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LEGISLATIVE ALERT!

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Dear Senator:

The AFL-CIO urges you to support and co-sponsor the Re-Empowerment of Skilled and Professional Employees and Construction Tradesworkers (RESPECT) Act (S. 2168), which will protect the collective bargaining rights of workers in a wide range of occupations—from nursing to the building trades to manufacturing.

The RESPECT Act would restore the original intent of Congress that employees with only minor supervisory duties should not be considered “supervisors” under the National Labor Relations Act (NLRA). “Supervisors” do not have protection under the NLRA to form and join unions, and can be legally fired for union activity.

In *Oakwood Healthcare, Inc.* (September 2006) and two other cases – the National Labor Relations Board (NLRB) radically broadened its interpretation of the term “supervisor” to include employees with only minor supervisory duties.

Specifically, the NLRB broadened its interpretation of two terms found in the NLRA definition of “supervisor”: authority to “assign” other employees and authority “responsibly to direct” other employees. The NLRB interpreted “assign” to include assigning a patient to a nurse for a single shift, or assigning another employee the task of restocking shelves. It interpreted “responsible direction” to include “ad hoc instructions to perform discrete tasks,” such as changing a catheter. The NLRB also ruled that employees can be considered supervisors if they have supervisory authority for as little as 10-15 percent of their time on a regular basis.

The dissent in *Oakwood* concludes that the majority opinion “threatens to exclude almost all hospital nurses—as well as countless professionals and others who oversee less-skilled co-workers—from the protection of the Act...Indeed, it is difficult to see who would be left in the category of minor supervisory employees that Congress clearly intended to protect.”

The *Oakwood* decisions have had a detrimental and far-reaching impact in health care and other occupations where professionals routinely assign tasks and provide direction to other employees; in the building and construction trades, where working foremen are common; and in manufacturing, where many employers have implemented “team leader” organizational structures.

This is not what Congress intended. The legislative history is quite clear that Congress did not intend to deny federal labor law protection to “minor supervisory employees,” nurses, professionals generally, or skilled workers such as craft employees.

A legislative solution is urgently needed. Even the majority opinion in *Oakwood* advises that if the decision “should lead to consequences that some would deem undesirable, the effective remedy lies with Congress.”

The RESPECT Act would make two minor modifications to the NLRA: it would (1) delete the words “assign” and “responsibly to direct” from the NLRA definition of “supervisor”; and (2) define “supervisor” to be an employee who has supervisory authority for at least 50 percent of his or her work time.

Both of these changes are necessary to avoid unnecessary litigation by providing a clear definition of “supervisor.” The NLRB’s unsuccessful efforts to reconcile the inherently ambiguous terms “assign” and “responsibly to direct” with the clear intent of Congress not to exclude “minor supervisory employees” from federal labor law protection have already led to decades of litigation.

With these two minor modifications to the NLRA, supervisors with substantial authority to affect employees’ terms and conditions of employment – such as authority to reward or discipline employees, or even authority to effectively recommend such reward or discipline – would still be excluded from federal labor law protection.

The RESPECT Act would thus respect the original intent of Congress by distinguishing between “minor supervisory employees,” whom Congress clearly intended to protect, and “supervisors vested with genuine management prerogatives,” who are the individuals Congress intended to exclude from federal labor law protection.

For all these reasons, we urge you to support and co-sponsor the RESPECT Act by contacting Meg Benner with Sen. Blumenthal at 202-224-2823.

Sincerely,



William Samuel, Director
GOVERNMENT AFFAIRS DEPARTMENT