

118TH CONGRESS
1ST SESSION

S. 710

To prohibit an employer from terminating the coverage of an employee under a group health plan while the employer is engaged in a lock-out or while the employee is engaged in a lawful strike, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2023

Mr. BROWN (for himself, Mr. CASEY, Mr. SANDERS, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. FETTERMAN, Mr. MARKEY, Mr. PADILLA, Ms. SMITH, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit an employer from terminating the coverage of an employee under a group health plan while the employer is engaged in a lock-out or while the employee is engaged in a lawful strike, 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 “Striking and Locked
5 Out Workers Healthcare Protection Act”.

1 **SEC. 2. CONTINUATION OF COVERAGE UNDER A GROUP**
2 **HEALTH PLAN DURING A LOCK-OUT OR A**
3 **LAWFUL STRIKE.**

4 (a) LOCK-OUT.—Section 8(a) of the National Labor
5 Relations Act (29 U.S.C. 158(a)) is amended—

6 (1) in paragraph (5), by striking the period and
7 inserting a semicolon; and

8 (2) by adding at the end the following:

9 “(6) to terminate or alter the coverage of an
10 employee under a group health plan during the pe-
11 riod that such employer is taking action to lock-out,
12 suspend, or otherwise withhold employment from the
13 employee in order to influence the position of such
14 employee or the representative of such employee in
15 collective bargaining prior to a strike; and”.

16 (b) STRIKE.—Section 8(a) of such Act (29 U.S.C.
17 158(a)), as so amended, is further amended by adding at
18 the end the following:

19 “(7) to terminate or alter the coverage of an
20 employee under a group health plan during the pe-
21 riod that such employee is engaged in a lawful
22 strike.”.

23 (c) DEFINITION OF GROUP HEALTH PLAN.—Section
24 2 of the National Labor Relations Act (29 U.S.C. 152)
25 is amended by adding at the end the following:

1 “(15) The term ‘group health plan’ has the meaning
2 given the term under section 607(1) of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C.
4 1167(1)).”.

5 **SEC. 3. PENALTIES.**

6 Section 12 of the National Labor Relations Act (29
7 U.S.C. 162) is amended—

8 (1) by striking “SEC. 12. Any person” and in-
9 serting the following:

10 **“SEC. 12. PENALTIES.**

11 “(a) VIOLATIONS FOR INTERFERENCE WITH THE
12 BOARD.—Any person”; and

13 (2) by adding at the end the following:

14 “(b) CIVIL PENALTIES FOR UNFAIR LABOR PRAC-
15 TICES RELATED TO COVERAGE UNDER A GROUP HEALTH
16 PLAN DURING A LOCK-OUT.—Any employer who commits
17 an unfair labor practice within the meaning of section
18 8(a)(6) shall be subject to a civil penalty in an amount
19 not to exceed \$75,000 for each violation, except that, with
20 respect to such an unfair labor practice that coincides with
21 the discharge of an employee or that results in other seri-
22 ous economic harm to an employee, the Board shall double
23 the amount of such penalty, to an amount not to exceed
24 \$150,000, in any case where the employer has within the
25 preceding 5 years committed another violation of section

1 8(a)(6). A civil penalty under this subsection shall be in
2 addition to any other remedy ordered by the Board.

3 “(c) CIVIL PENALTIES FOR UNFAIR LABOR PRAC-
4 TICES RELATED TO COVERAGE UNDER A GROUP HEALTH
5 PLAN DURING A LAWFUL STRIKE.—Any employer who
6 commits an unfair labor practice within the meaning of
7 section 8(a)(7) shall be subject to a civil penalty in an
8 amount not to exceed \$50,000 for each violation, except
9 that, with respect to such an unfair labor practice that
10 coincides with the discharge of an employee or that results
11 in other serious economic harm to an employee, the Board
12 shall double the amount of such penalty, to an amount
13 not to exceed \$100,000, in any case where the employer
14 has within the preceding 5 years committed another viola-
15 tion of section 8(a)(7). A civil penalty under this sub-
16 section shall be in addition to any other remedy ordered
17 by the Board.

18 “(d) DIRECTOR AND OFFICER LIABILITY.—If the
19 Board determines, based on the particular facts and cir-
20 cumstances presented, that a director or officer’s personal
21 liability is warranted, a civil penalty for a violation de-
22 scribed in subsection (b) or (c) may also be assessed
23 against any director or officer of the employer who di-
24 rected or committed the violation, or had actual or con-

1 structive knowledge of and the authority to prevent the
2 violation and failed to prevent the violation.

3 “(e) CONSIDERATIONS.—In determining the amount
4 of any civil penalty under subsection (b), (c), or (d), the
5 Board shall consider—

6 “(1) the gravity of the actions of the employer
7 resulting in the penalty, including the impact of such
8 actions on the charging party or on other persons
9 seeking to exercise rights guaranteed by this Act;

10 “(2) the size of the employer;

11 “(3) the history of previous unfair labor prac-
12 tices or other actions by the employer resulting in a
13 penalty; and

14 “(4) the public interest.”.

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