



New National Right-To-Work Bill Has Real Chance

News

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The national right-to-work bill introduced Wednesday in the House of Representatives poses an existential crisis for the labor movement. And where past attempts at a national law didn't get far, attorneys say this latest push has a real — albeit small — chance of success.

With Republican majorities in both houses of Congress, a right-to-work supporter in the White House and a recent surge in state-level interest in right-to-work reaching perceived union strongholds in the Northeast, a national law is closer to being a reality now than ever before, attorneys say.

"It comes down to how successful can the Democrats be in filibustering it and how dedicated are the Republicans in trying to jam it through," said Timothy Kamin of Ogletree Deakins Nash Smoak & Stewart PC. "The chances today are certainly much greater than they have been in the past."

The bill, called the National Right-to-Work Act, would amend the National Labor Relations Act and the Railway Labor Act, a predecessor to the NLRA covering the airline and rail industries, to remove language allowing requirements that workers pay dues as a condition of employment. Such requirements are known as union security clauses.

Union security clauses are allowed by default, but the Taft-Hartley Act in 1947 amended the NLRA to allow states to pass laws barring mandatory union dues, commonly called right-to-work laws. Under such laws, unions are required to bargain on behalf of an entire bargaining unit, but members do not have to pay dues.

The argument for right-to-work is that it gives workers the right to opt out of paying for union membership they don't want. The argument against is that it allows so-called free riders to enjoy benefits collectively bargained for by a union without paying to be represented.

In practice, right-to-work laws necessarily mean less money coming into union coffers. Each successive state that joins the right-to-work ranks is a blow to a union's bottom line, and a national expansion could be crushing, attorneys say.

"It's hard to overstate in some ways the impact of this because we're talking about coast-to-coast, on a national scale, taking far and away the greatest source of revenue for organized labor," Fisher

Phillips' Steven M. Bernstein said.

Several states passed right-to-work laws in the years immediately following the passage of Taft-Hartley, although the expansion slowed to a trickle in the latter half of the 20th century.

But the flow has recently started again. Five states — Indiana, Michigan, Wisconsin, West Virginia and in January, Kentucky — have passed right-to-work laws in the last six years. Missouri and New Hampshire, which have Republican-controlled Houses of Representatives and Republican governors, are expected to become the 28th and 29th right-to-work states soon.

For most of the 70 years since Taft-Hartley, right-to-work laws were largely confined to the South, where union support is perceived to be lower. That northern states are now joining the ranks shows that the status quo is breaking, however.

Despite right-to-work reaching areas not thought likely a decade ago, its path toward becoming the law of the land remains rocky, attorneys say. Right-to-work would have been an automatic veto for former President Barack Obama, but President Donald Trump endorsed the trend on the campaign trail last year.

Republicans also have majorities in both the House and Congress, although they would need to woo eight Democrats to their side to avoid a filibuster. Attorneys don't expect that to happen, but they didn't expect right-to-work to expand the way it has in recent years, either.

"I never would have thought that it would have happened in Wisconsin, Kentucky, West Virginia, and it's coming in Missouri," Jackson Lewis PC labor and preventive practice group co-chair Jonathan Spitz said. "Right-to-work legislation has been gaining momentum, and I think it's a real possibility this time."

Attorneys doubt unions would have a legal means to challenge the bill should it pass, so they expect them to apply political pressure to keep it from going through. The Democrats' coziness with big labor suggests the Republicans would have a tough time moving enough votes to avoid a filibuster.

The unions could also apply across-the-board pressure with broad pro-union campaigns a la the Fight for \$15, Spitz said. The failure of either approach to beat back this new legislation could be devastating.

"They're just going to have a harder time getting members on the rolls and paying dues, which then becomes a vicious cycle," Spitz said. "They have less members, they have less money to lobby, they keep getting hit with more legislative setbacks. So they've got to be very nervous right now."

Right-to-work going national wouldn't necessarily deal a deathblow to unions, but it would be a setback. These laws don't generally cause a mass exodus of union support in states where they're in

setback. These laws don't generally cause a mass exodus of union support in states where they're in effect, but they do reduce it.

Of the 27 states with a union membership below the national average in 2016, almost all have right-to-work laws, according to the [Bureau of Labor Statistics](#). Union rates are substantially lower in longtime right-to-work states like South Carolina and North Carolina than they are in recent adopters like West Virginia and Wisconsin, although union membership declined in the latter pair between 2015 and 2016, according to the bureau.

The effects of right-to-work depend somewhat on the dynamics of individual workplaces and geographic areas, attorneys say. In longtime union shops and areas with historically high union membership rates, workers tend to continue paying dues. But new workers who haven't developed loyalty to a union might not be so willing to join.

Union membership is already down substantially from midcentury highs and continues to fall, with just 10.7 percent of wage and salary workers holding union membership cards in 2016. In an America with universal right-to-work, unions would face more pressure to prove their worth than they already do. That might not be such a bad thing, according to Bernstein.

"I think in the end, this may force a healthy discussion for organized labor, which is, 'How do we get back to what made us effective when our ranks were growing in the '50s and '60s?'" Bernstein said. "Historians would say that what made unions effective in those days was crafting a message that resonated with all workers, not just some."

Or, it could be a bad thing — for employers.

Businesses tend to be strong advocates for right-to-work laws because they believe right-to-work weakens unions and that weaker unions are easier to work with. These beliefs suggest national right-to-work would be a boon for business and a burden for unions. But these beliefs may need rethinking, according to [Cary Kane LLP](#) labor attorney and former union organizer Larry Cary.

National right-to-work might not cause a gradual erosion of union power but rather spark an immediate fight. Where unions unconcerned about free ridership might be content to file a grievance and let that process play out, unions under right-to-work may be more apt to shut down a shop floor. Should it pass, a national right-to-work law might mean a labor movement that has to assert itself to survive, Cary said.

"Faced with that reality, the union has to more effectively represent people than they might have otherwise represented in order to win them over, to get them to pay dues, which means the shop floor becomes a battleground," Cary said. "I don't think [employers] would be happy with that."

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