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Alert



The Employee Free Choice Act Are you ready for the Obama Labor Board?

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When President-elect Barack Obama takes office in January, he has pledged to sign the Employee Free Choice Act (EFCA). The bill, now before Congress, would dramatically alter the way that union elections are decided. According to William H. Fairchild, the national chair of the construction industry trade group Associated Builders and Contractors, Inc., this change would be catastrophic for the construction industry. If you don't yet know what he is talking about, you should because it may dramatically alter the way your construction company operates.

Currently, only a small fraction of construction companies, 15 percent, are union shops, according to Fairchild. This number could be dramatically altered when the EFCA becomes law. The National Labor Relations Board (NLRB) is the federal agency that enforces the National Labor Relations Act. Members of the NLRB are appointed by the president. Because President Bush has been unable to get new members appointed by the senate, when President-elect Obama takes office, he will be able to install a majority of the board members which will likely be confirmed by the Democrat-controlled senate.

Historically, organized labor has won between 50 to 55 percent of the elections conducted by secret ballot under the supervision of the NLRB. The decrease in organized labor's membership is based on the transition of the U.S. economy from a manufacturing to a service-based economy. Many industries formerly boasting significant union market share have closed, moved overseas or become more automated. It has become much more difficult for unions to even get an election.

The EFCA would change that. It will permit unions to bypass the NLRB's secret ballot election machinery and obtain bargaining rights on behalf of employees through an authorization check card procedure. During an organizing campaign, employees are asked to sign authorization cards specifying the union as their bargaining representative. This happens away from the workplace without the employer's knowledge if the union can manage it. Under current law, these cards are submitted to NLRB as a "showing of interest," which if it exceeds 30 percent, triggers the NLRB machinery. Under EFCA, if it exceeds 50 percent, the union will have the right to demand certification by NLRB.

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The employer will lose the opportunity to explain its message to employees, a practice that organized labor contends results in coercion and unfair tactics to undermine an employee's choice. Yet employers know that authorization cards are an unreliable gauge of employee interest since many employees do not understand how collective bargaining works or that the opportunity the union has to improve wages and benefits in the workplace is often limited.

EFCA Poses Significant Changes to Existing Law:

- Enhanced penalties for violations including triple back-pay for unlawful discharges and fines up to \$20,000 for speech violations;
- Priority investigation and application of penalties; and
- Mandatory first contract mediation, and arbitration (to impose a two-year agreement) if the parties are unable to agree among themselves.

What Should You Do Now?

- Educate your workforce on the advantages of a union-free workplace;
- Improve communication between management and employees;
- Allay concerns about the economy's impact on job security if possible; and
- Train supervisors to treat employees with respect and to respond quickly and fairly to complaints.

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