Labor Contract Bill Would Introduce Sweeping Risks for Companies

Jul 17, 2026

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On June 9, a bipartisan majority of the U.S. House of Representatives surprisingly **passed** the Faster Labor Contracts Act. The private sector employer community has largely ignored the FLCA, as few believed it had any chance in the current Congress. In light of last month's development, however, that must change.

We cannot overstate the risk that the FLCA would create for nonunionized employers of all sizes if it becomes law. The FLCA would impose on every nonunion workplace the risk of mandatory, binding arbitration over everything from pay and benefits to working hours, work rules and production standards — essentially every term of employment.

If employees choose to unionize their workplace, their employer will have to negotiate a collective bargaining agreement within 120 days, or become subject to mandatory arbitration.

Notably, with the government guarantee of a quick first union contract, without any risk of a strike, union representation will become far more attractive than it has ever been before, increasing the odds of a successful campaign.

The Current Landscape and Why This Bill Emerged

Under the National Labor Relations Act, employers and unions must bargain in good faith. Currently, there is no deadline for the parties to reach a first union contract after a union is elected. There also is no requirement that the parties ever agree to a union contract should the union insist on terms that the employer is unwilling to accept.

First contracts often take a long time to finalize, as they can span hundreds of pages, stay in effect for three to five years, and govern the details of the entire employment relationship for decades, if not longer.

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Against this backdrop, the FLCA was introduced by Rep. Donald Norcross, D-N.J., with bipartisan co-sponsorship and was touted as a targeted reform to "accelerate workplace time-to-contract."

Notably, the core concept is not entirely new — it draws from provisions that were previously included in the Protecting the Right to Organize Act, a broader labor reform proposal that passed the Democratic-controlled House in 2020 and 2021, but stalled in the U.S. Senate due to solid Republican opposition.

Today, this picture has changed, and the FLCA has already secured significant Republican backing in the Senate, where Sens. Cory Booker, D-N.J., and Josh Hawley, R-Mo., have introduced their own version of the bill.

How the FLCA Would Work

At its core, the FLCA would amend the NLRA for the first time in over 50 years to impose a tightly compressed timeline and introduce mandatory, binding arbitration if initial negotiations stall. Under the FLCA, once a union is certified or recognized, the following sequence is set in motion:

- By Day 10: The employer must begin bargaining.
- By Day 90: If no agreement is reached, either party may notify the Federal Mediation and Conciliation Service, and mandatory federal mediation will begin.
- By Day 120: If FMCS mediation fails after 30 days, binding arbitration is triggered, and authority yields to a three-member arbitration panel to impose a final, two-year contract.

Binding Arbitration: The Critical Change

Under the FLCA, if the parties cannot reach an agreement by Day 120, authority effectively shifts from the parties to an arbitration panel. That time frame is extraordinarily short, considering that first contracts currently take more than 460 days to negotiate on average, according to a 2021 Bloomberg Law study quoted in the text of the bill.

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The arbitration panel would consist of three members: one selected by the union, one selected by the employer and one neutral who is mutually agreed upon by the parties. All three members must be selected within 14 days of the referral to arbitration or the FMCS will designate members.

The resulting agreement is binding, typically for a two-year term. In practical terms, this means that neither employers nor unions would have ultimate control over the terms of the union contract, which governs virtually every aspect of the employment relationship from pay rates, bonuses and pension plans to the ability to impose mandatory overtime and maintain 24-hour operations.

Ironically, despite the compressed time frame for initial bargaining efforts and mediation, the arbitration timeline is unlimited. There is no set date to bring the arbitrators — who have no firsthand knowledge of the parties' circumstances — up to speed. They also have no set time to issue their award. As such, the entire process could take longer than the initial two-year term.

In effect, this creates a seat for the government at the bargaining table from Day 1, as the parties must negotiate with an eye toward litigating the dispute in arbitration in the immediate future. In other words, negotiations are not just about making a good deal — they also become about building a case to present to the arbitrators.

It is unclear how the FLCA will affect an employer's rights under existing laws to challenge a union election based on unlawful conduct by the union or erroneous decisions made by the National Labor Relations Board in the lead-up to the election.

It also effectively locks employees into the union for two years. Previously, employees had the opportunity to decertify the union if it did not keep its campaign promises.

Further, it severely diminishes the utility of time-honored economic pressure techniques, such as strikes and lockouts, if not eliminating them altogether — along with an employer's right to impose terms and conditions of employment if and when negotiations reach an impasse.

Practical Implications for Nonunion Employers

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For companies with nonunion workforces, the FLCA changes the calculus around union risk in several critical ways.

