

115TH CONGRESS  
1ST SESSION

# H. R. 4548

To amend the National Labor Relations Act to strengthen protections for employees to exercise their rights to organize and collectively bargain for improved wages, hours, or other terms and conditions of employment, to sanction violations of such rights and assure meaningful remedies, to establish a process by which employers and employees conclude initial collective bargaining agreements, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2017

Mr. SCOTT of Virginia (for himself, Mr. SABLAN, Mr. TAKANO, Mr. DESAULNIER, Mr. NORCROSS, Ms. DELAURO, Ms. KAPTUR, Ms. SCHA-KOWSKY, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. NADLER, Mrs. NAPOLITANO, Mr. POCAN, Ms. CLARK of Massachusetts, Mr. RYAN of Ohio, Mr. ESPAILLAT, Mr. CUMMINGS, Ms. BONAMICI, Mr. DEFazio, Mr. BRADY of Pennsylvania, Mr. PALLONE, Mr. LANGEVIN, Mr. SERRANO, Ms. WILSON of Florida, Ms. SÁNCHEZ, Ms. ADAMS, Mr. HUFFMAN, Mr. RASKIN, Ms. HANABUSA, Mr. ELLISON, Mr. GUTIÉRREZ, Ms. NORTON, Mr. KHANNA, and Ms. SHEA-PORTER) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the National Labor Relations Act to strengthen protections for employees to exercise their rights to organize and collectively bargain for improved wages, hours, or other terms and conditions of employment, to sanction violations of such rights and assure meaningful remedies, to establish a process by which employers and employees conclude initial collective bargaining agreements, 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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

17 (2) According to research by the Bureau of  
18 Labor Statistics, through acting collectively and bar-  
19 gaining with their employers, workers who are  
20 unionized earn 25.2 percent more than workers who  
21 are not covered by a collective bargaining agreement.  
22 They are 40.8 percent more likely to be offered  
23 health insurance through work and nearly 5 times as  
24 likely to have employer-provided defined benefit pen-  
25 sions. The wage differential is significant for women

1 and people of color. Unionized African-American  
2 workers earn 25.1 percent more than African-Amer-  
3 ican workers who are not unionized, and unionized  
4 Latino workers earn 45.7 percent more than their  
5 peers who are not unionized. Unionized women earn  
6 32.1 percent more than women who are not union-  
7 ized, and the wage gap between men and women is  
8 much smaller at unionized workplaces. The wage  
9 gains achieved through collective bargaining agree-  
10 ments benefit workers and their communities.

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

16 (4) As enacted in 1935, the National Labor Re-  
17 lations Act (29 U.S.C. 151 et seq.) protects the  
18 right of all workers to join together with their co-  
19 workers to advocate for improvements in their pay,  
20 benefits, and working conditions, regardless of  
21 whether they seek representation by a union. The  
22 law protects the right of workers to discuss issues  
23 like pay and benefits without retaliation or inter-  
24 ference by employers. However, the awareness of  
25 workers regarding their rights under the law is lack-

1 ing, and many employers maintain policies that re-  
2 strict the ability of workers to discuss workplace  
3 issues with each other, directly contravening these  
4 rights. Research shows that more than one-half of  
5 workers report that their employers have policies  
6 that prohibit or discourage workers from discussing  
7 pay with their co-workers. These policies and prac-  
8 tices impede workers from exercising their rights  
9 under the law and impair their freedom of associa-  
10 tion at work.

11 (5) Retaliation by employers against workers  
12 who exercise their rights under the National Labor  
13 Relations Act (29 U.S.C. 151 et seq.) persists at  
14 troubling levels. Employers routinely fire workers for  
15 trying to form a union at their workplace. In one out  
16 of 3 organizing campaigns, one or more workers are  
17 discharged for supporting or joining a union. From  
18 fiscal years 2014 through 2016, the National Labor  
19 Relations Board obtained reinstatement orders for  
20 6,997 workers and obtained awards totaling over  
21 \$193,000,000 for backpay and other damages for  
22 workers who faced illegal retaliation for exercising  
23 their rights.

24 (6) The current remedies are inadequate to  
25 deter employers from violating the National Labor

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

11 (7) Unlike orders of other federal agencies, the  
12 National Labor Relations Board's orders are not en-  
13 forced until the Board seeks enforcement from the  
14 Court of Appeals. As far back as 1969, the Adminis-  
15 trative Conference of the United States recognized  
16 that the absence of a self-enforcing agency order im-  
17 poses wasteful delays in the enforcement of the Act,  
18 and recommended that the Board's orders be made  
19 self-enforcing like those of other agencies. Congress  
20 did not act upon this recommendation, and delays in  
21 the Board's enforcement remain a problem for the  
22 Act to be an effective law.

