

117TH CONGRESS
2D SESSION

S. 3585

To enable an employer or employees to establish an employee involvement organization to represent the interests of employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2022

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To enable an employer or employees to establish an employee involvement organization to represent the interests of employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Teamwork for Employ-
5 ees and Managers Act of 2022”.

6 **SEC. 2. EMPLOYER EXCEPTION.**

7 (a) IN GENERAL.—Section 8 of the National Labor
8 Relations Act (29 U.S.C. 158) is amended by adding at
9 the end the following:

1 “(h) It shall not constitute or be evidence of an unfair
 2 labor practice under subsection (a) for an employer to es-
 3 tablish, assist, maintain, or participate in an employee in-
 4 volvement organization, as defined in section 3 of the
 5 Teamwork for Employees and Managers Act of 2022: *Pro-*
 6 *vided*, That this subsection shall not apply in a case in
 7 which a labor organization is the representative of the em-
 8 ployees of the employer in accordance with section 9(a).”.

9 (b) EXCEPTION FROM LABOR ORGANIZATION DEFINI-
 10 TION.—Section 2(5) of the National Labor Relations
 11 Act (29 U.S.C. 152(5)) is amended by inserting “, except
 12 that the term shall not include an employee involvement
 13 organization as defined in section 3 of the Teamwork for
 14 Employees and Managers Act of 2022” before the period
 15 at the end.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) EMPLOYEE.—The term “employee” has the
 19 meaning given such term in section 2 of the Na-
 20 tional Labor Relations Act (29 U.S.C. 152).

21 (2) EMPLOYEE INVOLVEMENT ORGANIZA-
 22 TION.—The term “employee involvement organiza-
 23 tion” means an organization or entity established by
 24 the mutual consent of an employer and any number
 25 of employees of the employer—

1 (A) which may be initiated by the em-
2 ployer, the employees, or both;

3 (B) which may be dissolved—

4 (i) except as described in clause (ii),
5 at any time, and without regard to cause,
6 by the employer, the employees, or both; or

7 (ii) in the case of an employee involve-
8 ment organization for a large employer and
9 employees of the large employer, only in
10 accordance with section 4(b)(2);

11 (C) in which employees and supervisors
12 participate to address matters of mutual inter-
13 est, including issues of quality of work, produc-
14 tivity, efficiency, compensation, benefits (includ-
15 ing related to education and training), recruit-
16 ment and retention, grievances, child care, safe-
17 ty and health, and accommodation of the reli-
18 gious beliefs and practices of employees; and

19 (D) that does not have, claim, or seek au-
20 thority to—

21 (i) be the exclusive collective bar-
22 gaining representative of the employees
23 participating in such organization or enti-
24 ty;

1 (ii) negotiate or enter into a collective
2 bargaining agreement with the employer on
3 behalf of such employees;

4 (iii) amend any collective bargaining
5 agreement between the employer and any
6 labor organization; or

7 (iv) preclude such employees from
8 designating or selecting a labor organiza-
9 tion as the representative of such employ-
10 ees, as provided in section 9(a) of the Na-
11 tional Labor Relations Act (29 U.S.C.
12 159(a)).

13 (3) EMPLOYER.—The term “employer” has the
14 meaning given such term in section 2 of the Na-
15 tional Labor Relations Act (29 U.S.C. 152).

16 (4) LARGE EMPLOYER.—The term “large em-
17 ployer” means an employer that—

18 (A) had more than \$1,000,000,000 in an-
19 nual gross revenues for the most recently com-
20 pleted fiscal year prior to the date of certifi-
21 cation under section 4(b)(1); and

22 (B) employs more than 3,000 employees on
23 such date.

1 (5) WORKFORCE COMMITTEE.—The term
2 “workforce committee” means a committee of the
3 board of directors of an employer that—

4 (A) oversees the policies of the employer on
5 quality of work, productivity, efficiency, com-
6 pensation, benefits (including related to edu-
7 cation and training), recruitment and retention,
8 grievances, child care, safety and health, and
9 accommodation of the religious beliefs and prac-
10 tices of employees;

11 (B) has a substantially equivalent source
12 of authority with respect to authorizing provi-
13 sions in the article of incorporation or bylaws of
14 the employer as the compensation committee of
15 the board of directors or an equivalent com-
16 mittee of the board of directors; and

17 (C) may be the compensation committee of
18 the board of directors or an equivalent com-
19 mittee of the board of directors, if such com-
20 mittee meets the requirements of this para-
21 graph.

