Updating Antitrust Policy: Labor Issues

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**Introduction**

Labor markets are becoming increasingly concentrated\(^1\). A recent study found that the average labor market is dominated by just over three recruiting firms,\(^2\) with many sectors facing even more concentration. This trend is also evinced by rising markups, which can result from limited product market competition and can further erode the labor share.\(^3\) In this sense, the broader problems of declining competition that have been highlighted in recent years\(^4\) are weaponized against worker welfare. The deleterious effects of such asymmetries extend to the overall economy, because reducing wages reduces consumer expenditures and leads to inefficient investment of labor.\(^5\)

The optimal solution to this problem would be to restore competitive labor markets. As discussed below, this would involve unwinding mergers and implementing more aggressive attempts to combat monopolization. However, such interventions would take decades to fully restore labor power. Therefore, these pro-competitive policies must be combined with efforts to restore worker power in the short term. Labor law has long recognized asymmetries of power and attempted to countervail employer power by aggregating workers as a collective. Promoting worker power is part of the longstanding industrial-democratic tradition. There may be some concern that increasing worker bargaining power too much could likewise lead to wages that are above competitive levels instead of below them, but the current economy is heavily skewed in favor of employers.\(^6\) It will likely take so long to return wages to competitive levels there will be time to adjust policy if fears of overshooting grow. Unionization and worker aggregation enables workers to have a voice and should be prioritized to ensure that competitive balance is restored in the economy.

The present policy proposal focuses on four topics that we think are of the highest importance for updating competition policy in order to address the current issues related to anticompetitive effects in labor markets: mergers in labor markets, the use of non-compete and no-poach agreements, market power in the gig economy and how workers can countervail the power of employers.

**Part I: Problem: Anti-competitive effects of Mergers in Labor Markets**

The market power currently present in many industries in the United States also exists in the labor market in the form of collusion or monopsonization. The concentration of labor markets, in part produced by decades of unchallenged mergers, directly harms workers and contributes to lower wages, inequality, and the decline in productivity and competitiveness of the American economy.

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\(^4\) Matt Stoller, Goliath: The 100-Year War Between Monopoly Power and Democracy (Simon and Schuster, 2019); Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports, 2018).


To this point, the federal government has failed to challenge mergers based on their labor market impacts.

Mergers are currently regulated by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), which amended the antitrust laws in the United States, particularly the Clayton Act of 1914. The HSR Act sets the threshold for mergers and other sort of acquisitions that must be previously cleared by the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice (“DOJ”). Parties that do not comply with the rules set by the HSR Act are subject to civil penalties.

Most of the thresholds set by the HSR Act are related to size-of-the-transaction and size-of-the-parties requirements. Such assume that the size of the players and the transaction are the best proxies to assess if a merger may pose threats to competition if consummated. However, the economy has since the evolved and the antitrust laws have not progressed pari passu.

There are several aspects of mergers that should be taken into account and may even be more revealing than the HSR thresholds. For instance, the current thresholds do not evaluate and track the effects of the merger in labor markets. We believe it is necessary to add labor markets effects to the current merger review in order to address the most up-to-date competitive issues.

In addition to the HSR Act, the current analysis of mergers follows the Horizontal Merger Guidelines of the FTC and DOJ (“the Guidelines”). The Guidelines outline the techniques and policies applied by government agencies with respect to mergers and acquisitions under federal antitrust law. Even though the Guidelines seek to identify and reduce market power arising from mergers, they are highly focused on price effects.

There is significant literature on the existence of monopsony power by employers. The term “monopsony” is not new to competition practice, as it can be found on the Guidelines sections on mergers of competing buyers. It is a well-established term and its application to mergers in labor markets would not represent an innovation in merger analysis. The tool is available – it just needs to be used by the agencies.

Firms with monopsony power have the ability to pay lower prices for their inputs. In the labor markets, the inputs are the workers, and the prices are the wages paid to those workers. That is, labor monopsony occurs when the lack of competition in labor markets allows employers to suppress employee wages. These lower wages reduce the incentive for workers to choose employment in that industry, causing an inefficient allocation of labor. The current economic literature provides evidence that labor markets in the United States are highly concentrated, with at least 60% of labor markets in the United States qualifying as “highly concentrated.”

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7 C. Scott Hemphill & Nancy L. Rose point that one of the possible effects of mergers between sellers is the harm to workers selling labor. *Mergers that Harm Sellers*. 127 Yale L. J. 2078 (2018).


