EFCA REINTRODUCED IN CONGRESS

The Employee Free Choice Act ("EFCA") was introduced March 10, 2009, in the 111th Congress by Rep. George Miller (D-Calif.) and Senator Tom Harkin (D-Iowa). The bill has 223 co-sponsors in the House of Representatives ("House") and 40 in the Senate.

The bill's reintroduction came on the heels of the Senate Health, Education, Labor and Pensions Committee's first hearing on EFCA the morning of March 10. Both sides have been lobbying passionately. For the reintroduction of the bill, the U.S. Chamber of Commerce brought roughly 150 executives from small businesses and Chambers of Commerce to Washington, D.C. Similarly, labor officials brought in roughly 300 workers.

The text of EFCA is identical to last year's bill. In the last Congress, EFCA passed the House easily but only gained 51 votes in the Senate (60 votes were needed to vote for cloture). Now, Democrats hold 58 seats in the Senate (the number could increase to 59 if Al Franken is declared the winner in the still pending Minnesota race). However, it is still unclear whether all Democrats will support the bill. In the last Congress, only one Republican Senator, Sen. Arlen Specter (R-Pa.), supported EFCA. The bill is likely to start in the Senate.

If it passes, President Barack Obama is expected to sign the bill. Just last week in a speech to the AFL-CIO Executive Council, Vice President Joe Biden said about EFCA, "We just want to level this playing field again."

Employers of all sizes need to have their voices heard regarding the impact this bill will have on businesses across the country.

Provisions of EFCA

1. Right to Secret Ballot Election Taken Away

Under the EFCA, which would amend the National Labor Relations Act, workers will lose their fundamental right to a secret ballot election. Once organizers collect valid union authorization cards from a majority of employees, the union would be certified by the National Labor Relations Board to represent the workers. This leaves employers vulnerable since union organizers could collect enough cards before the employer learns that a movement is afoot!

Such an approach deprives workers from hearing both sides of the debate - the benefits and drawbacks of union representation. Additionally, without a secret ballot election workers would be stripped of their privacy by exposing their preferences for or against the union. This leaves workers at risk of being harassed or coerced.

2. Binding Arbitration on First Contracts

Furthermore, under the EFCA if the employer and union cannot agree to terms on a first contract within 90 days from the start of bargaining, either party has the right to refer the dispute to the Federal Mediation and Conciliation Service for mediation. Thirty days later, if an agreement is not reached through mediation, the contract dispute is then referred to binding arbitration. This would put the issue of wages and working conditions in the hands of unaccountable arbitrators who, unlike the employer and workers, do not have to live with the consequences of their decision.

3. Increased Penalties for Employers

Finally, the EFCA increases penalties on employers, but not unions, that engage in unfair labor practices during a union's organizing drive.

If you have immediate questions about the Employee Free Choice Act, you may contact one of the members of Thompson Coburn LLP's Labor and Employment Group listed below:

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