

EMPLOYER LAW BLOG

CARES Act and Traditional Labor Law

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One of the little discussed provisions of the CARES Act are those added by House Democrats to curry favor with organized labor. The first is that borrowers who obtain loans under the Act must make a good faith certification that they will remain neutral in any union organizing effort for the term of the loan. The effect of this provision is to force neutrality upon borrowers under the CARES Act for the duration of their loans. This means that a borrower commits not to say or do anything to oppose a union's organizing effort. Borrowers should be aware of this requirement which, in effect, abrogates some of their rights under the National Labor Relations Act.

The second provisions favoring organized labor under the CARES Act is even more onerous. That condition for obtaining a loan is that the borrower must certify that it will not abrogate existing collective bargaining agreements for the term of the loan and for two years following repayment. While the implications of this provision will be fleshed out through litigation most likely, questions arise as to what is meant by "abrogation." For example, will this provision prevent borrowers from abrogating their collective bargaining agreements in bankruptcy? What about abrogation of collective bargaining agreements which have been allowed under the law, such as loss of majority support of the union in the bargaining unit? What about business decisions, some of which historically have allowed employers to abrogate collective bargaining agreements?

Borrowers should be aware of these provisions in the CARES Act and develop a strategy to comply with them.