1 **SEC. 4. REQUIREMENTS FOR EMPLOYEE INVOLVEMENT OR-**
 2 **GANIZATIONS AT LARGE EMPLOYERS.**

3 (a) IN GENERAL.—This section shall apply to each
 4 employee involvement organization for a large employer
 5 and employees of the large employer.

6 (b) ESTABLISHMENT OF AN EMPLOYEE INVOLVE-
 7 MENT ORGANIZATION FOR LARGE EMPLOYERS.—

8 (1) CERTIFICATION.—A large employer shall
 9 certify each employee involvement organization for
 10 the large employer on the date of formation of such
 11 employee involvement organization.

12 (2) PROCEDURES.—

13 (A) IN GENERAL.—An employee involve-
 14 ment organization established under paragraph
 15 (1) shall have reasonable procedures regard-
 16 ing—

17 (i) how an employee may join or leave
 18 such employee involvement organization;
 19 and

20 (ii) dissolution of the employee in-
 21 volvement organization.

22 (B) DISSOLUTION FOR CAUSE.—

23 (i) IN GENERAL.—In the case of an
 24 employee involvement organization that
 25 has been certified under paragraph (1) for
 26 not less than 5 consecutive years, a large

1 employer may only dissolve such employee
2 involvement organization with cause.

3 (ii) CAUSE.—For purposes of clause
4 (i), the term “cause” means a reasonable
5 business purpose for dissolution, as deter-
6 mined by—

7 (I) the independent business
8 judgment of the board of directors of
9 the business of the large employer; or

10 (II) if the business of a large em-
11 ployer does not have a board of direc-
12 tors, the substantial equivalent of the
13 board of directors.

14 (3) COOLING-OFF PERIOD.—Unless otherwise
15 specified in the certification under paragraph (1), an
16 employee involvement organization may not be estab-
17 lished at a large employer prior to 2 years after—

18 (A) in the case of a large employer for
19 which a valid election was held under section
20 9(c)(1) of the National Labor Relations Act (29
21 U.S.C. 159(c)(1)) in which a majority of the
22 employees voting in such election voted against
23 representation, the date of such election; or

24 (B) in the case of a large employer for
25 which a valid election was held under section

1 9(e) of such Act and a majority of the employ-
2 ees voting in such election voted in favor of re-
3 scission of the authority of a labor organization
4 to make an agreement described in section
5 8(a)(3) of such Act (29 U.S.C. 158(a)(3)), the
6 date of such election.

7 (c) EMPLOYEE REPRESENTATIVE OF AN EMPLOYEE
8 INVOLVEMENT ORGANIZATION.—

9 (1) IN GENERAL.—Employees participating in
10 an employee involvement organization established
11 under subsection (b)(1) may, subject to the require-
12 ments in paragraph (2), elect through reasonable
13 means an employee representative of the employee
14 involvement organization.

15 (2) ELECTION PROCESS.—

16 (A) REQUIREMENTS.—An election of an
17 employee representative of an employee involve-
18 ment organization for the large employer—

19 (i) shall be through a secret ballot of
20 the employees participating in the em-
21 ployee involvement organization who are
22 employed by the large employer on the
23 date of such election and who are United
24 States citizens or reside primarily in the
25 United States; and

1 (ii) may not be funded through fund-
 2 ing sources external to the employee in-
 3 volvement organization, including any
 4 labor organization, nonprofit, or business
 5 other than the employer.

6 (B) DEFAULT RULES REGARDING ELEC-
 7 TION PROCESS.—Unless otherwise specified in
 8 the certification under subsection (b)(1) by the
 9 large employer of such employee involvement
 10 organization, an election of an employee rep-
 11 resentative of an employee involvement organi-
 12 zation for the large employer—

13 (i) may be funded through employer-
 14 provided funding; and

15 (ii) shall occur within the same time
 16 period and with the same regularity as the
 17 election of the board of directors of the
 18 large employer.

19 (3) ELIGIBILITY REQUIREMENTS.—

20 (A) IN GENERAL.—Each individual elected
 21 to be a representative of an employee involve-
 22 ment organization for a large employer shall be
 23 an employee who—

24 (i) is eligible to vote under paragraph
 25 (2)(A)(i); and

1 (ii) except in a case in which the large
 2 employer has operated for less than the 5
 3 calendar years immediately preceding the
 4 date of the election, has been employed by
 5 the large employer for not less than the 5
 6 calendar years immediately preceding the
 7 date of the election.

