
Secondary boycotts will be legal	Labor unions who have disputes with contractors or vendors will be allowed to picket in front of your organization
Severely limiting procedural rights for employers in bargaining unit and election proceedings	Your organization could lose the right to contest many issues and may be prevented from being a party to legal proceedings
Overturn right to work laws in 28 states	All union-represented employees will potentially be required to pay dues or fees to the union or face termination from their jobs
Private cause of action for unfair labor practices	Plaintiff's attorneys can sue your organization for alleged violations of law

Provision in PRO Act	What This Means To Your Organization...
Supervisory status threshold raised	Supervisors who occasionally perform the work of their employees would be considered “bargaining unit-eligible” and would be included in a collective bargaining unit
Expanding definition of employee status and narrowing scope of independent contractor status (codifying ABC test)	Many of your current contractors would be considered employees of your organization, with all the associated responsibilities and liabilities that come with employees
Civil penalties for employer violations of labor laws	Your leaders and corporate representatives may be personally fined for unfair labor practices – no similar penalties for union unfair labor practices
Unions granted access to employee personal information	Infringing on employee privacy by requiring employers to provide union organizers personal information for all employees without prior employee approval
Ban employers from requiring employees to attend meetings during working hours in union campaigns	Your organization would be prohibited from exercising your free speech right to inform employees in onsite meetings about union representation and why you would prefer to work with them directly
Reinstating “ambush” election rules	Election time frames would be shortened again, providing little time for you to respond to organizing activity
Reinstate the Obama administration persuader rule	Your organization would be required to publicly disclose all funds spent on legal counsel, consultants, and other outside experts regarding labor relations or employee engagement activities

WHAT YOU NEED TO DO TODAY

STEP 1: DEVELOP INTERNAL CAPABILITIES

Creating internal resources that understand the impact of the PRO Act and other pro-labor legislation is paramount. Early detection of organizing vulnerabilities is paramount to success in this new environment and your leaders are in the best position to do just that. External support could be restricted in the new era we have entered, which make it imperative to develop your internal resources now. Implementing a robust leadership training program should start as quickly as possible.

STEP 2: PREPARE YOUR INTERVIEWERS

The most effective union campaigns often begin with internal organizers. Unions have long utilized organizers posing as legitimate candidates for open positions and use of this tactic is likely to increase. Ensure your hiring leaders and recruiters know what to look for, what they can (and can't) ask and your legal rights.

STEP 3: LABOR RELATIONS TRAINING FOR HUMAN RESOURCES PROFESSIONALS

Many organizations that have never encountered third-party interference will be faced with those challenges in the coming months. Now is the time to upskill your Human Resources team so they are prepared to support your employees and managers with accurate information. Training your HR team now will enable them to detect shifts in employee sentiment sooner and be in a position to respond quickly to educate employees when needed.

NEXT STEPS

If you would like to learn more about the PRO Act, other pending legislative and regulatory threats to employers, and the detailed steps you should take to prepare, reach out to the experts at IRI Consultants.

Our next Intelligence Briefing in this three-part series will focus on employee rights and education as well as the steps you should take to address any vulnerabilities across your organization.

Have questions about how to proceed? Contact IRI at (313) 965-0350 for more information.