Research

State-Level Costs of the Protecting the Right to Organize Act

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Executive Summary

- Three major Protecting the Right to Organize (PRO) Act provisions – repealing right-to-work legislation (RTW), reclassifying independent workers as full employees, and broadening the joint-employer standard – would bring significant economic costs in an effort to increase union power at the expense of worker freedom and small businesses.
- Between 2000 and 2015, RTW states saw a 13.3 percent increase in the number of businesses while non-RTW states only saw 4.1 percent growth in businesses.
- The PRO Act's independent worker reclassification provision alone could cost as much as $57 billion nationwide.
- The PRO Act's joint-employer changes would cost franchises up to $33.3 billion a year, lead to over 350,000 job losses, and increase lawsuits by 93 percent.
- State-by-state analysis of these provisions indicate that the right-to-work states that would be most negatively affected by the PRO Act are Arizona, Florida, Georgia, Indiana, Louisiana, Nevada, North Carolina, South Carolina, Texas, Tennessee, and Virginia.

Introduction

The Protecting Right to Organize (PRO) Act is sweeping legislation at the center of the Biden Administration's labor policy. Previous American Action Forum (AAF) research has examined the potential consequences of this legislation on the nation as a whole. Some provisions of the PRO Act, however, would have strikingly different impacts across the states. In particular, the PRO Act would repeal right-to-work (RTW) legislation currently in effect in 27 states. Those workers would no longer have the choice of whether or not to join unions and could be forced to pay union dues. In addition, independent worker reclassification and a broad joint-employer standard would also have differential impacts across the states. This analysis examines the impact of these three provisions, with an emphasis on quantifying the impact on each state.

Right to Work and the PRO Act

RTW laws, now found in 27 states nationwide, dictate that union membership cannot be made a condition of employment and makes compulsory union dues illegal. The empirical evidence suggests that affording workers the choice to participate in unions results in increased employment, greater regional investment, and enhanced productivity. Thus, pre-empting RTW laws would carry a significant economic price tag. RTW laws also guarantee workers' freedom of association and keep unions accountable for the workers they represent, unquantifiable benefits that would be lost if the PRO Act were enacted.

Right to Work and Employment

The benefits of RTW laws on employment reverberate levels beyond typically unionized industries to benefit entire state economies. According to a 2017 report from NERA Economic Consulting, states with RTW laws witnessed 26.7 percent employment growth from 2001-2016, compared to only 15.4 percent growth in non-RTW states. The Competitive Enterprise Institute examined this effect over an even longer period, 1973- 2012, finding that employment growth in RTW states more than doubled that of non-RTW states.

More recently, looking at year-to-year changes in employment from 2016-2019, RTW states outpaced non-RTW states in employment growth. In 2017 and 2018, for example, states with RTW laws averaged between 1.5 percent and 2 percent employment growth, whereas non-RTW states hovered around 1 percent growth.

Unemployment rates are consistently lower in states with RTW laws, too. Since the end of the Great Recession, average unemployment has never been higher in RTW states than non-RTW states, with an average difference of almost 0.5 percent. Given the benefits that come with RTW legislation, it is likely that these states have an advantage in the current economic recovery.

Right to Work and Investment

The increased employment in RTW states is in part due to increased investment, often in the form of relocations of major businesses. Though there is a host of anecdotal evidence suggesting that businesses often choose to relocate to RTW states, the data support the claim that RTW states have preferable business environments. Specifically, from 2000 to 2015 states without RTW laws saw only a 4.1 percent increase in the number of businesses, while RTW states had a pronounced 13.3 percent increase.

Businesses also openly testify to the importance of RTW status for determining their location. According to a poll conducted by Site Selection Magazine, about 50 percent of survey respondents said that RTW is a “box that must be checked” when deciding where to invest. In a more recent survey of 500 CEOs, over half indicated a preference for locating in states with RTW laws.

In short, RTW laws play an integral role in state-level investment and location decisions and contribute to a more productive, pro-business environment.

