

## House Passes Build Back Better Act, Here's What Employers Need to Know as It Goes to Senate

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The U.S. House of Representatives has passed the Build Back Better Act (BBBA) ([H.R. 5376](#)) by a vote of 220–213. Supported by the Biden Administration and congressional Democrats, the controversial bill heads to the Senate for a vote.

House passage of the BBBA comes on the heels of President Joe Biden signing into law [the Infrastructure Investments and Jobs Act \(IIJA\)](#), allocating \$1.2 trillion in investments for various transportation, water, power and energy, environmental remediation, cybersecurity, and broadband initiatives. In comparison, the BBBA proposes \$1.75 trillion in government spending, with an emphasis on social and climate goals. Within the bill's 2,400-plus pages are both opportunities and obligations for employers.

While the BBBA is expected to undergo significant changes during Senate review (and may not pass at all), employers should take note of some key provisions in the House version.

### Universal Paid Family and Medical Leave

As passed by the House, the BBBA provides four weeks of guaranteed government-paid family and medical leave (maximum benefit of approximately \$800 per week). The paid leave would be available to both employed and self-employed workers and, unlike the Family and Medical Leave Act (FMLA), an employee need not be employed for any minimum length of service to be eligible for the leave. The program also applies to all employers, regardless of size.

In addition to paid leave, the BBBA would significantly broaden the current definition of “family member” under the FMLA to include siblings, grandparents, and “any other individual who is related by blood or affinity and whose association with the individual is equivalent of a family relationship.”

### Affordable Care Act Amendments

The BBBA modifies the affordability threshold for employer-sponsored health coverage under the Affordable Care Act for an employer that has at least 50 full-time employees (including full-time equivalent employees). The BBBA lowers the threshold from 9.61 percent for 2022 (the maximum amount of an employee's income that must be paid for individual coverage under the lowest cost employer-sponsored health option) to 8.5 percent (for the 2022–2025 tax years). This change may have a significant impact on companies that employ large numbers of low-wage employees.

### Immigration Reform

Under the BBBA, undocumented individuals could receive provisional grants of work permits under a process known as parole, which allows people to stay in the U.S. for five years with an option to extend for another five years thereafter.

The bill also currently includes long-term work permits and protections for immigrant essential workers.

### National Labor Relations Act

The BBBA proposes to add — for the first time — [civil penalties against an employer who engages in unfair labor practices \(ULPs\), up to six figures per violation in some instances](#). It would also add — for the first time — potential personal liability for company directors and officers for ULPs.

Moreover, the BBBA would effectively ban the following by applying the same civil penalties for engaging in actions that, until now, have been lawful for generations under the National Labor Relations Act (NLRA):

1. Permanent replacement of economic strikers;
2. Employer lockouts;
3. Advising employees (mistakenly) that they are “supervisors” or “independent contractors” and, thus,

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not covered by the NLRA;

4. Mandating employee attendance at employer pre-election campaign events; and
5. Entering or requiring employees to enter agreements not to engage in collective actions ( such as class action litigation).

## Retirement Savings Plans

The BBBA, as passed by the House, prohibits “backdoor” Roth conversions (conversion of employee after-tax contributions to Roth contributions) in qualified plans and individual retirement accounts for all individuals regardless of income level (beginning in 2022).

The bill also eliminates all Roth conversions (including conversions of pre-tax contributions to Roth) for both IRAs and qualified plans for single taxpayers with taxable income over \$400,000 or \$450,000 for married taxpayers filing jointly (beginning in 2032).

In addition, the BBBA adds a yearly reporting requirement for defined contribution plan sponsors on account balances exceeding \$2.5 million and would require certain individuals with aggregate IRA/retirement plan balances that exceed the “applicable dollar amount” (initially, \$10 million) to take required minimum distributions regardless of age. These provisions would go into effect beginning in 2029.

## Wage and Hour

The BBBA would significantly increase civil penalties for violations of the Fair Labor Standards Act. For child labor violations, the penalty would increase to \$132,270; for violations resulting in death or serious injury, \$601,150. Willful or repeated violations of minimum wage or maximum hours would increase to \$20,740. Penalties for tip violations would rise to \$11,620.

## Workplace Safety

The BBBA would increase certain penalties under the Occupational Safety and Health Act. The bill increases penalties for “willful” violations from \$70,000 to \$700,000. The current inflation-corrected penalty is \$136,653.

The current statutory penalty for a “serious” violation is \$7,000, which, adjusted for inflation, is \$13,653. Under the bill, the maximum for a “serious” violation would be increased to \$70,000 per “serious” item.

## Universal Preschool and Child Care Tax Credits

The BBBA as written would expand paid access for “high-quality” preschool of a parent's choice for three-year-old and four-year-old children.

The BBBA would provide tax credits to limit childcare costs to little or nothing for those earning less than \$72,000 a year and perhaps only about \$1,000 a year for families earning up to their state median income. It would also purportedly limit childcare costs to no more than seven percent of income for families earning up to \$300,000 a year. Under the bill as proposed, parents must be working, seeking work, in training, or suffering a serious health issue.

These programs, taken together, would make it more economically feasible for more people to work. The drafters hope these tax credits will help ease the labor shortage many industries are experiencing.

## Major Investment and Incentives for Clean Energy Manufacturing

The BBBA provides support through \$320 billion in tax credits to companies and individuals that manufacture and install solar-powered panels, improve energy efficiency of work environments, and advance residential clean energy transmission and storage, with particular support for solar panels and electric vehicle manufacture, effectively lowering their cost to end-users by 20-30 percent.

Included in this section is the controversial provision providing a consumer tax credit for electric vehicles manufactured at unionized plants.

This legislation would encourage domestic U.S. manufacturing of clean energy technologies, such as wind turbines, through outright grants, loans, and tax credits and is intended to hasten the movement away from fossil fuels.

## Next

The Senate is expected to turn to the legislation soon. However, BBBA is not routine legislation. It is a “reconciliation” bill. Conventional legislation is subject to opposition filibuster in the Senate, which would certainly doom this legislation. Thus, it is styled as a reconciliation bill that, under Senate rules, must be limited only to budgetary issues. A reconciliation bill needs only a simple majority to pass (which is more likely, but not certain). The Senate Parliamentarian will review the proposed legislation and report any sections that do not meet the standard. In addition, the Senate bill will be subject to the usual debate and negotiation of its provisions. Either way, it appears likely there will be changes to the bill before the Senate votes on it.

Jackson Lewis attorneys continue to track federal and state legislation that affect employers. If you have questions about the potential effects of the Build Back Better Act or related issues, contact a Jackson Lewis



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