



June 20, 2023

The Honorable Bernie Sanders
Chair
U.S. Senate Committee on Health, Education
Labor and Pensions
Washington, DC 20510

The Honorable Bill Cassidy
Ranking Member
U.S. Senate Committee on Health, Education
Labor and Pensions
Washington, DC 20510

Dear Chairman Sanders, Ranking Member Cassidy and Members of the U.S. Senate Committee on Health, Education, Labor and Pensions:

On behalf of Associated Builders and Contractors, a national trade association with 68 chapters representing more than 22,000 members, I am writing to express our opposition to the Richard L. Trumka Protecting the Right to Organize Act (S. 567), the Paycheck Fairness Act (S. 728) and the Healthy Families Act (S. 1664). As the committee is set to mark up these legislative proposals, ABC is concerned about the negative effects they would have on the construction industry and the economy.

PRO Act:

While for years proponents of the PRO Act have claimed it will simply protect the ability of workers to join a union if they so choose, the PRO Act will instead strip workers of their privacy, freedom and choice. Additionally, the PRO Act will impose undue costs on our nation's small businesses at a time when they are faced with inflationary prices, supply chain delays, workforce shortages and an increasingly hostile regulatory agenda.

The bill violates basic employee privacy rights, forcing employers to turn over employees' phone numbers, addresses and email addresses without consent, and replaces secret ballots in union elections with "card check," a system where votes are made public and employees fear retribution for voting their conscience. This provision removes a critical requirement for employees on both sides of the election to have their say on whether or not to join a union and is not designed to help employees, but instead expose them to harassment and intimidation unless they back unionization efforts.

Critically for construction, the PRO Act would also legalize secondary boycotts allowing union organizers to interfere with neutral businesses and uninvolved consumers to advance with a targeted employer. With the effect of harming the economic interests of as many businesses as can possibly be linked to the primary target, this tactic would be used to essentially blackmail businesses into recognizing a labor union or face severe costs and harm to their daily operations. Additionally, this action would eliminate the current "dual-gate" system recognized under the National Labor Relations Act, which allows construction sites to install a reserve entrance to address picketing on jobs with multiple contractors and employers. This dual-gate system is critical for the progression of construction projects and will be especially important for the federal government as it seeks to fully implement the bipartisan Infrastructure Investment and Jobs Act and other legislation with significant funds for construction, including the CHIPS and Science Act and the Inflation Reduction Act.

The PRO Act also codifies into law the National Labor Relation Board's controversial joint employer standard, which threatens our country's small and local businesses by curbing the opportunity to own a franchise business or work independently, and implements new restrictions for independent contractors, curbing the freedom and flexibility to work independently through gig economy platforms and traditional independent contractor roles.

Since 1943, a total of 27 states have passed right-to-work laws prohibiting employers from requiring employees to join unions as a condition of employment, incentivizing competition and producing a better work environment for businesses and workers. The PRO Act would completely reject this choice by eliminating these independently state-passed laws, forcing individuals to join a specific union and forfeit a portion of their hard-earned paychecks to support the activities and influence of unions if they want a job at a unionized factory, jobsite, school or company.

Paycheck Fairness Act:

While ABC supports equal pay for men and women in the workforce, the Paycheck Fairness Act would prohibit legitimate, nondiscriminatory practices that many construction employers use for recruiting and hiring of skilled workers. Specifically, this flawed legislation would:

- Threaten employee bonus or incentive pay;
- Prohibit employees from negotiating higher pay;
- Allow employees' wages to be publicly disclosed through social media to peers, friends, family and competitors;
- Require employers to submit expansive new pay data on their employees unrelated to gender-based pay discrimination;
- Reinstate a duplicative pay grade survey that has proven ineffective at addressing gender wage disparities among federal contractors;
- Make it easier for trial lawyers to file large class action suits against employers; and
- Establish unlimited punitive and compensatory liability under the Equal Pay Act against employers of every size.

Given the broad and overreaching aspects of the Paycheck Fairness Act, the impact of passage would be significant from both a compliance and litigation standpoint for the construction industry.

Healthy Families Act:

ABC and its members remain committed to providing essential workplace benefits, and we are dedicated to working with Congress and the White House to expand access to paid leave. While providing quality employee benefits is a top priority for ABC and its member companies, we remain concerned about burdensome government mandates and the one-size-fits-all approach of the Healthy Families Act, which could have a detrimental impact on the wages and employee benefits that construction employers currently provide.

In previous Congresses, ABC supported the Working Families Flexibility Act. This legislation would have amended the Fair Labor Standards Act to provide compensatory time for employees in the private sector. ABC and its member companies have always supported workplace flexibility; however, current wage and hour laws prohibit private sector employers from offering non-exempt employees the option of paid time off instead of overtime payments—a benefit state and local government employees have long enjoyed. This bill offered a reasonable solution for both employers and employees by extending this benefit to the private sector.

ABC also supported the Tax Cuts and Jobs Act (*Pub.L. 115–97*), which established a new tax credit for eligible employers that provide at least two weeks of paid family and medical leave to their employees. ABC urges the committee to expand this business credit, which expires at the end of 2025, and encourage our nation’s employers to continue to offer these benefits for their employees.

ABC appreciates the opportunity to comment on these critical bills set for markup but remains concerned that these expensive, ineffective and invasive proposals will have an adverse impact on the construction industry and its workforce. ABC urges the committee to reject these proposals and work to enact bipartisan solutions that address the needs of all of America’s workers and allows businesses to thrive.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen". The signature is fluid and cursive, with a prominent initial "K".

Kristen Swearingen
Vice President, Legislative & Political Affairs