Worker Freedom

Beyond the economic benefits of RTW laws are the intangible values of upholding freedom of association protected by the First Amendment. The Supreme Court has already recognized the inextricable relationship between voluntary union membership and freedom of association, finding that an Illinois law permitting unions to extract fees from nonunion members was unconstitutional in *Janus v. American Federation of State, County, and Municipal Employees, Council 31.*

As surveys consistently indicate, workers value free choice. Thus, economist Christos Makridis finds RTW laws have a statistically significant impact on individual well-being and economic sentiment. The paper concludes that “the adoption of right-to-work laws has increased individual well-being and economic optimism, even after controlling for a wide array of time-varying state and individual factors and time-invariant differences across location and time.” Survey data find that worker sentiment is also in favor of the protections that RTW legislation provides, with 70 percent of voters concerned that the PRO Act would abolish RTW and force workers to pay union dues. In sum, RTW laws have a positive impact on employment, investment, and attitudes, while also upholding workers’ constitutional protections. If passed, the PRO Act would reverse these positive effects, especially in the 27 states with RTW laws.

Independent Workers and the PRO Act

The PRO Act would impose a mass reclassification of independent workers as full employees. Among the 27 states that would be affected by the repeal of RTW laws, states with high concentrations of independent workers would be disproportionately affected The independent workforce is a rapidly growing segment of the labor force. It features higher wages and greater flexibility for workers, and more rapid economic growth overall. Reclassifying independent workers as full employees erases these benefits and would put upward cost pressure on employers, especially in Arizona, Florida, Georgia, Nevada, North Carolina, Texas, and Virginia (see appendix for all states).

Independent Workers and Wages

Independent work allows individuals to supplement existing sources of income or to accumulate as a cushion against economic instability. During the pandemic, for example, 12 percent of the workforce reported turning to some form of freelancing. Of those, 75 percent reported doing so for financial stability during a time of economic unrest. Out of the workers who left the traditional work model, 65 percent report an increase in earnings. Of those workers, 57 percent saw this increase in 6 months or less, and in 2020, wages and participation in the independent workforce rose 33 percent. In total around 59 million workers report participating in the independent workforce over the last year.

Independent Worker Flexibility

Another crucial element of independent work is the ability for workers to set their own schedules. The PRO Act would make definitional changes to the National Labor Relations Act (NLRA) in an effort to forcibly reclassify many independent contractors as employees. This reclassification would be contrary to the wishes of most independent contractors; data from the Bureau of Labor Statistics' (BLS) 2018 Contingent Worker Survey show that, if given the opportunity, less than 1 out of every 10 independent contractors (ICs) would prefer a traditional employment relationship. ICs enjoy valuable flexibility, entrepreneurial opportunity, and a level of autonomy not typically found in hourly employment.

Independent workers often voluntarily choose to enter this segment of the labor force because of their other responsibilities. Survey data find that 48 percent of independent workers are caregivers (to parent or child) and 33 percent have a disability or have someone in their household with one. Caregiving continues to be a challenge when it comes to labor force participation, particularly for women. The system of independent work allows caregivers to enter the labor force who may otherwise not be able to obtain the flexibility they need in the traditional work environment. It is therefore not surprising that research finds women self-select into jobs with greater temporal flexibility, which explains why participation in independent work has grown significantly more among women than men.

Independent Workers and Economic Growth

Independent workers contribute over $1.21 trillion, roughly 6 percent, to U.S. gross domestic product (GDP). AAF estimates found similar results, that the independent labor force implicates 8.5 percent of GDP. The proportion of individuals reporting themselves as full-time independent workers continues to grow. In the last year alone, 36 percent of workers reported engaging in independent work in a full-time capacity, compared to 17 percent in 2014. Future projections (to 2025) estimate a 3.6 percent annual growth rate in number of independent workers. This rate is two and a half times the overall employment rate growth projected by the U.S. Bureau of Labor Statistics and 50 percent faster than the rate at which the independent workforce has grown in the past 5 years.

