



ORGANIZED LABOR'S TOP FEDERAL LEGISLATIVE PRIORITY WILL DRASTICALLY AFFECT THE WORKPLACE

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The “Employee Free Choice Act” and How it Will Affect You . . .

The “Employee Free Choice Act” (EFCA), or “card-check” legislation as it is commonly known, makes sweeping changes to the federal National Labor Relations Act (NLRA) and increases the chances for businesses to be unionized. Certain members of Congress have been working with organized labor to get this legislation passed, and it could become law in 2009 if the bill is signed by the new President. It is critical that, as an employer or employee, you become aware of how this bill will significantly affect your workplace should it become law.

How Current Law Works. . .

The federal National Labor Relations Act (NLRA) currently provides that, if a labor organization seeks a collective bargaining agreement with a business, then signatures must be obtained from at least 30 percent of the workers. If the signature requirement is met, a supervised secret ballot election is then held by the National Labor Relations Board (NLRB), and a majority of the vote is required in order for a union to be certified by the NLRB. Right now, employees can vote by secret ballot process if they want their workplace unionized--a process that guarantees their privacy. Current law also protects workers from coercion, intimidation or harassment when they decide whether or not to join a union.

Why EFCA will be Harmful for Employers and Workers . . .

The Employee Free Choice Act as proposed would significantly change current federal law, and nullify workers’ NLRA protections that are necessary when they decide whether to support or oppose unionization. There are three provisions in the legislation that I’ve outlined below that dramatically alter the NLRA to favor organized labor and increase the potential for unionization:

1. Card-Check Authorization



This provision requires the NLRB to certify a union representative if a simple majority of employees have signed card authorizations. CACI sees three major objections to this provision:

- It takes away a workers' right to a secret ballot election and forces them to publicly decide whether or not to join a union;
- It increases the potential for intimidation, coercion and harassment of workers by allowing unions the opportunity to "persuade" a simple majority of workers to join their organization; and
- By removing the secret ballot election, workers will not have the option to independently decide whether or not to join a union, which is a critical decision that is currently allowed in the private voting booth.

2. Mandatory mediation and binding arbitration

This provision mandates mediation within 90 days if a bargaining agreement is not reached and mandates binding arbitration if an agreement is not reached within 30 days. The arbitration decision would be binding for two years. Again, CACI has three objections to this provision:

- It requires employers to negotiate critical terms of a union contract in a very limited time;
- It forces binding arbitration if an agreement is not reached, and the parties are stuck with a contract that cannot be changed for 2 years; and
- It is silent on the arbitration process and lends itself to inconsistent decisions by arbitrators.

3. Enhanced penalties and expanded grounds for injunctions

This provision enhances the penalties for unfair labor practices committed by an employer during a union campaign, and mandates injunctive relief. Concerning this provision, CACI's objection is the following:

- This provision creates unfair and excessive penalties against an employer by awarding treble damages (three times back pay), and civil penalties up to \$20,000 in favor of an employee. The bill does not apply the same increase in penalties, however, against unions if unfair labor practices have been committed by a union against a business or worker.

How You Can Protect Yourself . . .

Employers should take steps now to protect their companies from the potential negative effect of this legislation. These steps can include identifying and pursuing a strategy that helps provide a better workplace while remaining union-free. On the CACI Web site,



we've provided a resource paper written by CACI-member Littler Mendelson that outlines steps for employers that are concerned with the potential impact of the EFCA bill and that wish to protect themselves from unionization. For more information about Littler Mendelson, a national employment and labor law firm, please visit the firm's Web site:

<http://www.littler.com/Pages/Home.aspx>

What You Can Do To Fight This Legislation . . .

Because the EFCA legislation could become law in 2009, you should now contact the Colorado Congressional delegation. Please contact your member of the U.S. House of Representatives and Colorado's two U.S. Senators through correspondence, phone calls or office meetings and urge them to oppose this legislation. Congressional contact information is available from the Colorado Prosperity Project at:

www.coloradoprosperty.org.

The Colorado Prosperity Project is a collaborative effort between CACI and the Business Industry Political Action Committee (BIPAC):

www.BIPAC.org

Finally, additional information can be found on the Web sites of the U.S. Chamber of Commerce and the National Association of Manufacturers; CACI is affiliated with both national organizations:

<http://www.uschamber.com/issues/index/labor/nlra.htm>

http://www.nam.org/PolicyIssueInformation/HumanResourcesPolicy/EmploymentandLabor/EFCA/CardCheckManufact_ReDirect.aspx