

Three Key Takeaways for Employers from Biden's State of the Union Address



By [Michele C. Spillman](#) and [Kim Beight Kelly](#)

In his 2023 State of the Union Address, President Biden raised several topics of particular interest to employers. Here are three key takeaways:



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Strong Support for Unions

The President called on Congress to pass the Protecting the Right to Organize (PRO) Act, which would amend the National Labor Relations Act and other labor laws to make it easier for workers to unionize. If signed into law, the PRO Act would represent a historic shift in US labor law. Notable provisions include: instituting costly financial (and even criminal) penalties for labor law violations, expanding the definition of “employee” to encompass many workers who are

currently classified as independent contractors, and imposing collective bargaining agreements on employers in the absence of mutual agreement.

The PRO Act passed in the House in March 2021, but is unlikely to pass in its entirety through a divided Senate. However, Biden's emphasis on this initiative may indicate that he will push for regulatory changes in this direction.

National Paid Family and Medical Leave

Biden again called for nationwide paid family and medical leave, echoing comments he made last week during a press conference celebrating the 30th anniversary of the Family and Medical Leave Act. In a [memorandum](#) issued on February 2, 2023, Biden called upon the heads of federal agencies to update their workplace policies to expand leave availability to federal workers and voiced his support for a comprehensive, nationwide paid family and medical leave program. It is doubtful that a divided Congress will pass such legislation, leaving it up to individual states to enact expanded leave laws.

Noncompetition Agreements

Biden echoed the Federal Trade Commission's recent proposal to ban non-compete agreements, stating his intention to ban such agreements "so companies have to compete for workers and pay them what they're worth." The proposed rule provides that an employer:

- cannot enter into a non-compete agreement with a worker, including employees and independent contractors;
- cannot represent to a worker that the worker is subject to a non-compete clause when the employer has no good faith basis to believe that the worker is subject to an enforceable non-compete clause;
- must rescind existing non-compete agreements; and
- must provide workers (both current and former) with existing non-compete provisions with a notice that the

worker's non-compete clause is no longer in effect and may not be enforced against the worker.

The FTC is hosting a virtual public forum to allow workers and business owners to share their experiences with noncompete agreements on February 16, 2023. The proposal is open for public comment until March 20, 2023. We can expect significant legal challenges from pro-business groups should the rule take effect.

The Phillips Murrah [Labor and Employment](#) Law team stands ready to advise employers on all aspects of the ever-changing landscape of labor and employment laws.

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