8 (B) INELIGIBILITY; TERM LIMITS.—An
 9 employee representative of an employee involve-
 10 ment organization elected under this subsection
 11 shall not—

12 (i) be employed by the employer at the
 13 time of such election as a supervisor; or

14 (ii) at any time during the 5 calendar
 15 years immediately preceding the date of
 16 such election, be employed by the employer
 17 in a position related to human resources.

18 (4) REPRESENTATION BY EMPLOYEE REP-
 19 RESENTATIVE ON BOARD OF DIRECTORS OF LARGE
 20 EMPLOYER.—

21 (A) BOARD REPRESENTATION.—Subject to
 22 the limitation under subparagraph (B) and, as
 23 relevant, the procedure under subparagraph
 24 (C), an employee representative of an employee

1 involvement organization elected under this sub-
2 section shall—

3 (i) be a nonvoting member of either or
4 both of—

5 (I) the board of directors of the
6 employer; or

7 (II) a workforce committee of the
8 board of directors of the employer;
9 (ii) be permitted to attend any regular
10 meeting of such board or committee, as ap-
11 plicable; and

12 (iii) receive equal access to informa-
13 tion relevant to the purposes of the em-
14 ployee involvement organization as any
15 other member of the board or committee,
16 as applicable.

17 (B) LIMITATIONS.—Unless otherwise spec-
18 ified in the certification under subsection (b)(1)
19 by the large employer of such employee involve-
20 ment organization, an employer may exclude an
21 employee representative from attending any
22 meeting of any committee of the board of direc-
23 tors of the business of such employer (or the
24 substantial equivalent of any such committee)

1 called for purposes unrelated to the purposes of
2 such employee involvement organization.

3 (C) SPECIAL PROCEDURE FOR AN EM-
4 PLOYER WITH MORE THAN 1 EMPLOYEE IN-
5 VOLVEMENT ORGANIZATION.—In a case in
6 which 2 or more employee representatives in
7 total are elected for a large employer under
8 paragraph (1), the employer and each employee
9 involvement organization that elects such an
10 employee representative shall, by reasonable
11 procedures which provide for the input of each
12 such employee involvement organization, ensure
13 that only 1 employee representative for the em-
14 ployer at any time exercises the powers de-
15 scribed in subparagraph (A).

16 **SEC. 5. SAFE HARBOR FOR VIOLATION OF RULES DUE TO**
17 **THE FAULT OF AN EMPLOYEE.**

18 Section 8 of the National Labor Relations Act (29
19 U.S.C. 158), as amended by section 2, is further amended
20 by adding at the end the following:

21 “(i) It shall not constitute or be evidence of an unfair
22 labor practice under subsection (a) for an employer to es-
23 tablish, assist, maintain, or participate in an organization
24 which purports to be an employee involvement organiza-
25 tion, as defined in section 3 of the Teamwork for Employ-

ees and Managers Act of 2022, but which fails to comply with the requirements of such Act due to the fault of an employee: *Provided*, That this subsection shall not apply in a case in which a labor organization is the representative of the employees of the employer in accordance with section 9(a).”.

SEC. 6. LIMITATIONS.

(a) LABOR ORGANIZATION RIGHTS.—This Act shall not prevent or affect the rights provided to labor organizations under section 9 of the National Labor Relations Act (29 U.S.C. 159).

(b) EMPLOYEE RIGHTS.—This Act shall not affect the rights and responsibilities of employees under the National Labor Relations Act (29 U.S.C. 151 et seq.), except with respect to the amendments made to section 2(5) and section 8 of the National Labor Relations Act (29 U.S.C. 152(5); 29 U.S.C. 158) by sections 2 and 5 of this Act.

SEC. 7. ENFORCEMENT BY THE NATIONAL LABOR RELATIONS BOARD.

Section 6 of the National Labor Relations Act (29 U.S.C. 156) is amended—

- (1) by striking “The Board” and inserting “(a) The Board”; and
- (2) by adding at the end the following:

1 “(b) The Board shall not have any authority for en-
2 forcement, or adjudication, under this Act or the Team-
3 work for Employees and Managers Act of 2022 with re-
4 spect to an employee involvement organization, as defined
5 in section 3 of such Act.”.

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