

**BUILD BACK  
BETTER WITH  
UNIONS**  
PASS THE PRO ACT  
AFL-CIO



# Protect the Right To Organize (PRO) Act

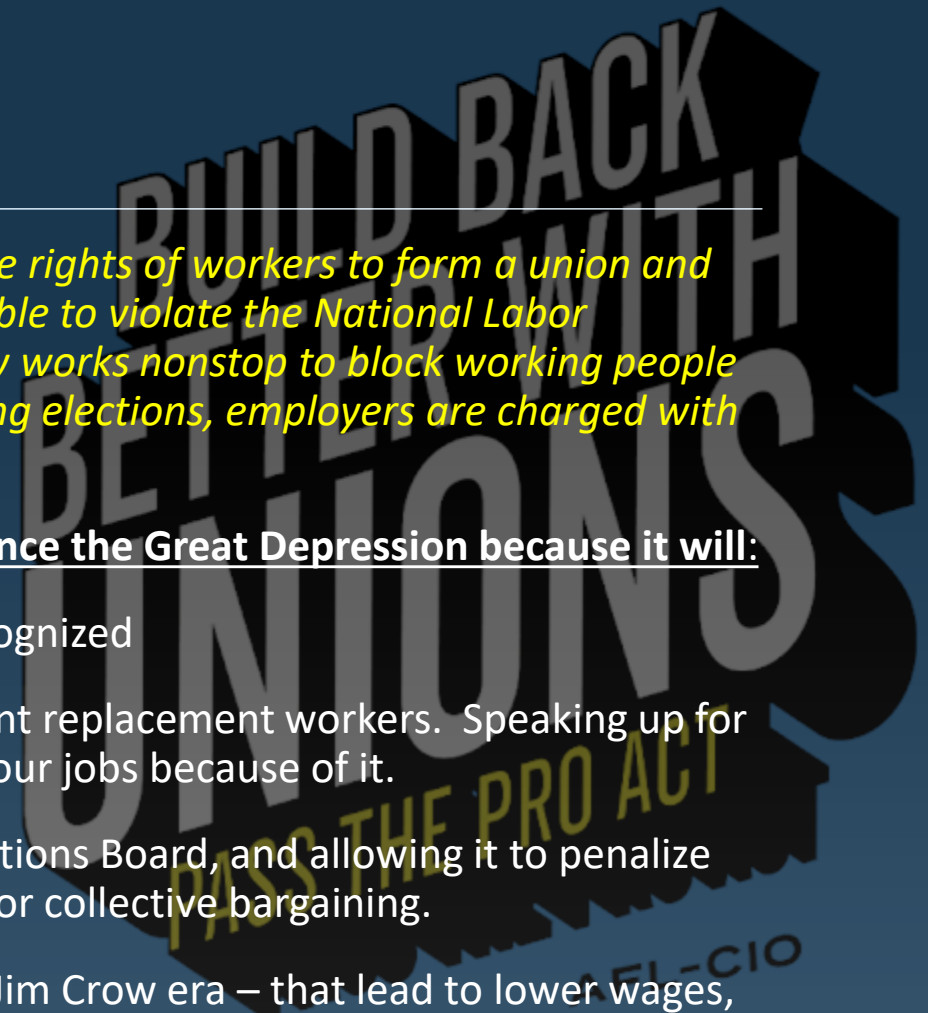
H.R. 842 & S. 420

# PRO Act: Why is it needed?

*“The problem is that our basic labor law, which is supposed to protect the rights of workers to form a union and bargain collectively, is broken. In recent decades, employers have been able to violate the National Labor Relations Act (NLRA) with impunity. An entire union-busting industry now works nonstop to block working people from exercising our rights. Today, in more than 40% of all union organizing elections, employers are charged with breaking the law.”*

