

CALIFORNIA AGRICULTURAL LEGISLATIVE UPDATE: ‘CARD CHECK’ IS HERE

Insights
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Governor Newsom just approved “card check” legislation making it far easier for California workers to organize into unions and creating headaches for agricultural employers in the state. Newsom’s signature on September 28 comes after President Biden issued a statement “strongly” supporting the legislation. But there is some good news for employers. Earlier this week, the Governor vetoed two bills. The first (AB 857) would have required additional disclosures to H-2A workers. The second (AB 364) would have required additional registration for foreign farm labor contractors. What do you need to know about these three bills?

1. AB 2183 – Farmworker Election Process

Introduced by Assemblymember Mark Stone (D-Monterey), [this bill](#) overhauls the union election process for farmworkers.

How it used to be

Currently, elections are held by secret ballot and conducted by the Agricultural Labor Relations Board (ALRB). A polling area is designated, each employee presents identification to get a ballot, and marks their ballot in the privacy of a polling booth. The employee’s choice is kept secret, and ballots are placed in a sealed box opened under supervision of ALRB staff and observers when voting is finished.

What’s new?

Everything. Pursuant to AB 2183, a union may organize without holding a polling place election, and instead, the new legislation permits unions to solicit employees to sign a

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Benjamin M. Ebbink

Partner

916.210.0400



Rebecca Hause-Schultz

Partner

916.210.0391

card authorizing the union to represent them in collective bargaining. This majority sign-up process is commonly referred to as a “card check.”

Originally, AB 2183 also outlined a secret mail-in ballot provision. This was eliminated by a “supplemental agreement” (RN 22 21856) between the Newsom administration, United Farm Workers (UFW), and the California Labor Federation. The supplemental agreement is expected to be made into law next year.

In a card check election, the union would present authorization cards to the ALRB, along with a petition for non-labor peace election. The Board will investigate and review to determine whether the union should be certified. No mail in vote or in-person secret ballot vote is required.

What about the “cap”?

The total number of card check certifications is limited to 75 through January 1, 2028. After that, AB 2183 is repealed. Undoubtedly, the organized labor’s plan is to replace it with something similar or more union friendly.

Question the Board? Pay a bond.

AB 2183 outlines a mandatory mediation and conciliation process for employers and unions who reach a stalemate in the bargaining process after certification. During that process, a mediator issues a report with the board that resolves the dispute. The parties can ask the board to review the report. However, if an employer opts to seek judicial review of the final order of the board, it must post a bond with the board for “the entire economic value of the contract” meaning the difference between the employee’s existing wages and economic benefit in the contract. There are strict time requirements for posting the bond, which creates additional procedural hurdles, and the cost of the bond itself may be cost-prohibitive.

2. AB 857 – Employer’s Required Disclosures

This bill would have required employers to provide additional information to workers under the H-2A visa program in a written notice in Spanish about specified topics related to their rights under the H-2A program. Critically, the legislation attempted to add a compensable travel time element for H-2A workers to and from worksites. Governor



Alden J. Parker

Regional Managing Partner

916.210.0404

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Newsom ultimately did not sign the bill and noted in his veto message that the notice requirements differ from those already found in the labor code.

3. AB 364 – Foreign Labor Contracting Registration

This bill would have established a separate program through the Labor Commissioner's office overseeing registration of foreign labor contractors in agriculture. Governor Newsom returned this bill without a signature because he noted that this would have created a redundant process, as labor contractors are already required to register with the state.

What Should Employers Do?

Agricultural employers should expect union organizers, especially the UFW, to kick in high gear and begin sweeping efforts to unionize using card check. Employers should be prepared with legal counsel ready in the event of UFW activity and have a response plan ready to go now.

We will monitor any 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](#).