Reclassification costs

Large-scale reclassification mandated by the PRO Act would deprive workers of the aforementioned wages, choice, and flexibility. It would also bring significant costs to employers. To calculate the costs of reclassification, data from the Chamber of Commerce was used to estimate the number of independent workers by state. The latest regional Employer Costs for Employee Compensation data for legally required benefits of full employees were used to identify the upward cost pressure that employers would face due to reclassification. This analysis does not estimate the effects of alternative cost saving measures that employers could take, such as laying off workers or passing on increased costs to consumers. Not only would reclassification affect the 59 million workers (30 percent of the labor force) who reported being part of the independent workforce, but it would significantly interrupt small business operations in addition to the traditional worker. This analysis indicates that RTW states facing the greatest costs from reclassification are Arizona, Florida, Georgia, Nevada, North Carolina, Texas and Virginia (see table below). Nationally the total cost amounts to $17 billion at the 15 percent reclassification level and $57 billion at the 50 percent reclassification level.

State-level Reclassification Costs

RTW States	Number of Independent Workers	Percent of Independent Workers	Cost of Reclassification ($) – 15 percent of workers	Cost of Reclassification ($) – 50 percent of workers
Alabama	301,335	2.6	179,336,512	597,788,373
Arizona	445,526	10.1	308,936,639	1,029,788,796
Arkansas	205,610	2.1	129,102,519	430,341,730
Florida	1,754,100	11.1	1,211,539,329	4,038,464,430
Georgia	848,487	10.0	586,041,486	1,953,471,620
Idaho	101,357	3.0	70,282,971	234,276,570
Indiana	377,333	6.0	272,981,559	909,938,530
Iowa	207,591	3.1	143,381,028	477,936,759
Kansas	189,224	4.0	130,695,125	435,650,415
Kentucky	246,604	4.3	146,763,905	489,213,015
Louisiana	311,378	6.3	195,514,246	651,714,154
Michigan	617,537	5.0	446,757,143	1,489,190,476
Mississippi	186,998	1.8	111,289,990	370,966,632
Nebraska	129,556	3.2	89,483,034	298,276,779
Nevada	207,209	16.0	143,682,865	478,942,883
North Carolina	707,988	6.7	489,000,232	1,630,000,772
North Dakota	53,647	1.8	37,053,446	123,511,488
Oklahoma	275,509	4.4	172,992,101	576,640,337
South Carolina	317,787	5.8	219,492,303	731,641,010

South Dakota	63,064	0.4	43,557,674	145,192,247
Tennessee	485,007	6.6	288,647,066	962,156,887
Texas	2,587,755	6.5	1,624,851,365	5,416,171,215
Utah	171,121	5.9	118,658,724	395,529,079
Virginia	557,643	9.9	385,158,444	1,283,861,479
West Virginia	79,462	2.0	54,883,609	182,945,363
Wisconsin	286,158	5.3	207,021,005	690,070,017

Wyoming	40,639	0.5	28,179,895	93,932,985

Sources: National Conference of State Legislatures, Chamber of Commerce, Bureau of Labor Statistics Employer Costs for Employee Compensation, The State of Independence Report

Joint-Employer and the PRO Act

The PRO Act would also significantly affect how business is conducted by broadening the joint-employer standard to situations in which a firm has direct or indirect control over an employee, rather than just direct control. Being deemed a joint employer comes with various obligations including being liable for any NLRA violations and being responsible for bargaining with any unions that represent the joint employees. There is also an incentive to bring more work in-house, ultimately hurting small local businesses and vendors.

A broadened joint-employer standard would significantly affect franchising, a unique business model that allows individuals to start and run small businesses. Franchisees operate their business independently, but with the foundation of the established brand of the franchisor, often leading to greater job growth than non-franchises. A broadened joint-employer standard could completely upend this model that provides employment for millions. Research surrounding a broadened standard finds that it would cost franchises $33.3 billion a year, lead to over 350,000 job losses, and increase lawsuits by 93 percent.

The potential change to a broader joint-employer standard would affect states differently depending on the prevalence of franchise agreements and franchise employment. RTW states that could experience significant consequences as a result of a broadened standard include Wyoming, North Carolina, South Carolina, North Dakota, Nevada, and Tennessee. (See Table.) Among all RTW states, franchise employment represents at least 4.5 percent of total employment and nearly 5 million workers.