23 (8) Many workers do not currently enjoy the  
24 protections of the Act because they are excluded

1 from coverage by the statute or interpretations of  
2 the statute.

3 (9) Too often, workers who choose to form  
4 unions are frustrated when their employers use delay  
5 and other tactics to avoid reaching an initial collec-  
6 tive bargaining agreement. Estimates are that in as  
7 many as half of new organizing campaigns, workers  
8 and their employers fail to reach an initial collective  
9 bargaining agreement.

10 (10) In order to make the right to collective  
11 bargaining and freedom of association in the work-  
12 place a reality for workers, the National Labor Rela-  
13 tions Act (29 U.S.C. 151 et seq.) must be strenght-  
14 ened.

15 **SEC. 3. PURPOSES.**

16 The purposes of this Act are to—

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

20 (2) expand coverage under the Act to more em-  
21 ployees;

22 (3) provide a process by which workers and em-  
23 ployers can successfully negotiate an initial collective  
24 bargaining agreement;

1           (4) provide for stronger remedies for employees  
2           who face retaliation, discrimination, or other inter-  
3           ference with the legal right of the employees to en-  
4           gage in collective action;

5           (5) provide for penalties against employers who  
6           violate the rights of employees to engage in collective  
7           action, in order to act as a meaningful deterrent  
8           against violating the law; and

9           (6) streamline the enforcement procedures of  
10          the National Labor Relations Board to provide for  
11          more timely and effective enforcement of the law.

12 **SEC. 4. STRENGTHENING REMEDIES AND ENFORCEMENT**  
13                           **FOR EMPLOYEES EXERCISING THEIR RIGHTS**  
14                           **AT WORK.**

15          (a) BACKPAY.—Section 10(c) of the National Labor  
16          Relations Act (29 U.S.C. 160(c)) is amended by striking  
17          “*And provided further,*” and inserting “*Provided further,*  
18          That if the Board finds that an employer has discrimi-  
19          nated against an employee in violation of paragraph (3)  
20          or (4) of section 8(a) or has committed a violation of sec-  
21          tion 8(a) that results in the discharge of an employee or  
22          other serious economic harm to an employee, the Board  
23          shall award the employee back pay and an additional  
24          amount as liquidated damages equal to 2 times the  
25          amount of such back pay, without any reduction (includ-

1 ing any reduction based on the employee’s interim earn-  
2 ings or failure to earn interim earnings): *Provided fur-*  
3 *ther,*”.

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

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

8 **“SEC. 12. PENALTIES.**

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

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

12 “(b) CIVIL PENALTIES FOR VIOLATIONS OF POSTING  
13 REQUIREMENTS.—If the Board, or any agent or agency  
14 designated by the Board for such purposes, determines  
15 that an employer has violated section 8(h), the Board  
16 shall—

17 “(1) state the findings of fact supporting such  
18 determination;

19 “(2) issue and cause to be served on such em-  
20 ployer an order requiring that such employer post  
21 the notice described in such section and provide the  
22 information to new employees described in such sec-  
23 tion; and

24 “(3) impose a civil penalty in an amount deter-  
25 mined appropriate by the Board, except that in no



1 case shall the amount of the fine exceed \$500 for  
2 each such violation.

3 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC  
4 HARM TO EMPLOYEES.—

5 “(1) IN GENERAL.—Any employer who commits  
6 an unfair labor practice within the meaning of para-  
7 graph (3) or (4) of section 8(a) or a violation of sec-  
8 tion 8(a) that results in the discharge of an em-  
9 ployee or other serious economic harm to an em-  
10 ployee shall, in addition to any remedy ordered by  
11 the Board, be subject to a civil penalty. Such penalty  
12 shall be in an amount not to exceed \$50,000 for  
13 each violation, except that the Board shall double  
14 the amount of such penalty, to an amount not to ex-  
15 ceed \$100,000, in any case where the employer has  
16 within the preceding 5 years committed another  
17 such violation.

18 “(2) CONSIDERATIONS.—In determining the  
19 amount of any civil penalty under this subsection,  
20 the Board shall consider—

21 “(A) the gravity of the unfair labor prac-  
22 tice;

23 “(B) the impact of the unfair labor prac-  
24 tice on the charging party, on other persons

1 seeking to exercise rights guaranteed by this  
2 Act, and on the public interest; and

3 “(C) the size of the employer.

