

Here's What House Democrats' Budget Bill Would Do for Workers

- House labor committee proposes \$761 billion bill
- Would address misclassification, class-action waivers

By Paige Smith, Robert Iafolla, Ben Penn and Bruce Rolfsen | September 9, 2021 5:31AM ET

The budget reconciliation measure for labor that House Democrats will begin to mark up Thursday would make employee misclassification a labor law violation and outlaw class-action waivers in workplace contracts.

The \$761 billion measure, released Wednesday, is loaded with pro-worker and pro-union provisions that could pass without needing a single Republican vote—if they can overcome procedural hurdles.

The bill, which the House Committee on Education and Labor will take up at noon Thursday, includes a slew of worker-friendly policies that would trigger more safety, anti-discrimination, and fair wage enforcement. It also would help shore up funding for the National Labor Relations Board, the U.S. Department of Labor, and the U.S. Equal Employment Opportunity Commission over the next five years, apart from annual appropriations.

The draft bill is one portion of the larger \$3.5 trillion budget reconciliation package Democrats are crafting to realize President Joe Biden's goal of achieving the largest expansion of the American social safety net in more than five decades.

To make the reconciliation package filibuster-proof, however, policy proposals are subject to approval by the Senate parliamentarian, who has the authority to ax items deemed unrelated to the budget. That sets up looming fights over whether some of the more ambitious proposals aimed at strengthening worker and union power will clear the so-called Byrd rule and make the cut.

NLRB

Provisions related to the NLRB are particularly controversial because they could have far-reaching impacts on employers.

Unions and their allies argue the proposal to give the NLRB the power to impose monetary fines for existing unfair labor practices conform to the rule's allowance for

provisions that impact a change in spending or revenue. But the bill's calls for new employer prohibitions might have a tougher time winning the Senate parliamentarian's approval for inclusion.

"This seems to be the kind of effort that the Byrd rule was designed to stop," said Michael Lotito, an attorney and lobbyist with the employer-side firm Littler Mendelson. "But that's an issue for the parliamentarian."

The proposal's labor law section would give new rights to workers and impose restrictions on employers, including the prohibition on class-action waivers in employment contracts and establishing that misclassification of an employee as an independent contractor violates labor law.

That part of the legislation also would boost protections for workers who go on strike to protest economic issues and forbid employers from requiring workers to attend what are known as "captive" audience meetings as part of anti-union campaigns.

EEOC

The workplace civil rights agency, which enforces workplace anti-bias laws, would receive \$321 million for enforcement, investigations, and outreach, as well as other activities.

DOL Penalties

The measure would dial up a range of existing penalties under the Fair Labor Standards Act by more than tenfold their current maximum value, putting more power behind the Labor Department's enforcement efforts.

- Penalties for child labor violations would be capped at \$132,270 per employee, from \$11,000 currently.
- Penalties for child labor violations that cause death would max out at \$601,150, from \$50,000.
- Fines for repeated or willful violations of minimum wage and overtime rules would be raised to \$20,740, from \$1,100.
- Fines on employers taking workers' tips would be upped to \$11,620, from \$1,100.

For Occupational Safety and Health Administration enforcement, the bill proposes to raise the maximum fine for willful or repeat violations to \$700,000, up from \$136,532. The minimum fine would be \$50,000. The cap on serious failure-to-abate violations would be \$70,000. The current limit is \$13,653.

Under the Migrant and Seasonal Agricultural Worker Protection Act, the top penalty for each violation would be lifted to \$25,790, from \$1,000.

For all statutes, the bolstered penalties would take effect on Jan. 1, 2022, if approved.

DOL Funding

The measure would give the Labor Department a major influx of cash to spend on workforce development programs over the next five fiscal years. That would include \$16 billion for dislocated worker programs; \$15 billion for adult career training programs; \$9.1 billion for youth workforce investments; \$3.6 billion for ex-offender reentry programs; and \$5 billion for the apprenticeship system.

The bill would give OSHA \$707 million to be spent through fiscal 2026. The Mine Safety and Health Administration would receive \$133 million.

If realized, the proposed spending surge would give the agencies flexibility to expand their hiring of workplace inspectors and investigators, aligning with Biden's bipartisan infrastructure initiative by helping to ensure workers on new construction projects are safe and paid proper wages.

The Office of Federal Contract Compliance Programs, which enforces anti-discrimination laws and affirmative action obligations for federal contractors, would receive \$201 million for enforcement and other relevant activities through the bill.

All funding totals, if they make it into the final legislation, would complement any funding provided through the regular annual appropriations process.

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