

Client Briefing

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On Employment & Labor Law

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THE "EMPLOYEE FREE CHOICE ACT" COULD REVOLUTIONIZE UNION ORGANIZING CAMPAIGNS

Current Union Formation Process

Under the National Labor Relations Act ("NLRA"), employees are currently able to form or join a union in two ways: (1) private ballot election administered by the National Labor Relations Board ("the Board"), or (2) submission of signed authorization cards to the Board from a majority of employees. The latter process is known as "card-check" and is similar to signing a petition in favor of a union. Currently, employees and employers usually agree to the first method - to hold a private ballot election.

Proposed Legislation

Under the Employee Free Choice Act ("EFCA"), the most significant proposed labor legislation in over fifty (50) years, the NLRA would be amended to change the way workers choose to become part of a union as well as to increase penalties for unfair labor practices.

- The most significant feature of the EFCA is that it would effectively eliminate the secret ballot election by requiring the Board to certify any union that secures a simple majority of signatures through the card-check process.
- The EFCA also requires companies and newly certified unions to enter binding arbitration if they cannot reach agreement on an initial contract after 90 days of negotiations. Neither companies nor employees could ap-

peal the arbitrator's ruling, and the contract would last for two years.

- Finally, the EFCA also increases penalties imposed on employers for NLRA violations while employees are attempting to organize a union including mandatory applications for injunctions, treble back pay and civil fines of up to \$20,000 per willful or repeated violations.

Impact On The Workplace

The EFCA is an unabashedly pro-union bill. If the EFCA becomes law, employees would lose their right to a Federal government-administered, private ballot election. Additionally, since unions typically do not announce their card-signing activities, many employers are unaware of such union organizing efforts until after the fact. Moreover, since the bill would make an employee's position on a union visible to both their co-workers and employer, it could make the workplace more hostile and conflict-filled.

Status Of The Act

On March 1, 2007, the House of Representatives in the newly Democrat-controlled Congress passed the Employee Free Choice Act by a vote of 241-185. The Senate will consider the bill soon. Passage of the EFCA is a priority for the Change to Win and AFL-CIO unions as well as others and these unions are mounting vigorous campaigns in support of the bill's passage.

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