

## **LEGISLATIVE UPDATE**

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### **AN OVERVIEW OF THE EMPLOYEE FREE CHOICE ACT**

The Employee Free Choice Act (“EFCA”) is pending legislation that would alter the landscape of American labor law significantly if enacted. EFCA seeks to amend three areas of labor law: (1) the process by which a union gains recognition as the exclusive bargaining representative for a unit of employees; (2) the initial bargaining process; and (3) employer penalties for engaging in an unfair labor practice during a union organizing drive or first-contract negotiations.

#### **Union Certification: “Card Checks” Replace Secret Ballot Elections**

Presently, unions typically gain recognition by winning a secret-ballot election conducted by the National Labor Relations Board. If EFCA becomes law, however, unions can gain recognition simply by proving that a majority of an employer’s workers in a given work unit have signed union recognition cards. As soon as a single employee informs the Board that a majority of workers in a unit have signed union cards, the Board would investigate the claim. If the Board verifies that a majority of workers have signed the cards, the employer would be obligated to recognize the union and bargain with the union possibly as early as ten days after a majority of the workers sign the cards. EFCA grants the Board the power to adopt procedures to verify the accuracy of an employee's claim regarding majority status.

The bill essentially would eliminate the current election process. Under the law as it stands today, the Board can hold a secret-ballot election where 30% or more workers in a bargaining unit sign union cards, but unions rarely proceed with the organizing campaign where they lack a majority of signed cards.

#### **Initial Bargaining: Strict Timetables, Mediation and Binding Arbitration**

EFCA places stringent timetables on initial bargaining between an employer and a newly recognized union. No such timetables currently exist. As stated, within ten days of gaining recognition, the union and the employer may have to commence negotiations under EFCA. If the parties fail to hammer out a collective bargaining agreement within ninety days from the date bargaining begins, the bill requires the parties to permit the Federal Mediation and Conciliation Services (the “FMCS”) to mediate any

disagreements if one party requests such assistance. Should mediation prove unsuccessful within thirty days of such a request, EFCA sends the parties to binding FMCS arbitration over any outstanding issues. There is no limit on duration of the arbitration process. Once the arbitrator decides the disputed terms of the collective bargaining agreement, the parties are bound by the agreement for two years. Employees would never get a chance to vote on the agreement in its entirety.

### **Employer Penalties for Violating the Amendments**

The bill mandates that the Board investigate *any charge* of an employer unfair labor practice which relates to these amendments with priority processing (meaning the Board will place such charges above all others) and seek an injunction for violations where the Board believes such relief is warranted. Additionally, EFCA provides employees who are deemed victims of such unfair labor practices with triple back pay. The bill also imposes a civil fine of up to \$20,000 against an employer for each violation found if the Board deems the violation willful or repetitive on the part of the employer.