**The PRO Act is the most significant worker empowerment legislation since the Great Depression because it will:**

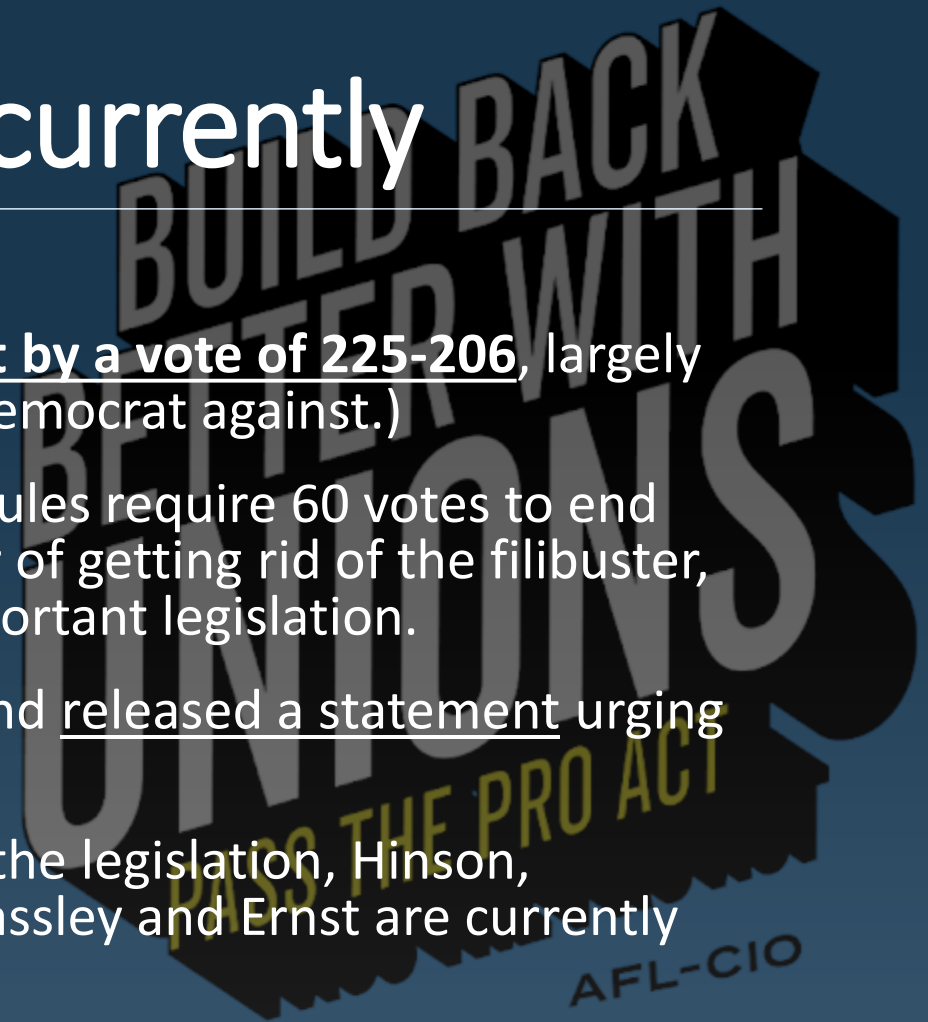
- Ensure that workers can reach a first contract quickly after a union is recognized
- End employers’ practice of punishing striking workers by hiring permanent replacement workers. Speaking up for labor rights is within every worker’s rights – and workers shouldn’t lose our jobs because of it.
- Hold Corporations accountable by strengthening the National Labor Relations Board, and allowing it to penalize employers who retaliate against working people in support of the union or collective bargaining.
- Repeal “right to work” laws – divisive and racist laws created during the Jim Crow era – that lead to lower wages, fewer benefits and more dangerous workplaces.



# PRO Act – Where it stands currently

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- On March 9, 2021, the House again passed the PRO Act by a vote of 225-206, largely along party lines (Five Republicans voted in favor, one Democrat against.)
- It faces an battle in the 50/50 split Senate, as filibuster rules require 60 votes to end debate on a bill and bring it to a vote. AFL-CIO is in favor of getting rid of the filibuster, not just for the PRO Act but also for HF 1, and other important legislation.
- President Biden has voiced strong support for the bill, and released a statement urging Congress to send the PRO Act to his desk.
- Representative Cindy Axne co-sponsored and voted for the legislation, Hinson, Feenstra, and Miller Meeks opposed the legislation. Grassley and Ernst are currently opposed.



# PRO Act: What Does It Do?

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## 1) Holds Employers Accountable When They Violate Workers' Rights:

- Allows workers to recover full back pay and damages, in some cases equal to double the owed amount.
- Imposes civil penalties up to \$50,000 per violation and provides a private right of action for workers who want to enforce their rights in court; holds employers personally liable when they know about violations but refuse to address them.
- Requires employers to disclose how much they're spending on union busting activities.