Loss of Control Over Contract Terms

Historically, employers could use the post-election negotiation period to align expectations, manage economic exposure, carefully analyze potential terms, and negotiate a sustainable and workable agreement, regardless of how long that took to achieve.

The FLCA destroys that dynamic. Under its framework, once a union is elected, a contract is guaranteed within a narrow, specified time frame — whether it is negotiated or federally imposed with terms that were not agreed upon by either party.

Binding arbitration introduces a fundamentally different risk to potential union organization. Third-party arbitrators could determine wages, benefits, and all other terms and conditions of employment, including seniority systems, layoff and recall procedures, job classifications and descriptions, safety standards and protocols, uniforms, workplace rules, discipline procedures — and the list goes on.

Arbitrators would be required to consider a rigid set of statutorily prescribed factors, despite having no on-the-ground experience with the given workplace or business. For that reason, the panel's decisions may not accurately reflect the employer's financial constraints, operational model or competitive reality.

In order to educate the panel about those realities, employers will be forced to choose between sharing highly confidential information, including financial information, or running the risk of an uneducated panel.

Workers would also have to contend with the loss of control, as they would not be able to vote on the terms and conditions of their employment and would not have an opportunity to approve or reject the contract. In short, the FLCA effectively overrides traditional private sector bargaining, setting terms without any direct accountability to either party.

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Widely Different Bargaining Positions

Required arbitration dramatically alters the bargaining position of both parties. Unions generally have limited business interests at stake in an initial contract, including a dues collection clause, membership clause and guaranteed time for union representatives to perform union-related duties.

That list is dwarfed by the list of business interests that the employer has at stake, given that virtually every aspect of the employment relationship — and, in turn, the employer's operations — will eventually be governed by the union contract.

The prospect of mandatory arbitration if the parties fail to reach a deal in an unrealistic time frame creates a stark imbalance in bargaining positions.

The risk of running out the clock would be minimal for unions, which have comparatively little on the line and can decline to reach an agreement with the employer to see if a panel might give the union more. To the contrary, the risk would be enormous for employers, which have virtually endless business interests at stake.

Employers are not the only ones with their rights on the line, as the FLCA would not be a cure-all for employees either. The first priorities for labor unions, both in negotiations and before arbitrators, will remain contract terms that benefit the union, such as the employer's collection of union dues and, where lawful, mandatory payment of union dues.

Although the union and the employer may have their positions heard by an arbitration panel, employees will not — to the contrary, they would lose their current right to approve or reject any union contract. Employers must be prepared to help their employees understand what they stand to lose under the FLCA scheme.

Compressed Timelines Requiring Immediate Readiness and Shifted Focus

The FLCA's framework gives employers almost no time to prepare once a union is certified. Employers would be required to begin

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bargaining in no more than 10 days, despite the reality that it takes months — not a week and a half — to prepare for negotiations that will affect the business for the next three to five years.

This means that preparation must occur before any organizing campaign succeeds, including cost analysis and modeling, developing negotiation strategy, and aligning leadership.

The FLCA would virtually eliminate any post-election window to strategize. Consequently, leaving that preparation to occur during an organizing campaign would hamstring the company's ability to effectively campaign during the lead-up to the election.

Uncertainty for New or Expanded Operations

Beyond the practical implications for boots-on-the-ground workers and employers alike, the FLCA would create a larger scale economic concern: the risk that companies would be fearful of opening or expanding U.S. operations given the immense uncertainty associated with a potential government-mandated union contract.

This uncertainty could discourage long-term investment as businesses struggle to predict future labor costs and operational flexibility. In turn, reduced investment and heightened perceived regulatory risk could dampen job creation and slow economic growth, particularly in industries that rely on agile workforce management and cost predictability.

What Happens Next, and What Employers Should Do Now

The FLCA is not yet law. Now that it has been passed by the House, the bill moves to the Senate, where its fate may depend upon the strength of opposition from the private sector employer community.

That said, the bill has bipartisan sponsorship and outspoken support from some Senate Republicans. Employers should also take note that 20 Republicans crossed party lines to advance the bill in the House, using a rare procedural mechanism to do it.

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For nonunion workforces, the FLCA signals a need to reassess labor strategy — now, not later. Key proactive actions include evaluating union vulnerability, strengthening employee engagement and retention strategies, and developing preemptive bargaining frameworks.

Bottom Line

The House's passage of the FLCA is a pivotal moment. Even if the bill evolves or fails in the Senate, its momentum underscores a broader trend toward faster, more enforceable union outcomes.

Nonunion employers must stay aware of these developments and take proactive measures to mitigate the potential risks of an extremely short runway to initial labor contracts with government-imposed terms.

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