



## Is Your Organization Ready for the EFCA?

**T**his month, we find our nation embroiled in the debate over healthcare reform, with many legislators focused primarily on this issue. However, there is one bill that is proposed at this time that many company leaders and human resource professionals need to understand - the Employee Free Choice Act (EFCA) or, the "card check" bill as it is often referred to.

The original version of EFCA would have made three major changes to the National Labor Relations Act (NLRA).

- 1) It would have required an employer to recognize a union if the union obtained a majority of signed authorization cards from workers in an appropriate bargaining unit. Currently, if a union obtains signed authorization cards from 30 percent of the employees, it can petition the National Labor Relations Board to hold an election where workers cast secret ballots.
- 2) Under EFCA, the employer and union would be subject to mandatory arbitration if they do not reach a first contract within 120 days of the start of bargaining. Currently, both parties have only a duty to bargain in good faith; there is no requirement that they come to an agreement or that they seek arbitration if they fail to reach an agreement.
- 3) The EFCA would significantly increase the penalties against employers (but not unions) for unfair labor practices. For example, as the law stands now, wrongfully discharged employees may be reinstated with back pay. Also, the NLRB can order the employee to bargain in good faith and it can seek a contempt order if the employer continues to violate the NLRA. Under EFCA, if an employee is wrongfully discharged, the employer could be ordered to reinstate the employee and pay three times the employee's back pay. Also, repeated violations could result in \$20,000 civil damages per violation.

It should also be noted that congressional leaders may be considering compromises to the bill as it is currently written. The key compromise is that the Senate may drop the card-check provision from the bill, as this has been the most controversial topic. Some other potential compromises that have been mentioned in the news have included:

- Mandate that elections take place within 10 days from the date that a union presents authorization cards from at least 30 percent of workers in an appropriate bargaining unit; currently the election can take place up to 40 or 45 days after authorization cards are signed.

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- Rather than preventing unions from coming into the workplace to solicit members, allow the union organizers into the workplace to talk to employees about unionization.
- Have a provision in the law that prohibits employers from holding mandatory employee meetings where the employer is able to explain its opinion about unionization.

Given the fact that any legislation of this kind may increase union activity, it is important that employers make sure that their workplaces are not vulnerable to union campaigns. There are many things that employers can currently do to take preventative action to remain union free:

- Maintain good working conditions and keep equipment and facilities in good working order.
- Develop and maintain fair and consistent employment policies and procedures, and follow these policies similarly for all employees.
- Train managers and supervisors in these policies as well as good employment practices.
- Discuss with management the pluses and minuses of unionization and its impact on your company's customers, managers and employees.
- Establish sound non-solicitation and electronic communication policies.
- Improve communication and promote employee involvement in decisions
- Conduct employee opinion surveys on a regular basis.
- Review the company's salary and benefits as compared to other similar industries and geographic areas to ensure competitiveness.

The experienced Employee Relations and Compensation Specialists at PROXUS are at the ready and can assist you in developing any of the above policies or programs. Please call PROXUS Principal, Jeff Green at 215-654-9140 ext. 102, [jgreen@proxushr.com](mailto:jgreen@proxushr.com) and/or Director, Client Services, June Garafano at 215-654-9140 ext. 404, [jgarafano@proxushr.com](mailto:jgarafano@proxushr.com).

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