According to Azar, Berry & Marinescu, higher concentration in labor markets is associated with lower wages and an increase in employer market power. The authors conclude that a monopsonist would find it profitable to decrease wages by 5% in most markets and that workers’ productivity is 17% greater than their wages. Moreover, data from the U.S. Census Bureau shows that from 1978 to 2016 wages were lower in local labor markets that were more concentrated.

There is enough evidence to affirm that the concentration of labor markets directly harms workers, contributes to inequality and impedes the productivity and competitiveness of the economy. These issues are even more significant because they disproportionately affect low-wage workers.

Monopsony in labor markets create an environment that welcomes anticompetitive conduct by employers. Monopsony facilitates collusion between firms (wage-fixing and no-poach agreements) and provides them with the necessary leverage to impose non-compete agreements on employees. Mergers that affect labor markets have the potential to create or reinforce market power and enable firms to further suppress post-merger.

Antitrust authorities have a role to play in this exceptionally important issue for the American people and the economy. The section below presents suggestions for the Biden Administration to tackle the topic and promote a more fair and competitive labor market.

**Solutions**

**Enforcement Actions:**
- **Greater scrutiny of mergers going forward.** There is no record of a merger being challenged because of possible anticompetitive effects on labor markets. The antitrust agencies have not even have analyzed the labor market effects of mergers vis-à-vis product market effects. The FTC and DOJ should analyze in more detail cases with the potential to affect labor markets and a subset of cases should be prioritized, including pharmaceutical, health care, agricultural, telecom and media mergers. The more in-depth review could identify blind spots that are usually not fully addressed by the agencies.

**Executive Actions:**

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• **Update the 2010 Merger Guidelines.** The 2010 Horizontal Merger Guidelines are the main tool employed by the FTC and DOJ to review mergers. However, the Guidelines are focused on product market competition and largely ignore issues related to the labor market. As put by Marinescu & Hovenkamp, mergers affecting the labor market require rethinking of merger policy, without altering its fundamentals. We suggest that the Guidelines be reviewed in order to evaluate concerns related to possible labor market power arising from a merger. There are potential improvements to virtually every section of the Guidelines. The agencies should be looking for new and improved methodologies to assess the relevant market for labor market mergers, such as the method proposed by Marinescu & Hovenkamp. The objective is for the FTC and DOJ to take into account the possible labor market effects of the merger, particularly when the merging parties are competitors in the same local market. Labor markets should be identified as an additional source of concern for the authorities when evaluating a merger. It is useful to recall Krueger and Posner’s suggestions for updating the Merger Guidelines, based on the normal approach on product markets: i) the agencies should define the labor activity, even broadly in some cases; ii) identify the labor markets affected by the merger; iii) assess if the merger has an effect on concentration in the labor market; and iv) allow firms to demonstrate any benefits that the merger would create to the labor market in order to offset any losses to the workers.

• **Instruct New Studies by the Agencies.** In addition to reviewing the merger guidelines, we suggest that the agencies employ funds to stimulate new studies focused on the effects of mergers in labor markets, propose a new regulatory agenda and influence the regulatory discussion on the need for reform in merger review.

**Legislative Actions:**

• **Reform Federal Antitrust Legislation.** The two main antitrust statutes were written in the beginning of the 20th century and, over time, their meaning and focus have been changed by courts. The current consumer welfare standard is sometimes applied by Courts as if does not address modern antitrust issues. This trend is particularly pronounced in the labor market effects of mergers because lower wages can lead to lower prices which the parties then claim as an efficiency benefit. Below-competitive wages cause dynamic harms, in the sense that they discourage employees from investing time and training in the affected professions. Reforming antitrust to correct the courts will the allocation of labor and benefit consumers and workers alike. Congress should instruct agencies and courts to consider the labor market effects of mergers, and not only the output price effects. The preamble of a new antitrust law should clarify that one goal of the legislation is well-functioning labor markets that are protected from monopsony power.

**Part II: Problem: Non-Compete and No-Poach Agreements Restrict Labor Mobility**

No-poach agreements are agreements between competing firms, or firms in upstream or downstream markets, in which both firms commit not to hire employees away from one another. This restricts job mobility and labor supply. Non-competes are clauses in employment contracts

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20 It is worth noting that that current, standard jurisprudence does not allow an efficiency to be the result of anticompetitive conduct.
that restrict what kind of labor activities, and for how long and where the employer may perform after ending its labor relation. No-poach agreements and non-competes create employer market power and must be addressed.

