

August 2008

Employee Free Choice Act Awaits Presidential Election

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There is a good chance that the Employee Free Choice Act (EFCA) may come back to life in January 2009. The Act, as passed by the United States House of Representatives in March of last year, would dramatically change how unions can organize and provide unions with tremendous leverage over employers.

The EFCA involves three major changes in labor laws that impact employers:

1. Certification of a group of employees on the basis of a majority sign up. This “card-check” process would replace the current secret ballot elections that allow both the unions and employers to engage in a robust campaign for their prospective sides prior to the vote. The elections are currently conducted by the NLRB. Under this proposed bill, employers fear that unions can persuade their employees with empty promises without the employers having a chance for rebuttal. Under the EFCA, employers may never learn that there is an effort to unionize their business until the union knocks on the front door with 51% of the employees’ support.

2. A fast track to obtaining a contract. If the parties are unable to reach a negotiated agreement within 90 days, either party may refer the matter for mediation. If mediation fails after 30 days, the topics in dispute will proceed to binding arbitration. Here, the arbitrator will have the final say and the contract will be binding for two years on the parties. The fast track to contract eliminates meaningful collective bargaining negotiations that can allow time for the parties to reach agreeable terms without forced arbitrary deadlines.

3. Enhanced penalties for employers who interfere with employees attempting to unionize or negotiate a first contract. Civil fines up to \$20,000 are proposed, as well as three times back pay for employees terminated while exercising their rights under this Act.

The EFCA, if enacted, will generate enormous union membership dues when unions obtain a majority of signatures without a secret ballot vote at employers’ work sites. Industries should be wary of this legislation and take proactive measures before it is too late. Action is needed now.

Employers should conduct self-audits to insure that their current salaries match the market place. An underpaid workforce is more susceptible to unionizing efforts for better wages. All Human Resources policies on the drawing board should be finalized. Employers are free to educate employees now about the high costs of unions and why management can more efficiently deliver better terms and conditions of employment without the expense of negotiating with a union. Open the lines of communication and find out what concerns employees. Employers may find that many of those concerns may be non-monetary and, if addressed in a timely manner, there will not be a burning desire to unionize with or without the passage of the EFCA. The key is to be prepared.

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