4 “(3) DIRECTOR AND OFFICER LIABILITY.—If  
5 the Board determines, based on the particular facts  
6 and circumstances presented, that a director or offi-  
7 cer’s personal liability is warranted, a civil penalty  
8 for a violation described in this subsection may also  
9 be assessed against any director or officer of the em-  
10 ployer who directed or committed the violation, had  
11 established a policy that led to such violations, or  
12 had knowledge of and the authority to prevent the  
13 violation and failed to do so.

14 “(d) JOINT AND SEVERAL LIABILITY.—An employer  
15 shall be jointly and severally liable under this Act for any  
16 violations of this Act involving one or more employees sup-  
17 plied by another employer to perform labor within the em-  
18 ployer’s usual course of business.”.

19 (c) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-  
20 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-  
21 NOMIC LOSS.—Section 10(j) of the National Labor Rela-  
22 tions Act (29 U.S.C. 160(j)) is amended—

23 (1) by striking “(j) The Board” and inserting  
24 the following:

25 “(j)(1) The Board”; and

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

2 “(2) Notwithstanding subsection (m) of section 10,  
3 whenever it is charged that an employer has engaged in  
4 an unfair labor practice within the meaning of paragraph  
5 (1) or (3) of section 8(a) that significantly interferes with,  
6 restrains, or coerces employees in the exercise of the rights  
7 guaranteed under section 7, or involves discharge or other  
8 serious economic harm to an employee, the preliminary in-  
9 vestigation of such charge shall be made forthwith and  
10 given priority over all cases except cases of like character  
11 in the office where it is filed or to which it is referred.  
12 If, after such investigation, the officer or regional attorney  
13 to whom the matter may be referred has reasonable cause  
14 to believe such charge is true and that a complaint should  
15 issue, he shall bring a petition for appropriate temporary  
16 relief or restraining order as set forth in paragraph (1).  
17 The district court shall grant the relief requested unless  
18 the court concludes that there is no reasonable likelihood  
19 that the Board will succeed on the merits of the Board’s  
20 claim.”.

21 (d) PRIVATE ENFORCEMENT.—

22 (1) RIGHT TO CIVIL ACTION.—Section 12 of the  
23 National Labor Relations Act (29 U.S.C. 162), as  
24 amended by subsection (b), is further amended by  
25 adding at the end the following:

1 “(e) RIGHT TO CIVIL ACTION.—

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

10 “(2) AVAILABLE RELIEF.—Relief granted in an  
11 action under paragraph (1) may include any relief  
12 authorized by section 706(g) of the Civil Rights Act  
13 of 1965 (42 U.S.C. 2000e-5(g) or by section  
14 1977A(b) of the Revised Statutes (42 U.S.C.  
15 1981a(b))).

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

20 (2) CONFORMING AMENDMENT.—Section 10(b)  
21 of the National Labor Relations Act is amended by  
22 striking “six months” and inserting “180 days”.

23 (e) ENSURING FAIR REMEDIES FOR ALL WORK-  
24 ERS.—Section 10(c) of the National Labor Relations Act  
25 (29 U.S.C. 160(c)) is amended by striking “suffered by

1 him:” and inserting “suffered by such employee: *Provided*  
2 *further*, That back pay shall not be denied on the basis  
3 that the employee is, or was during the time of relevant  
4 employment or during the back pay period, an unauthor-  
5 ized alien as defined in section 274A(h)(3) of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any  
7 other provision of Federal law relating to the unlawful em-  
8 ployment of aliens:”.

9 (f) REMEDYING ELECTION INTERFERENCE.—Section  
10 9(c) of the National Labor Relations Act (29 U.S.C.  
11 159(c)) is amended—

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

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

16 “(4) BARGAINING ORDER BASED ON MAJORITY  
17 OF VOTES.—If the Board finds that, in an election  
18 under paragraph (1), a majority of the valid votes  
19 cast in a unit appropriate for purposes of collective  
20 bargaining have been cast in favor of representation  
21 by the labor organization, the Board shall issue an  
22 order requiring the employer to collectively bargain  
23 with the labor organization in accordance with sec-  
24 tion 8(d). This order shall be deemed an order under

1 section 10(c) of the Act, without need for a deter-  
2 mination of an unfair labor practice.

3 “(5) DISMISSAL; BARGAINING ORDERS IN  
4 OTHER SITUATIONS.—

5 “(A) DISMISSAL.—If the Board finds that,  
6 in an election under paragraph (1), a majority  
7 of the valid votes cast in a unit appropriate for  
8 purposes of collective bargaining have not been  
9 cast in favor of representation by the labor or-  
10 ganization, the Board shall dismiss the petition,  
11 subject to subparagraphs (B) and (C).