## 2) Ensures that Most Workers are Included Under the National Labor Relations Act's (NLRA's) Protections

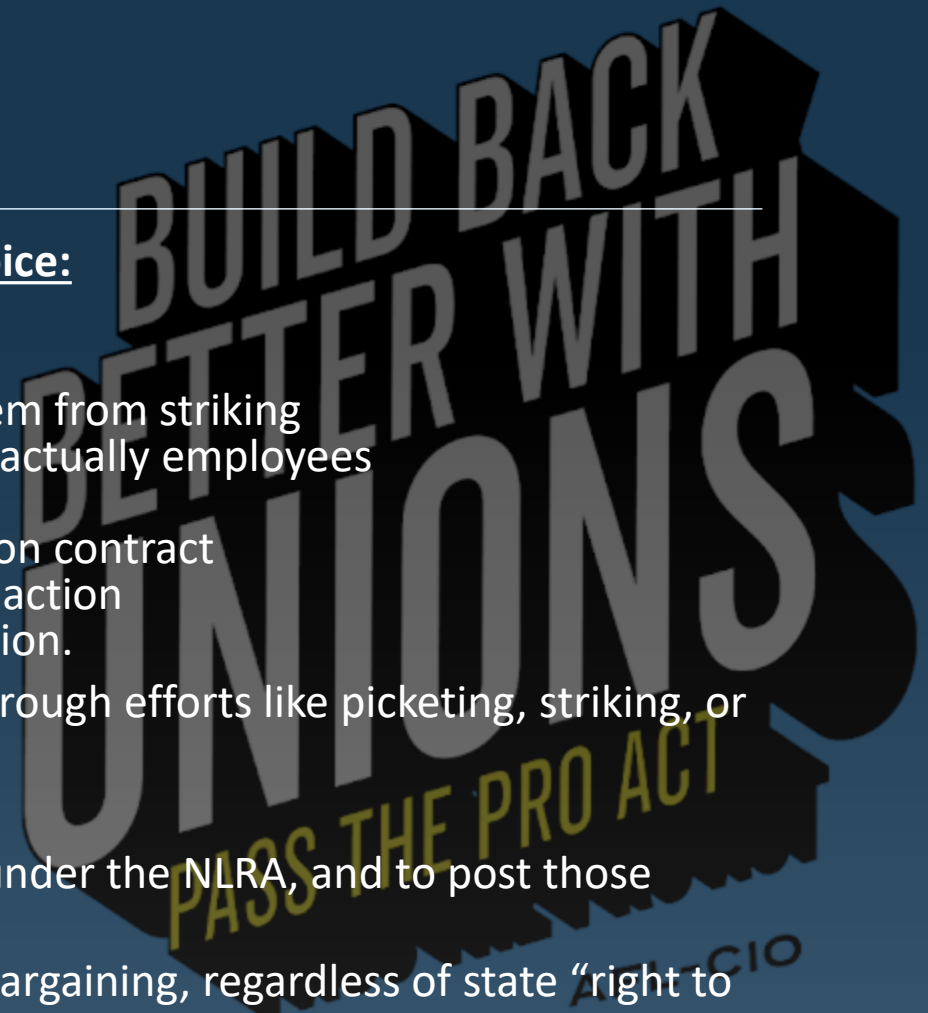
- Amends the definition of employer so that entities that control material aspects of employees' work are actually at the bargaining table.
- Adopts a clear test (ABC Test) to determinate employee status, so that workers are not misclassified as independent contractors and therefore unable to organize.
- Narrows the definition of supervisor - so that employees who make routine workplace decisions are not excluded from their unions.
- Guarantees that workers are eligible for damage recovery regardless of immigration status.



# PRO Act: What Does It Do?

## 3) Protecting Collective Action and Removing Barriers to Worker Voice:

- Ensures that employers **cannot**:
  - Fire and permanently replace workers who are on strike
  - Lock out, suspend, or withhold work from employees to stop them from striking
  - Tell employees they are independent contractors when they are actually employees
  - Force employees to attend anti-union messaging meetings
  - Change work conditions, pay, or benefits while negotiating a union contract
  - Force employees to waive their right to collective and class legal action
  - Prohibit employees from using work computers for collective action.
- Empowers employees to stand in solidarity with other workers through efforts like picketing, striking, or boycotting.
- Protects strikes of any duration, scope, or frequency.
- Requires Employers to notify each new employee of their rights under the NLRA, and to post those rights in the workplace
- Allows unions to collect fees to cover the expenses of collective bargaining, regardless of state “right to work” laws.

