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**UNDERSTANDING THE EMPLOYEE
FREE CHOICE ACT & CREATING A
SOLID HR STRATEGY**

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Three Points To Remember:

- **EFCA is considered organized labor's top legislative priority for this Congressional Session.**
- **ECFA will radically change labor-management relations in the United States.**
- **A Proactive HR Strategy & Employee Relations Program is Essential for all Employers.**



EMPLOYEE FREE CHOICE ACT OF 2009



Employee Free Choice Act of 2009

- S.560/H.R.1490 – Introduced 3/10/09.
- Sponsors:
 - Senate: Ted Kennedy (D-MA).
 - House: George Miller (D-CA).
- Currently in Committee.
- Some version of EFCA has been introduced in each of the last three Congressional Sessions.



Employee Free Choice Act of 2009

- Senator Kennedy's recent death and the focus on Health Care Reform have shifted the focus off of EFCA.
- Senate Majority Leader Harry Reid recently told the Las Vegas Chamber of Commerce that "we [the Senate] have too many other things on our plate" to pursue the EFCA.



Employee Free Choice Act of 2009

- On July 17, 2009, the New York Times reported that in an effort to secure a filibuster-proof majority in the Senate, a group of key Democratic senators are planning to change the proposed legislation to remove the "card check" provision of the EFCA.



Employee Free Choice Act of 2009

- EFCA proposes three areas of significant change to the current federal labor laws:
 - Requires the NLRB to certify a bargaining representative without directing an election.
 - Provides for binding arbitration if a new contract is not signed within ninety days of certification.
 - Provides for liquidated damages of three times back pay for employees terminated for forming a union.



Employee Free Choice Act of 2009

- Card-Check Certification:
 - Under current law, if 30% of the workers in a workplace sign membership cards, the employer can force a secret ballot election.
 - Prior to the election, there is a campaign period.
 - NLRB will hold a secret ballot election to decide whether the workers want to be in a union.



Employee Free Choice Act of 2009

- Card-Check Certification:
 - If a majority of votes in the election favor the union, the NLRB will certify it as the exclusive representative for the purpose of collective bargaining.
 - Under the EFCA, the NLRB must certify the union as the bargaining representative without directing an election if a majority of employees have signed membership cards.



Employee Free Choice Act of 2009

- Initial Contract Protections:
 - An MIT study revealed that only 56% of unions that win an election ever negotiate their first contract.
 - Newly formed unions lose their presumption of majority status after one year without reaching a contract.
 - Unions contend that employers delay the bargaining process to demoralize workers.



Employee Free Choice Act of 2009

- Initial Contract Protections:
 - Under the EFCA, if there is no agreement within 90 days, the dispute goes to mediation.
 - After 30 days of mediation, the dispute goes to binding arbitration.
 - The Arbitrator's decision is final and binding for two years.
 - Unions contend that these protections will eliminate the incentive for employers to bargain in bad faith.



Employee Free Choice Act of 2009

- Liquidated Damages/Penalties:
 - An illegally discharged employee is currently entitled to back pay, less any wages earned by the employee during the period of discharge.
 - The EFCA provides liquidated damages in the amount of two times back pay.
 - The ECFA provides for civil fines of up to \$20,000 per violation for willful or repeat violations.



Creating a Solid HR Strategy



Creating a Solid HR Strategy

- Employers can offset the EFCA if they:
 - Understand Why Employees Seek a Union;
 - How Unions Operate;
 - Their Rights as an Employer.



Creating a Solid HR Strategy

- Why Employees Seek a Union:
 - Deficiencies in the Employee/Employer relationship:
 - Must be committed to a sound Employee Relations Program (ERP).
 - ERP should build morale and loyalty through effective policies and open communication.



Creating a Solid HR Strategy

- Why Employees seek a Union:
 - Deficiencies in the Employee/Employer relationship (cont'd):
 - Loyalty cannot be purchased.
 - Employees want to be treated with consideration and thoughtfulness.



Creating a Solid HR Strategy

- Why Employees seek a Union:
 - Deficiencies in the Employee/Employer relationship (cont'd):
 - Two-way communication is essential.
 - Listening to Employee concerns and attending to their needs.
 - Treating employees with respect and dignity.



Creating a Solid HR Strategy

- Why Employees seek a Union:
 - Deficiencies in the Employee/Employer relationship (cont'd):
 - An Effective dispute resolution mechanism;
 - An opportunity for personal growth;
 - Interesting and challenging work;
 - Rewards/incentives for excellent job performance;
 - Fair and consistent discipline;
 - A safe and healthy work environment;
 - Written and current HR policies and procedures.



Creating a Solid HR Strategy

- How Unions Operate:
 - Initial objective is to gather signatures to file a petition for an election:
 - Authorization from 30% of the Employees is required.
 - Unions typically look for majority support before filing a petition.



Creating a Solid HR Strategy

- How Unions Operate:
 - Getting a foot in the door:
 - Forming an in-house organizing committee
 - Planting a Union supporter in the workforce (“salting”)
 - Compiling contact info of other employees
 - Encouraging solicitation of co-workers



Creating a Solid HR Strategy

- How Unions Operate:
 - Techniques to obtain a substantial number of authorization cards:
 - Opinion Polling and Mail Surveys
 - Questionnaires and Quizzes
 - Making Home Visits
 - Initiation Fee Waivers



Creating a Solid HR Strategy

- How Unions Operate:
 - Petition for a Secret Ballot Election:
 - Filed with the NLRB Regional Director;
 - Union must allege and submit proof;
 - Notice of Representation Hearing;
 - Regional Director conducts investigation;
 - Representation Hearing will be held if no agreement reached.



Creating a Solid HR Strategy

- How Unions Operate:
 - Petition for a Secret Ballot Election (Cont.):
 - NLRB schedules an Election;
 - Campaign;
 - Election conducted at Employer's work site;
 - Conducted by a Board Agent;
 - Balloting completed;
 - Tally of Ballots.



Creating a Solid HR Strategy

- Employer Rights:
 - Freedom of speech
 - Section 8(c)
 - Right to Communicate verbally and in writing;
 - Right to express views, opinions and facts;
 - Right to meet with employees alone or in groups;
 - Right to create Employee Participation Programs;
 - Right to enact No-Solicitation/No-Distribution Policy.



Creating a Solid HR Strategy

- Employer Rights:
 - Restrictions on Employer Rights:
 - **T** - Threats/Violence Against Employees;
 - **I** - Interrogation and Polling;
 - **P** - Promises and Grants of Benefits;
 - **S** - Surveillance and Photographing;