12 “(B) SPECIAL RULES FOR EMPLOYER VIO-  
13 LATIONS OR INTERFERENCE.—In any case  
14 where a majority of the valid votes cast in a  
15 unit appropriate for purposes of collective bar-  
16 gaining have not been cast in favor or represen-  
17 tation by the labor organization and the Board  
18 determines that the election should be set aside  
19 because the employer has committed a violation  
20 of this Act or otherwise interfered with a fair  
21 election, and the employer has not dem-  
22 onstrated that the violation or other inter-  
23 ference is unlikely to have affected the outcome  
24 of the election, the Board shall, without order-  
25 ing a new or rerun election, issue an order re-

1           quiring the employer to bargain with the labor  
2           organization in accordance with section 8(d) if,  
3           at any time during the period beginning 1 year  
4           preceding the date of the commencement of the  
5           election and ending on the date upon which the  
6           Board makes the determination of a violation or  
7           other interference under subparagraph (A), a  
8           majority of the employees in the bargaining  
9           unit have signed authorizations designating the  
10          labor organization as their collective bargaining  
11          representative.

12                   “(C) OTHER ELECTION INTERFERENCE.—

13          In any case where the Board determines that  
14          an election under this paragraph should be set  
15          aside, the Board shall direct a rerun election  
16          with appropriate additional safeguards nec-  
17          essary to ensure a fair election process, except  
18          in cases where the Board issues a bargaining  
19          order under subparagraph (B).”.

20 **SEC. 5. MODERNIZATION.**

21           (a) PREVENTION OF UNFAIR LABOR PRACTICES.—

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

24                   “(h) POSTINGS OF NOTICE.—

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

9           “(2) NOTIFICATION OF NEW EMPLOYEES.—The  
10          Board shall promulgate regulations requiring em-  
11          ployers to notify each new employee of the informa-  
12          tion contained in the notice described in paragraph  
13          (1).”.

14          (b) ENFORCING COMPLIANCE WITH ORDERS OF THE  
15          BOARD.—

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

18                         (A) by striking subsection (e);

19                         (B) by redesignating subsection (d) as sub-  
20                         section (e);

21                         (C) by inserting after subsection (c) the  
22                         following:

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



1           “(1) IN GENERAL.—Each order of the Board  
2 shall take effect upon issuance, unless otherwise di-  
3 rected by the Board, and shall remain in effect, un-  
4 less modified by the Board or unless a court of com-  
5 petent jurisdiction issues a superseding order.

6           “(2) VIOLATIONS OF ORDERS BY THE BOARD.—  
7 Any person who fails or neglects to obey an order  
8 of the Board shall forfeit and pay to the Board a  
9 civil penalty of not more than \$10,000 for each vio-  
10 lation, which shall accrue to the Board and may be  
11 recovered in a civil action brought by the Board to  
12 the district court of the United States in which the  
13 unfair labor practice or other subject of the order  
14 occurred, or in which such person or entity resides  
15 or transacts business. Each separate violation of  
16 such an order shall be a separate offense, except  
17 that in a case of violation through continuing failure  
18 to obey or neglect to obey a final order of the Board,  
19 each day of continuance of such failure or neglect  
20 shall be deemed a separate offense. No action by the  
21 Board under this paragraph may be made until 30  
22 days following the issuance of an order.

23           “(3) PROCEDURE.—If, after having provided a  
24 person or entity with notice and an opportunity to  
25 be heard regarding a request under paragraph (2)

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

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

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

14 (D) in subsection (f)—

15 (i) by striking “proceed in the same  
16 manner as in the case of an application by  
17 the Board under subsection (e) of this sec-  
18 tion” and inserting “proceed as provided  
19 under paragraph (2) of this subsection”;

20 (ii) by striking “Any” and inserting  
21 the following:

22 “(1) Within 30 days of the issuance of an  
23 order, any”; and

24 (iii) by adding at the end the fol-  
25 lowing:

