

CALIFORNIA AG OFFICIALS PUBLISH GUIDANCE ON CARD CHECK LEGISLATION: 6 THINGS EMPLOYERS NEED TO KNOW

Insights
Jan 13, 2023

The Agricultural Labor Relations Board recently published an overview on AB 2183, the monumental “card check” legislation passed last year that makes it far easier for California agricultural workers to organize into unions. The ALRB’s guidance, published on their website on December 28, includes guidance on the new law and a portal for employers to register a Labor Peace Compact. What are the six most important things that employers need to know?

1. Portal for Labor Peace Compact

As we explained in detail in our summary when the law passed, AB 2183 provides that an employer may enter into an agreement called a “Labor Peace Compact,” in which it agrees to act neutrally with respect to unionization. Much of the ALRB’s guidance centers around the controversial Labor Peace Compact provisions of AB 2183.

Specifically, such a Compact would see the employer agreeing to the following:

- *Our lips are sealed* — Not to make statements for or against union representation to its employees or publicly (in writing or orally) at any time during employee hire, orientation, or after a Notice of Intent to Organize, Notice to Take Access, or petition is filed.
- *Come on over* — Allowing union access to worksites. The U.S. Supreme Court recently decided that California law requiring employers to provide such access was illegal.

Related People



Benjamin M. Ebbink

Partner

916.210.0400



Rebecca Hause-Schultz

Partner

916.210.0391

But agreeing to a Labor Peace Compact requires an employer to give up their rights to block access.

- *Seriously, don't talk about it* — Not to engage in “captive audience” meetings — where an employer would discuss unions or union representation – and not to disparage the union in written or verbal communications to employees or the public. Employers are also not permitted to express a preference for one union over another union.

The new guidance notes that employers who opt to enter a Labor Peace Compact must do so by enrolling via the [ALRB's online portal](#) between January 1 and February 1, 2023. Thereafter, employers must sign up before January 1st of each year. The list is public and available on the ALRB's website. As of publication, no employers have opted to enter the Labor Peace Compact.

2. Is This Going to Be Amended?

In his statement issued along with his signature on AB 2183, Governor Newsom outlined an agreement with the United Farm Workers and California Labor Federation that essentially eliminates the Labor Peace Agreement option, and naturally the mail-in-ballot option. The ALRB's recent guidance clarifies that Governor Newsom's agreement is not the law, and it will enforce AB 2183 as passed until the legislature acts.

3. Guidance For Farm Labor Contractors On Labor Peace Agreements

Farm Labor Contractors (FLC) are bound by their grower's decision regarding the Labor Peace Compact. If an FLC provides labor to an employer who entered a Labor Peace Compact, the FLC is bound by that determination and must follow the “neutrality” rules. FLCs and their growers should discuss this point for 2023 contracts.

4. How Can A Union Petition For Election?

Let us count the ways. Instead of the secret ballot election, the guidance confirms that there are now three ways for a union to petition:

- *The Old Way*: Unions may petition for certification for a traditional in-person election. In the petition, the union must provide proof that more than 50% of the workers want to have an election. After this threshold showing, the



Alden J. Parker

Regional Managing Partner

916.210.0404

Service Focus

Labor Relations

Industry Focus

Agriculture

Related Offices

Irvine

Los Angeles

Sacramento

San Diego

San Francisco

Woodland Hills

ALRB conducts a secret ballot election where employees cast ballots in-person, privately.

- *You've Got Mail*: For employers who opt to enter a Labor Peace Compact, unions may not utilize the "card check" option (below), but instead may petition for a mail-ballot election. In this scenario, the ALRB will mail ballots directly to employees. The employee will complete the ballot and return it by mail.
- *Card Check*: There is no notice, mailing, or run-up period in this type of election. A unionizing organization is only required to provide proof of "support" from a majority of workers through authorization cards or petition signatures. Once the union demonstrates majority support, the ALRB will certify the union without a secret ballot election or any prior notice to the employer.

5. Challenge the ALRB? Pay a Bond.

If an employer opts to seek judicial review of a final order of the board, the guidance confirms that 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 new contract. The cost of the bond alone could be a limiting factor for employers when deciding to challenge final ALRB decisions in the courts.

6. New Penalties Available

The ALRB's guidance outlines that additional civil penalties are now available where the Board finds a violation of the ALRA. The penalties may be up to \$25,000, depending on the circumstances. The guidance specifically describes that a director or officer of an employer may be personally liable for penalties.

What Can Employers Do Now?

If you haven't already, you should be in active discussions with your legal counsel about navigating this new law with a response and mitigation plan in place. Given how quickly a card check election will move forward, you should also have labor counsel at the ready in the event of activity at your operation.

We will monitor the situation for developments and provide updates as warranted, 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](#).