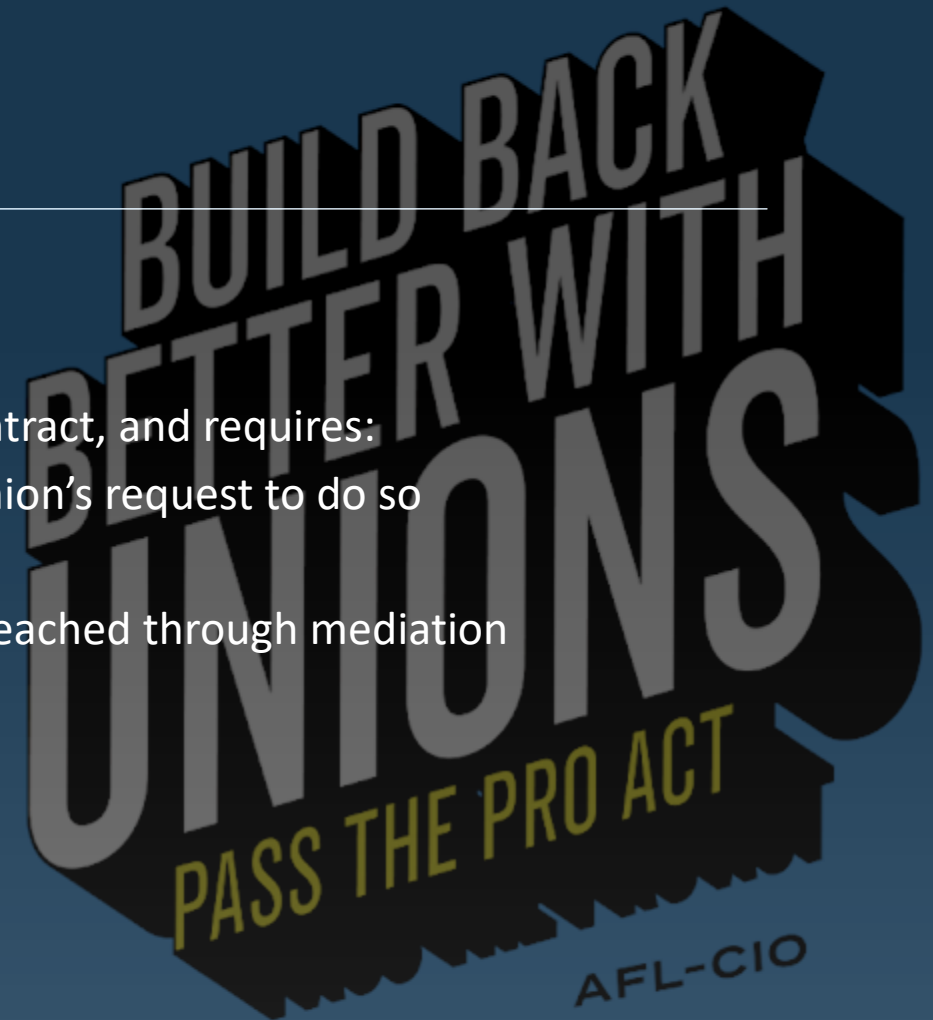


# PRO Act: What Does It Do?

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## 4) Strengthening Employees' Bargaining Rights:

- Adopts new procedures to make sure unions can reach a first contract, and requires:
  - Collective bargaining to begin within 10 days of the certified union's request to do so
  - Mediation if not contract is reached within 90 days
  - Mandatory arbitration of a two-year contract if no contract is reached through mediation