No-poach agreements – whether between separate firms or franchises of the same company – limit outside job prospects for employees. While courts have established that no-poach agreements between separate firms violate Section 1 of the Sherman Act, they have yet to firmly condemn no-poach agreements between franchisees.\(^21\)

Non-compete agreements restrict the jobs employees can take if they leave their current employer. Surveys indicate that more than 40% of employees have been subject to a non-compete or no-poach agreement at some point in their career.\(^22\) Non-compete agreements can have benefits in a few limited cases when the employee controls the business’ good will or sensitive commercial information that, once hired, they can use to “hold up” the employer by threatening to leave for a competitor.\(^23\) This does not describe the vast majority of employees covered by non-competes. Instead, non-competes are used in settings where their effect is to limit employees’ job prospects and improve employer bargaining power.

No-poach agreements are more likely to be classified as illegal than non-competes. The former involve agreements – usually among horizontal competitors – to reduce competition for labor, while the latter involves a contract among employer and employee, both of whom allegedly consented. Nevertheless, while the instruments are different in the mechanisms and agents involved in restraining job mobility, both of them have similar anticompetitive effects.\(^24\)

No-poach agreements and non-competes produce harms to employees and static and dynamic harms to competition. Both instruments reduce competition in labor markets by excluding employees of the non-poaching firms from one-another’s supply; and exclude potential employers from workers’ demand. This has the likely effect of reducing the employees’ exit options, enhancing employers’ bargaining power, since employees’ threats to switch jobs are less credible. It produces harms to employees who are likely to face lower wages than they would have otherwise if at least some of them had the option to leave for higher-paying offers.

Non-competes and no-poach agreements also produce dynamic harms to competition in the firm’s labor market and in the related product market by limiting future labor supply, entrenching the current labor market power levels, and likely resulting in higher levels of concentration in the respective goods or service markets. Potential prospective employees will refrain from entering that labor market due to the lower wages produced by lower bargaining power and widespread use of non-competes and non-poach agreements. Decreased labor supply, whether due to restrictions on the movement of current employees or avoidance of the labor market by potential future


employees, may create barriers to entry by for other firms, denying the scale necessary to make producing a good or service profitable. This may create harms related to monopoly or oligopoly, like reduced output, higher prices, lower quality, and reduced innovation.  

This dynamic can also result in similar effects in other labor markets. Higher levels of concentration in the original labor market may spill over to associated labor markets, resulting in lower competition for associated labor if new firms refrain from entering this market due to the original labor market issues.

Solutions

Enforcement Actions:
- **Continue to Pursue Vertical and Horizontal No-Poach Cases:** Even in the absence of an explicit ban on franchise no-poach agreements, continued investigations and prosecutions of both no-poach horizontal and vertical no-poach agreements under Section 1 of the Sherman Act will help restore competition in labor markets and boost wages.

Executive Actions:
- **Provide Guidance on the Anti-Competitive Nature of Most Non-Competes and provide better inter-agency coordination for enforcement:** The DOJ Antitrust Division and the FTC should jointly issue a guidance that non-compete agreements are viewed as presumptively anti-competitive and that the DOJ and the FTC may investigate firms for antitrust violations if they have broad uses of non-competes. The DOJ and FTC have already issued joint guidance on no-poach agreements and should take the same course for non-competes. The executive should also promote inter-agency working groups and cooperation.
- **Presume Non-Competes Illegal and Shift the Burden-of-Proof in Determining Their Legality Under the Rule of Reason to the Employer by Using the FTC’s Rulemaking Authority:** The Federal Trade Commission should use its statutory authority under section 5 of the Federal Trade Commission Act to issue a rule defining “unfair methods of competition” in this realm to presumptively recognize non-competes as illegal and to shift of the burden-of-proof in determining their legality under a rule-of-reason approach to the employer once the plaintiff has shown that the non-compete restrained their ability to move to a higher paying job. The burden-of-proof should be allocated to the employers which are better positioned to provide evidence of the reasonableness of enforcing non-compete

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contractual clauses and that have increased bargaining power in general. Moreover, this presumption and shifting of the burden-of-proof would be an additional instrument against unenforceable non-compete contractual provisions.

