

# PLAYING THE WAITING GAME: AGRICULTURAL UNION CARD CHECK BILL HEADS TO CALIFORNIA GOVERNOR'S DESK

Insights  
Sep 1, 2022

California agricultural employers are in for a whirlwind month ahead as labor advocates and farmworker unions are once again demanding Governor Newsom pass the infamous "card check" bill. If signed, this bill would make it far easier for agricultural workers to organize into unions across the state. While California lawmakers just passed [Assembly Bill \(AB\) 2183](#) on August 29, Governor Newsom has been outspoken about the bill's procedural problems and various inconsistencies. The governor's spokesperson recently noted that he "cannot support an untested mail-in election process that lacks critical provisions to protect the integrity of the election and is predicated on an assumption that government cannot effectively enforce laws." This statement occurred after final amendments were made to the bill – so presumably the governor's concerns were not addressed before the bill landed on his desk. We won't know for sure, however, whether the governor supports the measure as it stands until he formally puts pen to paper and either signs or vetoes the measure – which he must do by September 30. What do you need to know about the card check bill, and what might it mean for your business?

## Summary of Bill

AB 2183 would amend California's Agricultural Labor Relations Act to require agricultural employers, on an annual basis, to indicate whether or not they are agreeable to entering into a "labor peace compact," which would prevent the employer from taking certain actions. Specifically, employers will agree to:

## Related People



**Alden J. Parker**

Regional Managing Partner

916.210.0404

## Service Focus

Labor Relations

## Industry Focus

Agriculture

## Related Offices

Los Angeles

- not speak for or against union representation;
- allow labor organizations access to employees on company property;
- not hold “captive audience meetings” where unions are discussed;
- not disparage a union in communications to employees or the public; and
- not express a preference for one union over another.

Sacramento

San Diego

San Francisco

Woodland Hills

Irvine

If an employer agrees to enter into a labor peace compact, the labor organization will be permitted to conduct a mail-in ballot election. This process will require the employer to provide an employee list to the Agricultural Labor Relations Board. Once provided, the Board will issue “ballot cards” to employees, which would require the following information be completed:

- the name of the labor organization;
- the name of the agricultural employer or farm labor contractor;
- the employee’s name;
- the signature of the employee; and
- the date.

If there are any discrepancies between the name listed on the ballot card and the name listed on the employer’s list, the bill will allow the Board to ignore the discrepancy so long as the remaining information matches. If the Board determines that majority of the ballots are in favor of unionization, the labor organization will be immediately certified.

However, if the employer declines to enter into a labor peace compact, the labor organization is required to provide notice of its intent to organize to the employer, provided that the labor organization received authorization cards from majority of the employees. Once notice is provided, the employer is required to provide an employee list to the labor organization. This list includes, but is not limited to, employees’ names, current street addresses, email addresses, and cell phone numbers. If the board determines

that majority of employees are in favor of unionization, the labor organization is immediately certified.

Lastly, if an employer wishes to appeal petitions and/or the Board's decision, the employer will be required to provide an appeal bond in an amount of the entire economic value of the order. This amount is of course determined by the Board.

### **What Does This Mean?**

Currently, union elections are only conducted when a majority of employees sign a petition to hold an election. Voting is done privately and management, supervisors, union representatives, attorneys, and legal representatives are not permitted in a polling area.

This bill provides an alternative procedure for securing union representation that has traditionally been referred to as "card check" – through which the signatures of employees would essentially replace secret ballots as their only vote. Similar measures were explored by way of failed federal legislation in the form of the Employee Free Choice Act, and more recently, the PRO Act.

This most recent attempt to resurrect card check within California's agricultural sector will likely raise concerns for many employers, as this abbreviated process (along with the mail ballot process generally) lacks many of the safeguards inherent in a manual secret ballot election process that has stood the test of time. Among other things, union representatives could attempt to track an employee's vote. By the same token, the lack of oversight within this process may also give rise to the prospect of threats and intimidation directed at those workers who decline to sign off on the ballot cards.

### **What's Next?**

The bill cleared the legislature on August 29 and is now on its way to Governor Newsom's desk. He has until September 30 to either sign or veto the measure.

We will monitor this bill and proposed updates, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our California offices](#).

