

# BUSINESS INSIDER

## **Bernie Sanders plan to reshape employment includes an under-the-radar idea that would be a huge win for American workers**

Bryce Covert

January 31, 2020

In most parts of the country, if you aren't lucky enough to be part of a union that negotiated protections or in such demand that you can secure them in your own contract, you can be fired from your job at pretty much anytime and for virtually any reason, other than outright discrimination or for exercising your labor rights. This is what's known as "at will" employment.

It would be more accurately called "at your employer's will." Your boss doesn't have to have a good excuse. If your boss doesn't like what you post online or how you wear your hair, for example, he or she can tell you to pack up your things and leave.

At-will employment gives a significant upper hand to the country's employers. But Democratic presidential candidate Sen. Bernie Sanders wants to change that dynamic.

As part of a plan focused on workers' and labor rights, Sanders called for a national law mandating that employers can only fire employees for "just cause"—or in other words, only for good reason.

American employers hold a lot of power over today's workers. While Sanders's idea wouldn't completely balance the scales, it would give the workers' side a little more weight: the reassurance that if they perform their jobs adequately, they can't just be fired arbitrarily.

### **Trying to rebalance the scales of power**

Behemoth corporations hold a lot of sway in today's economy. Virtually every industry has been concentrating since the late 1990s, which has given companies monopsony power and left workers with fewer employment options..

As the pool of companies dwindles, workers have little choice but to settle for the terms and conditions offered by the biggest employers. So those employers can keep pay and benefits low.

In the most concentrated sectors, wages have been suppressed. Concentration has also meant that there are between 5% to 18% fewer jobs than there otherwise would be.

This could be one explanation for why, even in today's hot labor market that's driven unemployment consistently below 4%, wage increases are still lagging well behind past economic expansions and have struggled to keep up with inflation. Despite some marginal gains,

employers have also been slow to increase benefits like retirement or time off. A quarter of workers can't even have a say over their own schedules.

At the same time, unions, the biggest source of workers' balancing power, have been dwindling. As of 2018 just 10.5% of the workforce was in a union, compared to over 20% in the early 1980s. Plenty of evidence has found that strong unions help keep income inequality at bay and ensure that the spoils of economic growth get shared with the workers who generate it.

The guarantee that workers can't be fired for any arbitrary reason wouldn't shield them from all of the headwinds they face. But it would offer a bit of respite.

Under Sanders' plan, workers wouldn't be at the mercy of employers' whims and could rest assured that as long as they perform their jobs adequately, they can expect to continue receiving a paycheck.

### **Protecting workers**

Critics of this idea argue that if employers have to come up with a justified reason for firing their employees, they'll be afraid to hire anyone at all, particularly more marginalized or less skilled ones, because then they might be stuck with them.

"Security isn't free," the Cato Institute's Ryan Bourne recently wrote. "Making it costlier or riskier to fire people also makes it riskier to hire them."

But every just cause requirement that ensures employers have to have good reason to fire workers also includes stipulations that they can still be fired for "personal" reasons—bad job performance as well as something like harassment or discrimination—as well as "economic" grounds like mergers or mass layoffs.

It doesn't mean firms can't fire anyone, but that they have to have a justification for it. Most just cause requirements also exempt new hires on a probationary period. Companies can still take a risk on someone and find out that it doesn't work.

It's on employers, then, to be clear about what a good job done means and make sure to hire the right person to get it done. They should only fear a just cause requirement if they're unable to properly hire and manage people.

Some studies have found that states that go further than baseline federal law to protect workers from unfair firings have sometimes seen a reduction in employment or business growth.

These same studies, it should be noted, find that some protections — such as for employees who are merely complying with public policies or good faith protections meant to shield workers from being fired for satisfactorily performing their duties — have no employment effects, while wrongful discharge protections have been followed by "strong employment growth."

And Montana, the one state that has banned at-will employment, currently enjoys a lower unemployment rate than the national average.

But the beauty of a national standard is its uniformity — all businesses across the country will face the same playing field. Companies need employees. They'll still have to hire people to get the work done. This will just be the new standard under which they do it — a standard other

countries, such as Denmark, Finland, Norway, and Sweden, have instituted without decimating employment.

There are other ways Sanders could consider protecting workers from unfairly losing their jobs.

A national Pregnant Workers Fairness Act, which would require employers to work with pregnant employees to accommodate their needs rather than dismiss them, would offer assurance to people who are still regularly fired or forced out.

A national requirement that employers pay employees severance in the case of layoffs, as in a groundbreaking New Jersey bill, could make it less attractive to cut costs by simply firing people.

Losing your job is no joke. A paycheck is a lifeline. So are workplace benefits like healthcare. The ability to fire someone shouldn't be taken lightly, nor should it be something that can be done on a whim. Eliminating at-will employment is one way to give hardworking employees more protection and power.