Legislative Action:

- **Eliminate All No-Poach Agreements:** Franchise no-poach agreements already likely violate Section 1 of the Sherman Act, but an explicit ban on no-poach agreements between franchisees would make enforcement substantially easier. No-poach agreements restrain competition without any benefits that could outweigh the costs of decreased competition and should be completely banned.

- **Eliminate Nearly All Non-Compete Agreements:** The administration should follow through on the proposal in the Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions to ban all but a narrow subset of non-compete agreements. Several states have had success banning non-compete agreements and the proposed Workforce Mobility Act of 2019 provides a starting point for federal legislation. Since states have struggled to protect employees by applying vague standards of reasonableness to non-competes, the administration should follow the lead of California and categorically ban all non-compete agreements other than those in i) the sale of a business, ii) separation of a partner, or iii) dissolution of a company.

- **Require Payment of Attorney’s Fees and Statutory Penalties by Employers Violating Bans on No-Poach and Non-Competes:** Even if no-poach and non-compete clauses are made unenforceable, employers may still include them in contracts to deceive workers, resulting in the negative effects described above. To encourage use of an individual right to action to enforce bans on no-poach and non-compete agreements and to discourage employers from purposely deceiving workers, a ban on non-compete and no-poach agreements should require statutory penalties and attorney’s fees be paid to a successful plaintiff enforcing the right. Both the Clayton Act and the proposed Workforce Mobility Act of 2019 include language to award attorney’s fees to successful plaintiffs. Leading scholars have suggested also using penalties to deter manipulative behavior by firms and Washington has implemented mandatory fines for violators of its recent ban on many non-competes. Including both attorneys’ fees for plaintiffs and mandatory fines for willful violators would ensure than a ban on these contracts does in fact “[g]ive businesses incentives to write contracts that are enforceable under the law.”

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29 ibiden.com/empowerworkers/
31 See California Business and Professions Code, Sections 16600 - 16602.5
• **Use Grants to Encourage Enforcement**: In 2020, the Department of Labor provided states with more than $1.3 billion in Employment Services grants.\(^{35}\) Future funding for these grants should require that recipient states either 1) pass and enforce their own bans on no-poach agreements and covenants not to compete, or 2) create a plan to enforce the suggested federal legislation suggested above.

**Part III: Problem: Combatting Market Power in the Gig Economy’s Labor Markets**

The so-called gig economy has seen explosive growth over the last decade and a half: today, 36% of the entire US labor force is involved in the gig economy, and this number is only growing.\(^{36}\) While the gig economy has created a valuable, flexible source of income for many, its workers often face low and unpredictable wages, lack health insurance and other critical benefits, and are at the mercy of changing platform standards and the threat of removal.

The precarious nature of this work results from a significant asymmetry between the platforms that dominate these markets and the individual workers that provide services. Dominant platforms exercise meaningful market power, benefiting from indirect network effects and a treasure trove of historic data. By contrast, workers are denied collective action rights, making them effectively powerless to negotiate with platforms. Here we propose policies that focus on the specific challenges facing on demand drivers, a major segment of the gig economy. However, these policies are also relevant for other platforms that rely on workers providing closely managed services, such as dog walking or home cleaning.

Uber, Doordash, and other major platforms argue that their drivers are independent contractors, rather than employees, and they have spent hundreds of millions of dollars pushing policies that maintain this classification, arguing it is critical to giving drivers the flexibility many value.\(^{37}\) In addition to allowing platforms to skimp on benefits and payroll related costs, this classification denies workers collective action rights: under antitrust laws, any attempt by independent contractors to bargain for higher wages is considered an illegal price fixing conspiracy.

While the platforms claim its workers are individual businesses competing with one another, many of these workers are denied the ability to compete on price – most driving platforms set the prices at which all their drivers must provide services. If it is illegal for drivers to coordinate on price, it cannot be legal for platforms to facilitate price coordination. We argue this coordination constitutes a “hub-spoke-and-rim” price fixing conspiracy, prohibited under §1 of the Sherman Act. The status quo allows an artificial asymmetry of bargaining power and is inconsistent with antitrust law.