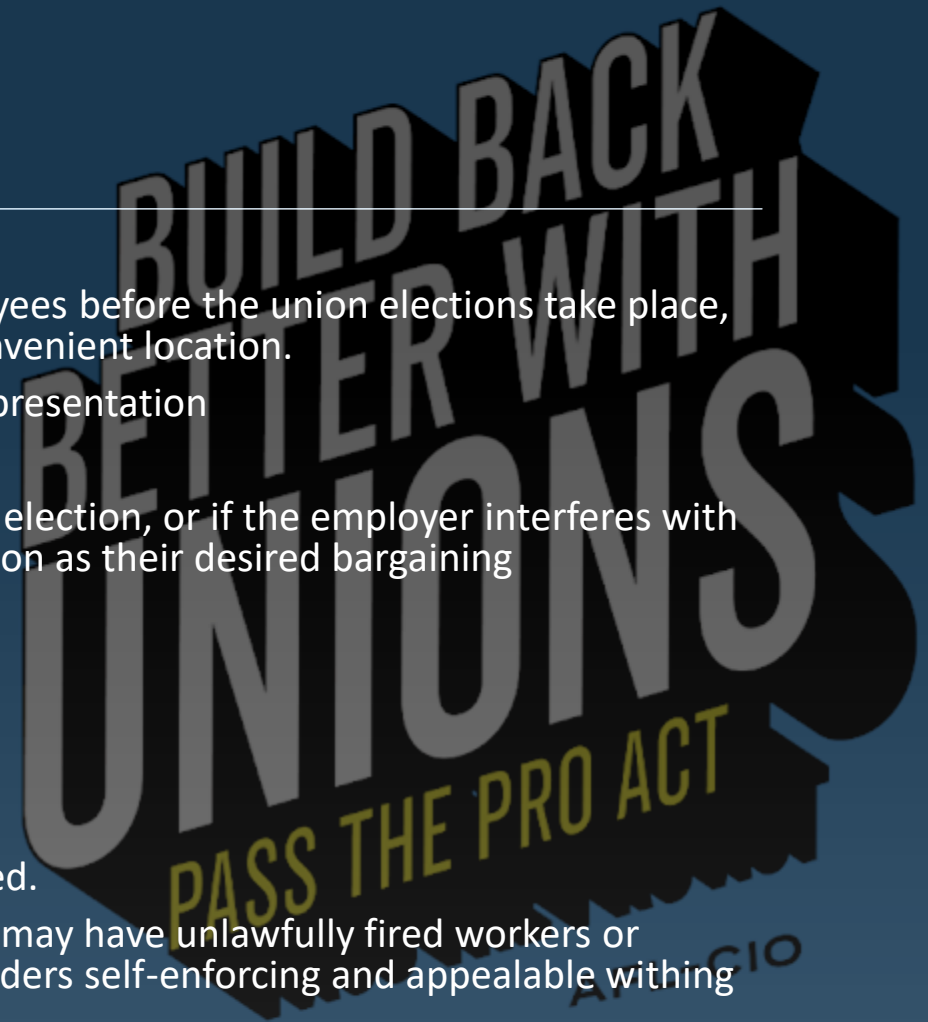




# PRO Act: What Does It Do?

## 5) Modernizing the Union Election and Enforcement Processes

- Requires employers to provide contact information for all relevant employees before the union elections take place, and allows union elections to take place by mail, electronically, or at a convenient location.
- Keeps employers from intervening in administrative hearings on union representation
- Ensures workers can form commonsense bargaining units
- Requires the NLRB to order the employer to bargain if the union wins the election, or if the employer interferes with the election and a majority of employees have already designated the union as their desired bargaining representative.
- Ensures new elections do not take place if:
  - The union and the employer are still bargaining
  - The employer voluntarily recognized the union
  - The union and successor employer are just starting to bargain
  - The time window for filing a petition has closed.
- Pauses union elections when a ULP (Unfair Labor Practice) charges are filed.
- Requires the NLRB to seek a US District Court injunction when employers may have unlawfully fired workers or otherwise interfered with their rights under the NLRA and makes NLRB orders self-enforcing and appealable withing 30 days.