1           “(2) No objection that has not been urged be-  
2 fore the Board, its member, agent, or agency, shall  
3 be considered by a court, unless the failure or ne-  
4 glect to urge such objection shall be excused because  
5 of extraordinary circumstances. The findings of the  
6 Board with respect to questions of fact if supported  
7 by substantial evidence on the record considered as  
8 a whole shall be conclusive. If either party shall  
9 apply to the court for leave to adduce additional evi-  
10 dence and shall show to the satisfaction of the court  
11 that such additional evidence is material and that  
12 there were reasonable grounds for the failure to ad-  
13 duce such evidence in the hearing before the Board,  
14 its member, agent, or agency, the court may order  
15 such additional evidence to be taken before the  
16 Board, its member, agent, or agency, and to be  
17 made a part of the record. The Board may modify  
18 its findings as to the facts, or make new findings,  
19 by reason of additional evidence so taken and filed,  
20 and it shall file such modified or new findings, which  
21 findings with respect to questions of fact if sup-  
22 ported by substantial evidence on the record consid-  
23 ered as a whole shall be conclusive, and shall file its  
24 recommendations, if any, for the modification or set-  
25 ting aside of its original order. Upon the filing of the

1 record with it the jurisdiction of the court shall be  
2 exclusive and its judgment and decree shall be final,  
3 except that the same shall be subject to review by  
4 the appropriate United States court of appeals if ap-  
5 plication was made to the district court, and by the  
6 Supreme Court of the United States upon writ of  
7 certiorari or certification as provided in section 1254  
8 of title 28, United States Code.”.

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

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

15 (B) in section 10—

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

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

22 **SEC. 6. COVERAGE.**

23 (a) ENSURING THAT EMPLOYEES ARE NOT WRONG-  
24 LY CLASSIFIED AS SUPERVISORS AND DENIED THE PRO-

1 PROTECTIONS OF THE ACT.—Section 2(11) of the National  
2 Labor Relations Act (29 U.S.C. 152(11)) is amended—

3           (1) by inserting “and for a majority of the indi-  
4           vidual’s worktime” after “interest of the employer”;

5           (2) by striking “assign,”; and

6           (3) by striking “or responsibly to direct them,”.

7       (b) ENSURING THAT EMPLOYEES ARE NOT  
8 MISCLASSIFIED AS INDEPENDENT CONTRACTORS AND  
9 DENIED THE PROTECTIONS OF THE ACT.—Section 2(3)  
10 of the National Labor Relations Act (29 U.S.C. 152(3))  
11 is amended by inserting at the end of the section the fol-  
12 lowing: “An individual performing any service shall be  
13 considered to be an employee and not an independent con-  
14 tractor unless—

15           “(A) the individual is free from control and di-  
16           rection in connection with the performance of the  
17           service, both under the contract for the performance  
18           of service and in fact;

19           “(B) the service is performed outside the usual  
20           course of the business of the employer; and

21           “(C) the individual is customarily engaged in an  
22           independently established trade, occupation, profes-  
23           sion or business of the same nature as that involved  
24           in the service performed.”.

1 **SEC. 7. FACILITATING INITIAL COLLECTIVE BARGAINING**  
2 **AGREEMENTS.**

3 Section 8 of the National Labor Relations Act (29  
4 U.S.C. 158), as amended by section 5(a), is further  
5 amended by adding at the end the following:

6 “(i) Whenever collective bargaining is for the purpose  
7 of establishing an initial agreement following certification  
8 or recognition, the provisions of subsection (d) shall be  
9 modified as follows:

10 “(1) Not later than 10 days after receiving a  
11 written request for collective bargaining from an in-  
12 dividual or labor organization that has been newly  
13 organized or certified as a representative as defined  
14 in section 9(a), or within such further period as the  
15 parties agree upon, the parties shall meet and com-  
16 mence to bargain collectively and shall make every  
17 reasonable effort to conclude and sign a collective  
18 bargaining agreement.

19 “(2) If after the expiration of the 90-day period  
20 beginning on the date on which bargaining is com-  
21 menced, or such additional period as the parties may  
22 agree upon, the parties have failed to reach an  
23 agreement, either party may notify the Federal Me-  
24 diation and Conciliation Service of the existence of  
25 a dispute and request mediation. Whenever such a  
26 request is received, it shall be the duty of the Service

1 promptly to put itself in communication with the  
2 parties and to use its best efforts, by mediation and  
3 conciliation, to bring them to agreement.

4 “(3) If after the expiration of the 30-day period  
5 beginning on the date on which the request for me-  
6 diation is made under paragraph (2), or such addi-  
7 tional period as the parties may agree upon, the  
8 Service is not able to bring the parties to agreement  
9 by conciliation, the Service shall refer the dispute to  
10 a tripartite arbitration panel established in accord-  
11 ance with such regulations as may be prescribed by  
12 the Service. The arbitration panel shall render a de-  
13 cision settling the dispute and such decision shall be  
14 binding upon the parties for a period of 2 years, un-  
15 less amended during such period by written consent  
16 of the parties.”.

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