



## The Employee Free Choice Act: A Q&A For Employers

**What is the proposed Employee Free Choice Act?** The proposed Employee Free Choice Act (EFCA), commonly called “card check,” would require recognition of a union in the workplace if a simple majority (50 percent plus one) of employees (within an appropriate bargaining unit, which could be a company, a business unit, even a single department) sign union authorization cards. The proposal takes from employees their current right to have a government-supervised, secret-ballot union election – and could deny some workers any voice at all in the matter of union representation because they may not be given the opportunity to sign or not sign a card. EFCA includes other provisions, such as imposition of a mandatory binding contract within just a few months if a company and the union cannot reach agreement, and substantial increases in penalties for employers (but not unions) that violate labor laws.

**How likely is it that the bill will pass?** The legislation passed in the U.S. House of Representatives in the last session of Congress, but Republican opponents successfully stalled the bill in the Senate. The White House had promised to veto it. The Democrats increased their majority in the Senate in the last election and are within a few votes of having enough support to close off debate and move the bill through in the current session. The current White House has pledged to organized labor that the bill will be signed without delay.

Enactment of EFCA would dramatically tilt the playing field in favor of organized labor. Under current law, unions must gather 30 percent of employee signatures to trigger a secret-ballot election of the affected workers. The current system essentially creates a “campaign period,” or educational period, where the union and the employer can communicate with workers and discuss the pros and cons of a union. Under EFCA, there is potentially no starting or stopping point for a unionization effort – and employers conceivably could not even be aware a campaign is underway until after 50 percent plus one signatures are presented. At that point, the union must be recognized and contract bargaining must occur within 10 days of a request to begin negotiations. If a first contract is not reached within 90 days, the Federal Mediation and Conciliation Service may intervene. If no agreement has been reached after 30 days of mediation, the unresolved issues are referred to binding arbitration and a contract (addressing wages, benefits, work rules) can be imposed by a government-appointed third party upon the employer and employees.

**What impact will EFCA have on employees?** EFCA takes away one of the most basic rights in a democracy – the right to cast a ballot in a secret election. In America, the power to self determine begins with an individual’s vote, and any threat to that vote being free from outside influence is a threat to the entire democratic system. Because signing a union authorization card would, as a practical matter, become the actual “vote” under EFCA, union supporters might be tempted to coerce or even intimidate employees into signing a card. In some cases, there may be a number of employees who have been involved in union campaigns and have signed authorization cards in the past just to “send a message.” Some workers may not realize that signing the card completely replaces their right to a secret-ballot union election. Also, the “50 percent plus one” component of card check means there could be situations where more than 40 percent of employees are required to be represented by the union without ever having any say in the matter whatsoever.

**What can employers do now to prepare for EFCA?** The first step for any employer should be to discuss the implications of EFCA with legal counsel. Companies should next determine the potential impact upon their workplace and evaluate how vulnerable they are to changes that would undermine their employer-employee relationships and their company’s productivity. Specific actions and concerns will vary among companies, but no company would be immune to change if EFCA becomes law. Third, employers should give consideration to educating their associates about EFCA and the potential impact it would have on the company, their jobs and their rights.

**Are employers of all sizes affected if EFCA passes?** All employers that engage in interstate commerce would be affected; there is no employer "too small" to be affected.

**What information should employers share with their employees?** Because of the dramatic effect EFCA would have in the workplace, every employee should be aware of the proposal and its potential impacts. Organized labor has mounted a multi-million dollar campaign to push for support of EFCA. Various organizations opposed to EFCA also have created Web sites, purchased advertising and taken other steps to present their points of view. Because every employer would be impacted in some way, it makes sense for all companies to assess the potential risks as well as their current communication strategies with employees, and then determine what information needs to be shared and how best to do it. At a very minimum, employees need to understand what signing a union authorization card currently means and how that will change under EFCA. In addition, employees need to know that EFCA will take away their right to a secret ballot, and possibly deny them any voice at all in determining whether or not they will be represented by a union.