# PRO Act: Independent Contractors

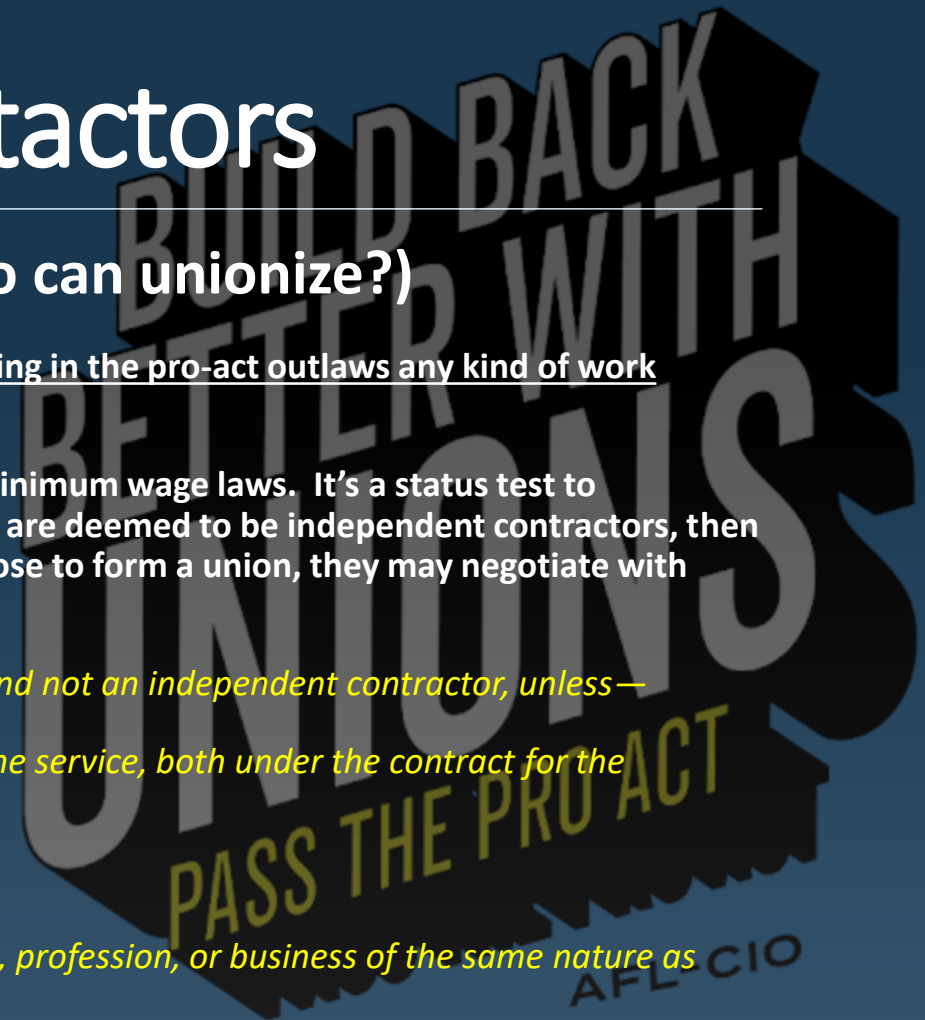
## The PRO Act and the “ABC” Test (Who can unionize?)

Workers classified as “independent contractors” are not protected by the NLRA. Nothing in the pro-act outlaws any kind of work arrangement.

The PRO-Act only amends the NLRA and does not touch federal or state overtime or minimum wage laws. It’s a status test to determine who is an employee under the NLRA – if the test is applied and the workers are deemed to be independent contractors, then the inquiry stops there. If the workers are found to be employees, and a majority choose to form a union, they may negotiate with their employer for better pay and working conditions.

**THE “ABC” Test:** *An individual performing any service shall be considered an employee and not an independent contractor, unless—*

- *The individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;*
- *The service is performed outside the usual course of the business of the employer; and*
- *The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.*





# THE PRO Act is Civil Rights Legislation

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- A union contract is the single best tool we have to close racial and gender wage gaps, and to ensure dignity and due process for workers, regardless of where we were born, who we are, or what industry we work in.
- Removing barriers to organizing and bargaining is important for all workers, especially those who have been marginalized.
- Expanding collective bargaining will increase protections for women, people of color, immigrants, and the LGBTQ community in areas where laws are following short.
- The union advantage is greater for Black, Latino, women, immigrant, LGBTQ and other workers who have experienced workplace discrimination. Black, Latino and women workers are paid 13.7%, 20.1% and 5.8% more, respectively, when they belong to a union. Union contracts pay women and men the same for doing the same job. You cannot be fired for your sexual orientation or gender identity under a union contract.



# THE PRO Act: H.R. 842 & S. 420

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