

AB 2183 & AB 113

“Card Check” Legislation

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AB 2183 (2022) / AB 113 (2023) “Card Check” Legislation

“Old” Law (Prior to 1/1/23)	“New” Law: AB 2183 (Effective 1/1/23)	Resulting Law: AB 113 (“The Promise”) (Effective 5/15/23)
In-person voting required	In-person voting is an alternative	In-person voting is an alternative (expires 1/1/28)
No labor peace election requirement	<p>Labor peace (mail balloting) election (expires 1/1/28)</p> <ul style="list-style-type: none">• Employer must choose this method; choice is automatically renewed each year until revoked.• Employer agrees to Access.• No employer captive audience meetings.• No disparagement of union.• No statements for or against union at time of hire/rehire or after any filed notice that organizing has begun.• Mail balloting alternative (“Voting Kit”).• Union requesting Voting Kits must have filed LM-2s the previous two years (no “new” unions formed by bargaining unit employees).• Voting Kit ballots are good for 180 days.• Petition for mail balloting election must be supported by a majority of the employees working during the payroll period preceding the filing of the petition.• If petition is supported by a majority and the Board determines all other requirements (half-peak, no existing CBA, etc.), then Board mails voting kits to all eligible employees excluding those employees who already submitted mail ballots and tallies ballots.• Any adverse employment action (discipline, suspension, demotion, discharge, etc.) taken during a mail ballot campaign is presumed to be retaliatory unless employer proves by “clear, convincing, and overwhelming evidence” that the action would have been taken anyway.• Objections to certification do not delay 90-day waiting period to trigger MMC provisions.	Labor peace (mail balloting) election provisions are repealed.

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No non-labor peace election (card check) provisions	<p>Non-labor peace (card check) election (expires 1/1/28)</p> <ul style="list-style-type: none"> • Union submits petition with proof of majority support (authorization cards, signature petitions, etc.). • Employer must provide list of current employees (with street addresses) and other information requested by Board to compare with employee names included within evidence of majority support submitted by union. • If Board determines within five days there is proof of majority support of union, then union is certified as the bargaining representative. If not, union is given another 30 days to provide proof of majority support. • Only unions that have filed LM-2s the previous two years (no “new” unions formed by bargaining unit employees) can petition for a non-labor peace election. • Any adverse employment action (discipline, suspension, demotion, discharge, etc.) taken during a card check campaign is presumed to be retaliatory unless employer proves by “clear, convincing, and overwhelming evidence” that the action would have been taken anyway. • Objections to certification do not delay 90-day waiting period to trigger MMC provisions. 	<p>Non-labor peace (card check) election provisions are repealed.</p> <p>Note: The “non-labor peace election” has been replaced by the Majority Support Petition, which is the same thing as the non-labor peace election, but with a different name. See discussion below.</p>
No “Majority Support Petition” (Card Check) provisions	No “Majority Support Petition” (Card Check) provisions	<p>Majority Support Petition (Card Check) election is now an alternative to in-person secret ballot election.</p> <p>Majority Support Petition election provisions expire 1/1/28.</p> <p>Majority Support Petition election provisions are the same as the “non-labor peace (card check) election provisions. However, there is a “cap” of 75 card check certifications allowed from May 15, 2023, to January 1, 2028.</p>

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“Old” Law (Prior to 1/1/23)	“New” Law: AB 2183 (Effective 1/1/23)	Resulting Law: AB 113 (“The Promise”) (Effective 5/15/23)
No economic strikers eligibility to vote provisions	No economic strikers eligibility to vote provisions	Economic strikers eligibility to vote provisions (expires 1/1/28) <ul style="list-style-type: none"> • Economic strikers are eligible to vote or have their support submitted (authorizations cards, etc.) <i>if</i> striker has not been permanently replaced for more than 12 months. • Board may adopt additional eligibility rules for elections (in-person or card check) conducted during a labor dispute within 18 months of the effective date (May 15, 2023) of these provisions. • No eligibility for strikers who have not performed work for 36 months.
No penalties for unfair labor practices (ULPs)	Penalties for ULPs (does not expire) <ul style="list-style-type: none"> • Up to \$10,000 for each violation, in addition to any other remedy (backpay, etc.) • Double the penalty (up to \$25,000) for violations involving discrimination or retaliation in violation of the Act. 	No change from AB 2183 ; penalties were not repealed and still apply.
No appeal bond requirement for ULPs	Appeal bond for ULPs (does not expire) <ul style="list-style-type: none"> • Employer that seeks appellate court review of a Board decision involving monetary remedies (backpay, etc.) must file a bond for the entire amount of the remedy. 	No change from AB 2183 ; appellate bond requirement was not repealed and still applies.
No appeal bond amount provisions	No appeal bond amount provisions	Appeal bond amount (does not expire) <ul style="list-style-type: none"> • If a Board decision involves a monetary remedy for a ULP, then the Board will immediately conduct further proceedings to determine how much the monetary remedies will be. • The Board decision will not be final until the amount is determined. • MMC: Mediator’s Report shall include a statement setting forth the entire economic value of the recommended collective bargaining agreement (by stipulation or determination by the Mediator). Any party seeking appellate review of a Board decision involving an MMC collective bargaining agreement shall post a bond for the entire economic value.