To fix this imbalance, antitrust authorities could sue platforms that fix prices among independent contracts. We argue that a better solution is to empower gig drivers to engage in collective action. This approach preserves the benefits of charging a single price, namely the convenience provided

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\(^{35}\) These grants support state and local agencies for workforce development and are separate from the more than $10 billion in grants to states for unemployment administration and pandemic relief. (https://www.usaspending.gov/federal_account/016-0179)


to consumers. Moreover, it is preferable to antitrust enforcement because it directly addresses the challenges faced by drivers, avoids the uncertainty associated with extended litigation, and ensures coverage for the greatest swathe of workers. We also argue for robust enforcement and legislation where necessary to maintain competition among gig platforms.

**Solutions:**

*Collective Action Rights for Gig Economy Drivers*

Our core proposal is collective action rights for drivers and other workers central to gig economy platforms. These rights include protection from antitrust liability for collective bargaining and protection for engaging in strikes as provided by the National Labor Relations Act. Allowing workers to organize and strike would enable them to negotiate meaningfully with Uber and other platforms. Through collective bargaining, workers could secure those benefits and changes most beneficial to them. Given the immaturity of the gig economy and the potential for continued innovation, such an approach is nimble than advocating specific benefits and allows greater expression of worker preferences, such as flexible hours. Moreover, this approach provides protection to a broader swathe of gig economy workers than enforcement against a single platform.

**Legislative Actions:**

- **“ABC Test”:** Replace the current employee/independent contractor test under the National Labor Relations Act with the “ABC test.”
  - This test places the burden on employers to show that their workers are not employees, by demonstrating that they are free from control or direction in the provision of work, that work takes place outside the company’s usual course of business, and the work constitutes an independent business or trade.
  - This provides a much more flexible definition of employee that should protect both drivers and other core workers on gig economy platforms.

- **Industry-Specific Designation:** Adopt industry-specific language that designates app-based drivers as employees under the National Labor Relations Act.
  - This definition should cover all drivers that (a) use an internet-based application to provide short-term delivery or transportation services, (b) connect to clients through this application, and (c) are subject to standards set by the platform.
  - As we saw after the passage of AB5 in California, platforms may still try to misclassify even under a more stringent “ABC” test. While platforms alone cannot block workers from organizing, the threat of litigation over worker classification may have a chilling effect on efforts to organize.
  - This legislation may be adopted in addition to, or as a less ambitious alternative to, a broader labor reclassification scheme.

- **Robust Strike Protections:** Update the NLRA to explicitly protect additional forms of striking more effective in the gig economy, such as intermittent strikes, rolling strikes, and digital sit-ins, like unified driver service request denials while remaining on the app.

- **Prohibit Short Term Fare Increases During Strikes:** Complement protections for collective bargaining with a prohibition on short term fare increases or rewards programs during recognized strike periods intended to attract strikebreakers.

**Enforcement Actions:**
• **Price Fixing Case:** If Uber or another platform continues to misclassify workers or successfully blocks legislation, federal and state antitrust enforcement authorities should be prepared to bring a price fixing case under §1 of the Sherman Act, alleging a “hub-spoke-and-rim” conspiracy.
  
  o Such a case presents a “second-best” option as the likely remedy—greater price competition among drivers—may fail to improve conditions.

*Maintain Competition Among Gig Platforms*

Even with collective bargaining, competition among platforms is critical to maintaining competitive service fees and fares for drivers. As the on demand driving market matures and pressure grows for platforms to turn a profit, regulators must remain vigilant. Any proposed mergers or acquisitions among platform players must be closely scrutinized with an eye to the impact on the market for drivers, not simply consumers. Antitrust authorities also must be prepared to take vigorous action against anticompetitive conduct vis a vis gig workers. This would include practices that restrict multihoming, a practice in which either suppliers or consumers use competing digital platforms interchangeably. For example, a driver might drive for Uber and Lyft, and a consumer might order food from Uber Eats and DoorDash. In the context of the ride sharing industry, multihoming grants drivers the flexibility to meet their desired driving time and wages, which likely fluctuate on an hourly basis. These fluctuations in a drivers’ reservation wages and shifts are significant motivations for multihoming given subtle variations among apps in rider demand and pickup locations. While economic literature suggests that multihoming might yield greater benefits for riders than drivers, firm actions that limit this behavior will have harmful outcomes for drivers’ earnings and flexibility and riders’ choice and convenience. Where antitrust law is unable to provide an effective remedy, policymakers must be prepared with new legislation.

**Enforcement Actions:**

- **Challenge Anti-Competitive Rewards Programs:** Challenge driver reward programs with §2 enforcement action in local markets that threaten multihoming among drivers
  
  o Gig drivers are often dependent on driver rewards programs that effectively tie them to a single platform to make a reasonable income.
  
  o Such programs may be used to hinder competition from other platforms, a potential §2 violation.

