



## **Labor Unions Flex Political Muscle**

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American labor relations are set to undergo dramatic changes if Congress enacts the Employee Free Choice Act (H.R. 1409). EFCA would amend the National Labor Relations Act (NLRA) to make it significantly easier for workers to form labor unions. Employers should begin to prepare now for EFCA's likely passage and the major impact it will have on the American workplace. The legislation contains three core components which will fundamentally alter the labor relationship.

The first component, "card check," effectively eliminates the secret ballot election. Instead, a union will be certified when a majority of employees signs authorization cards designating the union as their exclusive bargaining representative. This is a major departure from the current law, which recognizes a union only after a majority of employees votes in favor of the union at a federally supervised election. Employers currently are permitted to actively campaign against the union during the time leading up to the election. Under EFCA, employers lose their ability to participate in the electoral process.

The second major component of EFCA is binding arbitration. Under current law, there is no requirement that a collective bargaining agreement (CBA) actually be reached. In fact, it is not uncommon for a union to win an election but ultimately fail to secure a CBA, meaning that the union effectively has no power. EFCA eliminates this possibility by referring stalled contract negotiations to binding arbitration. If the parties cannot reach an agreement on their own, the arbitrator decides the terms of the CBA for them. The decision of the arbitrator cannot be appealed and is binding for two years.

Third, EFCA mandates harsh penalties for employers who violate NLRA rules and regulations. Penalties for violations currently are limited to equitable remedies such as back pay and reinstatement. Because there are no monetary penalties, some employers have intentionally violated the NLRA, as the benefits of doing so can outweigh the costs. EFCA is designed to end these practices by providing for civil fines of up to \$20,000 per violation when an employer is found to have willfully violated employee rights during an organizing campaign or while a contract is being negotiated. It also provides for triple damages when an employee is discharged or discriminated against for supporting a union.

It is obvious that EFCA will substantially increase the power and influence of American labor unions. Many observers believe that Congress will likely pass the legislation sometime this year. As that political battle unfolds, employers should take immediate steps to ensure that everything is being done to counter a union campaign. Specific strategies can and should be employed, and they all boil down to one overarching concept: maintain good employee relations.