

PUBLICATION

The RESPECT Act: Another Pro-Union Bill Lurking in Congress

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Currently pending in Congress is another arrow in organized labor's quiver, the Re-Empowerment of Skilled and Professional Employees and Construction Tradesworkers Act (RESPECT Act) (H.R. 1644; S. 969). The target of this arrow is the National Labor Relations Act's (NLRA) definition of "supervisor." If enacted, the RESPECT Act would redefine the term and effectively turn numerous supervisors into rank and file employees subject to union organizing. Organized labor is pushing hard for passage, as this, along with passage of the Employee Free Choice Act, would swell the ranks of unionized employees.

Currently, a person is a supervisor under the NLRA if the individual has "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." NLRA § 2(11). Satisfying any one of these criteria qualifies an employee as a supervisor.

In a recent decision, the National Labor Relations Board settled the meaning of the terms "assign," "responsibly to direct" and "independent judgment" in accord with Supreme Court decisions. *Oakwood Healthcare*, 348 NLRB No. 37 (2006). The RESPECT Act would make three major changes to the current definition: (1) it would eliminate the authority to assign; (2) it would eliminate the responsibility to direct; and (3) it would require that the "majority of a supervisor's work time" be spent engaging in the remaining duties outlined in the NLRA definition below. Were the RESPECT Act to become law, the definition of "supervisor" would be:

Any individual having authority, in the interest of the employer, and for a majority of the individual's worktime, to hire, transfer, suspend, lay-off, recall, promote, discharge, reward, or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This change would have a dramatic negative impact on employers. Many working supervisors - the skilled, experienced and knowledgeable employees that companies so greatly rely on - would be forced to switch sides. Currently, a company can demand the loyalty of its supervisors, who are essential leaders in the effort to maintain a union-free environment. When such persons are removed from the ranks of management, maintaining order, fidelity and discipline becomes much more difficult. The absolute loyalty that employers expect would be neutralized. Also, as many employers rely on supervisors to perform actual work for at least half the workday, it is impossible to determine the RESPECT Act's negative impact on production.

To prepare for the RESPECT Act, we recommend that you review your supervisors' job descriptions for accuracy and provide any necessary training. Examine your supervisors' actual duties to ensure that they meet the current definition of supervisor under the NLRA and develop contingency plans for restructuring duties in case the RESPECT Act becomes law (as seems likely to happen). Baker Donelson attorneys can assist you in reviewing job descriptions, provide necessary training and conduct a union vulnerability audit. Such an audit can ensure that supervisors are properly classified, have appropriate duties and job descriptions, and know

how to identify a union organizing campaign. A union vulnerability audit can also identify key workplace issues that might undermine an employer's effort to remain union-free.