

The WAGE Act

Boosting Collective Action for Higher Wages



In September 2015, Senator Patty Murray and Congressman Bobby Scott introduced the Workplace Action for a Growing Economy (WAGE) Act, legislation that would ensure that working people can join together without fear of reprisal to win improvements on the job, including higher wages, benefits, and better working conditions. This fact sheet examines how the WAGE Act is an important first step in addressing our toothless and outdated labor law and its enforcement by the National Labor Relations Board (NLRB).

PROBLEM	SOLUTION
Employer Lawlessness in the Workplace	Real Penalties to End Retaliation
<p>Under the National Labor Relations Act (NLRA), an employer who illegally fires an employee for collective activity is not fined, but instead is simply required to give back pay to that employee (minus whatever the employee earned in the interim). Many employers find the punishment for illegal activity a bargain, if firing an active employee scares others from joining together.</p> <ul style="list-style-type: none">• A national study of workplace retaliation found that employers fire employees in 34 percent of NLRB union election campaigns.• One in five workers in a recent study experienced serious wage or safety violations but was too afraid of retaliation to complain to their employer.• Employers who break other workplace protection laws (occupational safety, minimum wage and discrimination laws) are required to pay fines or damages.• Some executives refer to the paltry cost of breaking the law as a “hunting license.”	<p>The WAGE Act would penalize employers who violate their employees’ rights at work the same way they are treated when they violate civil rights. If an employer fires an employee in retaliation against their collective action to win improvements at work, the bill would:</p> <ul style="list-style-type: none">• Assess monetary penalties against employers.• Require employers to pay victims three times the amount of back pay without deductions.• Authorize personal liability for responsible corporate officers.• Hold host employers jointly liable for violations against temporary or contract employees. <p>Joshua Coleman worked at a T-Mobile customer call center for three and half years, where he was received many promotions and performance awards. But Joshua felt he and his co-workers were not fairly treated by supervisors, and so he became part of an effort to form a union. Soon after, T-Mobile fired him. A charge was filed with the NLRB, and eventually T-Mobile agreed to reinstate Joshua, but well after the company’s anti-union campaign had ramped up. And T-Mobile continues to violate the law in order to prevent its employees from forming a union. The WAGE Act’s enhanced remedies would serve to deter companies determined to intimidate workers from exercising their right to collective action.</p>

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PROBLEM	SOLUTION
<p style="text-align: center;">Employers Use Lengthy Appeals to Game the System</p>	<p style="text-align: center;">Swift Justice for Employees</p>
<p>Employers know that if they fire an employee during an organizing effort, it will likely be months or years before they are ordered to reinstate that person – long after the damage is done. Through the typical process, even when the NLRB decides to pursue a charge against an employer for firing an employee, the employer can appeal the administrative law judge decision, then the Board decision, all the way to the federal circuit court, before an employee gets her job back.</p> <p>In unfair labor practice cases that were settled or required employers to comply with a judge’s orders, the average time between the filing of the charge and its closure was 501 days.¹ During a 2004 effort to form a union at the Stabilus, Inc., auto parts facility in North Carolina, the company <u>illegally</u> fired activist Dennis McSwain. It wasn’t until January 2012, seven years later, that the company was forced to remedy its violations and agreed to a new election. Many of the original union supporters were gone by then, so the election did not go forward.</p>	<p>The WAGE Act would require the NLRB to seek injunctive relief to get an employee their job back when there is reasonable cause to believe they were fired for exercising their rights to join together and win improvements at work.</p> <p>When World Class Corrugating purchased Wheeling Corrugated in 2012, a union-represented roofing company in Kentucky, it intentionally refused to hire back a majority of former employees and refused to recognize and bargain with their union. As soon as <u>the NLRB decided</u> in 2014 to seek injunctive relief, World Class settled the charges and agreed to hire back former employees and recognize their union. Shortly thereafter, employees won a new collective bargaining agreement.</p> <p>The WAGE Act would ensure that the swift justice won in this case would be the norm and not the exception.</p>
PROBLEM	SOLUTION
<p style="text-align: center;">Employers Can Exploit Immigrants Seeking Improvements at Work</p>	<p style="text-align: center;">Protect All Employees at Work, Regardless of Immigration Status</p>
<p>The NLRA extends rights to collective action to all employees, including those who are undocumented. However, the 2002 Supreme Court decision <i>Hoffman Plastics</i> effectively nullified those rights by barring the NLRB from ordering employers to pay back pay when they illegally retaliate against and fire undocumented employees. This loophole hurts all employees – immigrants and non-immigrants alike – who seek to improve conditions at work.</p> <p>One <u>study</u> of workplace retaliation found that in half of NLRB election campaigns with a majority of undocumented workers and 41 percent with a majority of recent immigrants, employers make threats of referral to Immigration Customs and Enforcement (ICE).</p>	<p>The WAGE Act would fix the loophole created by the Supreme Court and enable all employees, regardless of immigration status, to receive remedies when they are unlawfully fired or discriminated against for their collective activity.</p> <p>The bill would have helped Francisco Joya, who made bread in a Brooklyn bakery for eight years. He worked 65 to 75 hours a week, without overtime pay. When he and six co-workers complained about the working conditions, they were all fired. Even though it was the employer and not the employees who had violated immigration laws, <u>the NLRB found</u> that Joya and his co-workers were not entitled to compensation for the time they were without work.</p>

¹ Jobs With Justice analysis of NLRB unfair labor practice charges closed between September 1, 2014, and September 1, 2015, with a disposition of settled, compliant, non-compliant or partially compliant. Information accessed September 8, 2015, at <https://www.nlr.gov/search/cases>.