

July 21, 2022

The Protecting America's Meatpacking Workers Act of 2021 (S.B. 3285) would provide comprehensive protections for meatpacking workers, including ensuring that a broad range of workers—beyond meatpacking workers—are not punished or otherwise discouraged from using legally protected time off through abusive attendance policies.¹ *Note: This fact sheet covers only the attendance policy portions of the Act, not the Act's other provisions.*²

Too Many Workers Are Punished or Deterred from Using Time Off Protected Under Existing Federal Laws to Care for Themselves or a Loved One Under Abusive Attendance Policies

- Across the country, at some of our nation's largest retail, manufacturing, and food service companies, **workers are subject to "no fault" attendance policies under which they are assessed "points," or are deducted time from leave banks, for lawfully-protected absences** related to pregnancy, disability, and other medical and caregiving needs—and then subjected to discipline, up to and including termination.³
 - Under our country's existing laws, such as the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), as well as state and local Pregnant Workers Fairness Acts (PWFAs) and other laws, **workers often have a legal right to take time off from work to care for themselves and their loved ones.**⁴
 - Although these laws prohibit employers from penalizing employees for using their legally-protected time off,⁵ the reality on the ground is far different: **Too often, workers subject to "no fault" or other abusive attendance policies are still punished or threatened with punishment for taking time off for a legally protected reason** because of their employer's written policies and practices.⁶
 - In a landmark 2020 report, A Better Balance surveyed 66 U.S. employers' no fault attendance policies, covering 18 million workers across the country.⁷ The report found that **the vast majority of policies reviewed indicate that workers will incur points for missing work due to illness,**
- despite the fact that many of the employers surveyed operate in states and localities with paid sick time laws.⁸ Further, more than 80% of the policies surveyed failed to make clear that employees would not receive points for legally-protected absences under the ADA.⁹ Still other policies provided misleading or incomplete information about workers' rights to time off under the FMLA.¹⁰
- **Such policies mislead and misinform workers about their rights, punishing them for using their legally-protected time off or deterring them from doing so.** On our legal helpline, A Better Balance hears consistently from workers subject to no fault attendance policies who are forced to choose between earning a paycheck and caring for their health or that of a loved one—even when they have a legal right to do both.¹¹
 - **The problem is particularly severe in the meatpacking industry.**¹² According to one poll of Alabama poultry workers, four in five reported that their plants assessed points for any absence, including medical reasons.¹³ Fear of accumulating points causes workers to come to work sick (or injured)—even during a pandemic—increasing the risk to other workers that they too will fall sick.¹⁴
 - **Low-wage workers and workers of color** are most likely to be subject to abusive attendance policies, making this an important racial, gender, and economic justice issue.

The Protecting America's Meatpacking Workers Act of 2021 Will Benefit Working Families and Their Employers

- **The Act enshrines commonsense guidelines** to safeguard workers' rights to time off to care for their own health and for the health of their loved ones.
- **The Act promotes workplace transparency** by ensuring that employees have access to their employers' attendance policies at work and outside of it.
- **The Act fosters workplace fairness** by ensuring that employees have a process through which to report an absence that is for a legally-protected reason, provide medical documentation in support of protected absences, and seek removal of points improperly assessed for legally-protected reasons.
- **The Act benefits employers by helping them become fully compliant with federal, state, and local laws already on the books.** For example, the Act requires the Secretary of Labor to create a sample no fault attendance policy that employers may opt to use, thereby **decreasing employers' litigation exposure.**
- The Act ensures that employees know, and feel empowered to access, their rights to legally-protected time off, decreasing the pressure on workers to show up to work sick—to the benefit of companies' customers, clients, the broader public, and the health of the employer's workforce.¹⁵

For more information, contact Dina Bakst at dbakst@abetterbalance.org and Sarah Brafman at sbrafman@abetterbalance.org or visit <https://www.abetterbalance.org/our-issues/abusive-attendance-policies/>.

¹ *Protecting America's Meatpacking Workers Act of 2021*, S.B. 3285, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/3285>.

² For information about the Act's other provisions, see Press Release, Sen. Cory Booker, As Thanksgiving Approaches, Booker, Khanna Announce Legislation to Protect Meatpacking Workers (Nov. 23, 2021), <https://www.booker.senate.gov/news/press/as-thanksgiving-approaches-booker-khanna-announce-legislation-to-protect-meatpacking-workers>.

³ DINA BAKST, ELIZABETH GEDMARK & CHRISTINE DINAN, A BETTER BALANCE, MISLED & MISINFORMED: HOW SOME U.S. EMPLOYERS USE "NO FAULT" ATTENDANCE POLICIES TO TRAMPLE ON WORKERS' RIGHTS (AND GET AWAY WITH IT) 1 (June 2020), https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf.

⁴ For instance, the FMLA provides eligible employees the right to take up to 12 weeks of unpaid, job-protected leave for certain purposes, such as childbirth and bonding with a new child, and caring for one's own or a family member's serious health condition. See 29 C.F.R. § 825.113-121. Likewise, employees with disabilities are entitled to unpaid, job-protected leave under the ADA, as long as such an accommodation can be made without undue hardship to the employer. See 42 U.S.C. § 12112(b)(5)(A).

⁵ See, e.g., 29 C.F.R. § 8225.220(c).

⁶ MISLED & MISINFORMED at 4.

⁷ MISLED & MISINFORMED at 6.

⁸ MISLED & MISINFORMED at 2.

⁹ MISLED & MISINFORMED at 2.

¹⁰ MISLED & MISINFORMED at 2.

¹¹ MISLED & MISINFORMED at 14, 30, 33.

¹² See MISLED & MISINFORMED at 26-27.

¹³ OXFAM AMERICA, LIVES ON THE LINE: THE HUMAN COST OF CHEAP CHICKENS 35 (2015).

¹⁴ MISLED & MISINFORMED at 27.

¹⁵ MISLED & MISINFORMED at 22.