

Build Back Better Act Update: Class Waiver Provisions Gone, Penalty Increases Remain

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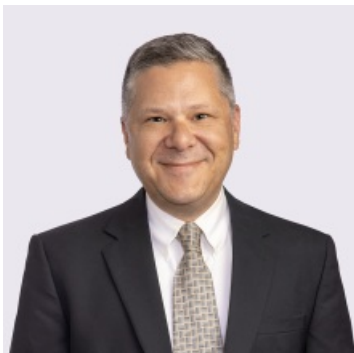


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The Senate Committee on Health, Education, Labor, and Pensions has released its version of the Build Back Better bill and it does *not* contain the provision regarding class or collective action waivers in the version passed by the U.S. House of Representatives on November 19, 2021.

The Build Back Better Act ([H.R. 5376](#)), as passed in the House on November 19, 2021, contained a provision that could have effectively prohibited companies from adopting class and collective action waivers in arbitration agreements or in stand-alone agreements with employees or independent contractors.

The legislation would have made it a violation under the National Labor Relations Act (NLRA) for a covered employer to require employees to agree not to engage in collective or class action, or to join such litigation. The bill also created significant civil penalties for violations of the NLRA — as much as \$50,000 per violation (\$100,000 for repeat offenses) — penalties that effectively would bar the ongoing use of class and collective action waivers in employment or arbitration agreements. The bar on such waivers was one of several amendments to the NLRA in the original House version of the legislation that was dropped before passage. The House version likewise contained significant increases in the monetary penalties the Department of Labor could impose for violations of the Fair Labor Standards Act (FLSA).

On December 11, the Senate Committee on Health, Education, Labor, and Pensions released its version of provisions of the Build Back Better bill on subjects within its jurisdiction. The [updated bill text](#) does *not* contain the provision on class or collective action waivers. That this provision has been stripped from the Senate version is a relief for companies that utilize arbitration agreements with class and collective action waivers, or stand-alone class waivers outside of arbitration agreements, to control litigation costs and to ensure the efficient resolution of disputes.

Although the updated bill still includes the significant civil penalties for unfair labor practices and FLSA violations, negotiations in the Senate are ongoing. Additional bill changes are likely before the Build Back Better Act comes to a final vote.

Jackson Lewis attorneys continue to track the bill. Please contact a Jackson Lewis attorney with any questions.

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