

# *Employee Free Choice Act*

## One More Reason for Strengthening Employee Relations

You may know of the likelihood that the Employee Free Choice Act (EFCA) will become law sometime in the near future. Prepare yourselves now, because if EFCA becomes law, union-related risks will once again become prevalent after lying somewhat dormant for several decades.

### THE BASICS OF EFCA

#### Changes How a Union Organizes

EFCA will significantly change how labor unions win the right to represent employees. Currently, if a union wants to represent an organization's employees, it must gather signatures from 30% of the employees on union authorization cards. Procuring these cards gives the union a right to request an election. However, before the election takes place, both the union and the employer enjoy an open campaign period when they can present information to the employees. When the election takes place, a representative from the National Labor Relations Board attends to monitor the process, and employees enter voting booths where they secretly cast their ballots. Under these conditions, employees suffer no pressure to vote one way or the other, and no one but the employees themselves know how they voted. In order to win, the union must receive 50% plus 1 of the votes in the secret ballot election.

In contrast, the EFCA eliminates the open campaign period and secret-ballot election. The EFCA only requires a union to present cards signed by 50% plus 1 of the bargaining unit employees in order to gain the right to represent an organization's employees, thus denying the organization any opportunity to respond. Consequently, a union could surreptitiously collect these signatures without the employer's knowledge. In a workplace where employees do not trust their management, the managers may never learn that a union has approached employees until the union presents the required signatures to the organization.

#### Changes How Parties Negotiate

As the law presently stands, after the union receives certification, the employer and union can take as long as necessary to negotiate the collective bargaining agreement. They sometimes take only a few months, while other agreements require more than a year of negotiation. In some cases, the negotiating parties reach an impasse, and the law provides procedures to deal with this type of situation.

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## Changes How Parties Negotiate *(continued)*

The EFCA, however, will change the dynamics of the negotiating process. The new legislation will give negotiating parties only 90 days to reach an agreement. If the parties fail to reach an agreement, either party can request mediation. If the mediator cannot bring the parties to an agreement after 30 days, all disputes must go to binding mandatory arbitration in front of an arbitration panel. A concern expressed by many in the management arena is that these arbitrators could potentially rule on all terms of employment addressed in the collective bargaining agreement, even if the arbitrators have no knowledge of the industry or market. Basically, this new law could take the power out of the hands of both the employer and the union and give that decision-making authority to a third-party panel.

## Increased Penalties

Finally, the EFCA provides for increased penalties for certain unfair labor practices that occur while the union collects signatures on cards or while negotiating the first contract. These provisions can result in up to \$20,000 per violation. Additionally, employees will recover triple back pay damages if they suffer discharge or retaliation for participating in union organizing activities. These new penalties are only assessed against the employers; the union receives no penalties if it engages in unfair tactics.

ELI® has a solution for organizations that are worried about union issues. For more information, contact ELI® at [info@eliinc.com](mailto:info@eliinc.com) or call 800-497-7654.

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