

Employee Free Choice Act Re-introduced in Congress

Organized Labor is Fighting for Labor Law Reform. The union-backed and highly controversial Employee Free Choice Act (EFCA) was re-introduced in Congress on March 10, 2009.

EFCA is the so-called "card check" legislation that would eliminate secret ballot elections for workers in determining workplace unionization.

Some version of labor law reform is likely this year, though it now appears EFCA will probably not pass in its current form. Still, in the current culture and economic climate, workers may be thinking more about unions today than at any time in recent memory.

Wise employers will prepare now for increased union interest among workers, organizing activity by unions, and key legislative changes by Congress.

EFCA would amend the federal National Labor Relations Act in three primary ways:

- 1. Card Check Recognition Without Secret Balloting.** First, EFCA would eliminate an employer's right to a secret ballot election, requiring the employer to accept unionization of its workforce based on a "card check," that is, upon being presented with union "authorization" cards signed by a majority of its employees.
- 2. Union Contract Creation by Arbitration.** Second, EFCA would provide for mandatory arbitration in which an arbitrator would actually decide the terms and conditions of a first union contract for a newly organized employer.
- 3. New Damages and Penalties Against Employers.** Finally, EFCA would multiply the damages available against an employer and create, for the first time, substantial penalties for labor law violations during an initial organizing period.

Develop an Action Plan to Prevent Unionization. Employers wishing to remain union-free in today's environment should consider actions that make sense right now, regardless of the ultimate shape labor law reform may take. Following are a few examples of the many possibilities for such action steps.

- **Audit for Employee Satisfaction, Ensure that Communication Lines are Open and that Managers are Responsive to Employees Issues, and Train Managers and Supervisors on Labor Law** Dissatisfied employees and festering employment issues are fertile ground for union organizers. Reasonable preventive action includes conducting an objective audit to test for worker unrest, levels of trust in management, and a sense that management is open to worker concerns. Training of managers on the nuances of labor law is critical.
- **Review Employment Policies and Practices.** Certain policies, enacted before union organizing occurs, can help prevent unionization activity or provide useful tools in the event organizing begins. Examples of policies employers should consider include: i) a policy on visitors in the workplace and ii) an e-mail policy covering personal and other uses of business e-mail.
- **Carefully Consider How and When to Communicate with Employees about Union Cards and More.** Because of the significance of card-signing under the current law, and its potentially greatly increased significance under EFCA, employers must educate employees on the meaning and potential effects of signing a union card. Employers may also want to consider the most opportune time to communicate with employees about the employer's position on unionization.



MARK MATHISON
Principal
Gray Plant Mooty
mark.mathison@gpmlaw.com
<http://www.gpmlaw.com>