- **Monitor Additional Programs:** Along with driver rewards programs, antitrust enforcers should carefully monitor any programs that can lock-in drivers and be prepared to bring §2 claims, such as vehicle leases that require de-facto exclusivity.

- **Robust Merger Review:** Review any proposed mergers or acquisitions in the broader on demand driving market (rideshare, grocery delivery, food delivery, package delivery) to determine impact on labor market for individual service providers (ie. Drivers).
  
  o This is consistent with our proposal for updated horizontal merger guidelines.

**Part IV: Problem: Supply-Side Market Power – Unions/Countervailing Power**

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38 [https://www.nber.org/papers/w23296](https://www.nber.org/papers/w23296)

The overall economy has become heavily tilted against workers. Over the past half century, labor’s share of income has fallen from 65% to 58%, meaning a prompt correction is needed to restore balance. An essential component of ensuring that labor markets work effectively and competitively is to create unions that countervail the power of the employers. Without unions, workers are often left powerless to negotiate with their employers for better wages and working conditions, a situation compounded by the prevailing employment at-will doctrine that enables employers to fire workers without case. Under this structure, workers are often precarious. The following policy solutions aim to aggregate worker power to restore more equal bargaining positions.

**Solutions**

**Enforcement Actions:**
- NLRB
  - Protect the right to collectively bargain:
    - Adopt new rules for holding representation elections virtually
    - Give workers reasonable time to bargain their first contract with their employer following voluntary recognition
  - Expand eligibility for bargaining
    - Narrow the definition of “supervisor” in the NLRA
    - Promulgate a rule establishing that undergraduate and graduate students and student athletes are “employees” within the meaning of the NLRA
    - Allow craft bargaining and minority units for segments of some industries, such as mechanics in the airline industry or in tech (Alphabet)
  - Although the NLRB has not traditionally promulgated many rules, either adjudicate or engage in rulemaking to reverse the following precedents:
    - *Browning-Ferris,* which makes it more difficult for workers to show employers are joint employers
    - *SuperShuttle DFW* and *Velox Express, Inc.*, which make it easier for an employer to misclassify their workers as independent contractors
    - *MV Transportation,* which makes it easier for employers to unilaterally change terms and conditions of employment
    - *Lechmere* and *Bexar,* both of which limit off-duty employees’ ability to organize in public areas of a contractor’s workplace
    - *Kroger Limited,* which limits the ability for union organizers to leaflet
    - *Johnson Controls,* which allows employers to withdraw union recognition without holding an election
    - *PCC Structural Inc,* which reversed *Specialty Healthcare,* holding that workers can establish their own bargaining units

**Executive Actions:**
- Federal contracting requirements
  - Require contractors to pay $15 minimum wage and allow collective bargaining

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- Multi-year federal debarment for employers who illegally oppose unions
- Restore and build on the Fair Pay and Safe Workplaces executive order, choosing contractors based on their compliance with labor and employment laws
- Expand ability to collectively bargain
  - Reverse E.O. 13836, which directs agencies to not bargain over certain topics
  - Reverse E.O. 13837, which limits use of “official time” for collective bargaining

**Legislative Actions:**
- **Federal level:**
  - Expand the ability of workers to collectively bargain
    - End the agricultural and domestic worker exemption in the NLRA
    - Codify California’s ABC test at the federal level
  - Pass the Protect the Right to Organize (PRO) Act
  - Make it easier for workers to join a union
    - Card check (50% of workers sign a card → union)
    - Protect employees attempting to form of join unions from retaliation (see the PRO Act, which creates meaningful penalties for employers and creates a private right of action for employees who have had their right to organize violated)
  - Repeal key provisions of the Taft-Hartley Act, including:
    - Right to work
    - Prohibitions on secondary strikes and boycotts
- Enable sectoral bargaining
- **State level:**
  - Pass laws that enable workers not covered by the NLRA (e.g., agricultural, domestic workers, certain employers now treated as “independent contractors”) to unionize. These workers are disproportionately BIPOC.
    - Enact Domestic Workers Bill of Rights
  - Expand collective bargaining rights for most state and local public employees
  - Mandate safety stewards and sectoral and workplace safety committees
  - Just-cause dismissal standards