State-level Franchise Employment

State	Franchise Employment	Percent Franchise Employees
Alabama	139,149	6.4
Arizona	202,041	5.6
Arkansas	77,655	5.9
Florida	678,789	6.7
Georgia	310,798	6.2
Idaho	43,096	5.0
Indiana	201,624	6.2
Iowa	83,996	5.0
Kansas	83,030	5.7
Kentucky	132,160	6.6
Louisiana	122,576	6.2
Michigan	253,586	5.3
Mississippi	68,941	5.7
Nebraska	59,566	5.9

Nevada	107,050	7.1
North Carolina	350,362	7.1
North Dakota	28,691	7.4
Oklahoma	100,719	5.7
South Carolina	159,843	6.9
South Dakota	24,583	5.5
Tennessee	225,786	6.9
Texas	825,687	6.0
Utah	83,096	5.2
Virginia	254,385	5.9
West Virginia	35,247	4.6
Wisconsin	161,197	5.4

Wyoming	33,722	12.0

Sources: International Franchise Association, Small Business Administration state profiles

Conclusion

The PRO Act would significantly shift power into the hands of unions at the expense of workers and small businesses. The state-level effects would vary significantly, but the costs surrounding three major provisions in the Act – repealing RTW legislation, independent worker reclassification, and broadening the joint-employer standard – provide an indication of those states that would face higher costs and challenges should the legislation pass.

Appendix

State	RTW	Number of Independent Workers	Cost of Reclassification ($) – 50 percent of workers	Franchise Employment
Alabama	x	301,335	597,788,373	139,149
Alaska		43,853	136,080,244	10,934
Arizona	x	445,526	1,029,788,796	202,041
Arkansas	x	205,610	430,341,730	77,655
California		3,041,828	9,439,096,467	849,592
Colorado		452,520	1,045,954,728	176,341
Connecticut		236,440	671,300,448	93,376
DC		63,539	146,285,840	23,389
Delaware		55,884	128,661,733	27,105
Florida	x	1,754,100	4,038,464,430	678,789
Georgia	x	848,487	1,953,471,620	310,798
Hawaii		99,218	307,883,376	54,204
Idaho	x	101,357	234,276,570	43,096
Illinois		870,904	2,100,184,996	354,388
Indiana	x	377,333	909,938,530	201,624
Iowa	x	207,591	477,936,759	83,996
Kansas	x	189,224	435,650,415	83,030
Kentucky	x	246,604	489,213,015	132,160
Louisiana	x	311,378	651,714,154	122,576
Maine		86,367	245,213,186	24,954
Maryland		459,889	1,058,802,445	165,038
Massachusetts		489,750	1,390,498,200	122,397
Michigan	x	617,537	1,489,190,476	253,586

Minnesota		520,727	1,198,869,772	160,718
Mississippi	x	186,998	370,966,632	68,941
Missouri		359,478	827,626,199	169,847
Montana		71,529	165,332,131	25,619
Nebraska	x	129,556	298,276,779	59,566
Nevada	x	207,209	478,942,882	107,050
New Hampshire		85,523	242,816,902	30,147
New Jersey		528,352	1,524,137,014	208,347
New Mexico		124,172	287,011,161	58,352
New York		1,212,924	3,498,921,863	334,674
North Carolina	x	707,988	1,630,000,772	350,362
North Dakota	x	53,647	123,511,488	28,691
Ohio		754,091	1,818,490,447	360,218
Oklahoma	x	275,509	576,640,337	100,719
Oregon		254,714	790,403,013	91,241
Pennsylvania		783,614	2,260,491,306	286,039
Rhode Island		68,330	194,002,536	20,143
South Carolina	x	317,787	731,641,010	159,843
South Dakota	x	63,064	145,192,247	24,583
Tennessee	x	485,007	962,156,887	225,786
Texas	x	2,587,755	5,416,171,215	825,687
Utah	x	171,121	395,529,079	83,096
Vermont		44,358	125,941,234	8,687
Virginia	x	557,643	1,283,861,479	254,385
Washington		401,988	1,247,408,963	163,015
West Virginia	x	79,462	182,945,363	35,247
Wisconsin	x	286,158	690,070,017	161,197
Wyoming	x	40,639	93,932,985	33,722