



Labor and Employment *ALERT*

Current Law Developments and Legal Issues

That May Affect You Or Your Business

Lafayette Shreveport

March 11, 2009

[Employee Free Choice Act \(EFCA\) Reintroduced in Congress](#)

Yesterday, March 10, 2009, the controversial pro-union legislation known as the Employee Free Choice Act (EFCA), which passed the House in 2007, was reintroduced in both the House and Senate of the U.S Congress as H.R. 1409 and S. 560. The law, also known as the “card-check” bill, would radically change the way unions organize nonunion companies in America, and would also radically change the process of collective bargaining in a first contract situation. It would also increase the penalties for employers who violate the National Labor Relations Act (NLRA).

Under current law, in order to organize a nonunion company, unions must capture supportive signatures from at least 30% of employees in an appropriate unit, which gives the union the right to call for a secret ballot election amongst all employees in the unit, which election is supervised by the National Labor Relations Board (NLRB). EFCA would remove the need for an election if the union is successful in procuring signatures from a majority of employees in the unit, even if the remaining employees knew nothing about the union’s efforts. Procurement of a majority of signatures would result in immediate certification of the union by the NLRB.

EFCA would also drastically change the collective bargaining process for newly organized employers. Under current law, if a union is successful in winning a NLRB election, the parties must bargain in good faith for at least one year in an effort to reach an agreement, with no provision for government mandated terms and conditions. EFCA would require the parties to reach an agreement within 90 days, or be forced to mediate and then arbitrate about what should be in the initial contract. Absent agreement, the arbitrator would be given the power to ultimately impose a final contract on the employer and employees for at least two years.

Finally, EFCA would greatly increase employer sanctions for violating the NLRA during a union organizing drive or before a first contract is reached. Triple back pay for terminated employees and fines of up to \$20,000 for willful or repeat violations would be available. Federal court injunctive relief against employers would also be easier for the NLRB to procure.

All nonunion employers who wish to remain that way should take an active

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interest in defeating this legislation, since passage is guaranteed to increase unionization in United States, including in right to work states like Louisiana and Texas. A recent study predicts that the increased cost that unionization would bring to business as a result of EFCA would result in job losses of 600,000.

The battle on EFCA in 2009 will be in the Senate. In 2007, EFCA easily passed the House, and is expected to do so again. In 2007, a Senate vote on EFCA never took place since it failed to get a cloture vote (a vote to stop debate and take a vote on legislation) by nine votes. With the increased number of Democrats in the Senate, it will be a very tight vote on whether to invoke cloture this time around. If cloture is invoked, supporters have a clear majority of Senators who will vote for passage. Recent reports do indicate that certain conservative Democrats in the Senate are reconsidering their position on EFCA, now that the chance of passage is more realistic, and President Obama has pledged to sign it, unlike President Bush. Included in the list are Mary Landrieu of Louisiana, Mark Pryor and Blanche Lincoln of Arkansas, and Ben Nelson of Nebraska. Any communications to Senators should include a request not to vote for cloture, since a vote for cloture is a vote for passage of EFCA.

While the political battle is raging, all employers should be communicating with their supervisors about this legislation, and continuing to train them on positive union avoidance techniques in managing employees, and on the legal do's and don'ts regarding union organizing. Consideration to communicating with non-supervisory employees about the company's position on EFCA and unions in general should also be given, since a huge multi-million dollar TV campaign being run by organized labor ensures that your employees will be hearing about it from the union's perspective. Finally, the employer should examine its current position with regard to its vulnerability to unionization, and make necessary changes to improve its ability to counter any future union organizing efforts, whether EFCA passes or not.

Greg Guidry

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