

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE
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November 2008

The (Presidential) Election To End All (Union) Elections?

The election of Barack Obama has been rightfully hailed as historic. Its impact on labor laws could well become historic, too, as unions appear now to have the support necessary for passage of the Employee Free Choice Act ("EFCA") in early 2009. Should it become law, the EFCA would do away with employees' rights to vote for or against a union on a secret ballot not seen by co-workers or union organizers.

Consider these developments embedded in the EFCA, which President-Elect Obama and a majority of Congress have pledged to support:

- **Certification by Card Check.** When a majority of employees have signed valid union authorization cards, the National Labor Relations Board ("NLRB") would certify that union as the bargaining representative, without the opportunity for secret voting. Arm-twisting behind closed doors would replace a ballot box.
- **Initial Collective Bargaining Agreements by Mandatory Arbitration.** After the NLRB's certification of the union, the parties would have 90 days to negotiate a contract. If no contract is reached after 90 days, the parties could notify the Federal Mediation and Conciliation Service ("FMCS") to request mediation. If still no contract results after 30 more days, the FMCS would refer the dispute to an arbitration board that would set a contract that would bind the parties for two years.
- **Increased Penalties and Damages Against Employers for Unfair Labor Practice Charges.** The NLRB would be authorized to award an employee back-pay and two times that amount in liquidated damages, and to impose a civil fine on the employer of up to \$20,000.00, for each violation of an employee's rights under the National Labor Relations Act or a collective bargaining agreement.

The EFCA appears likely to alter dramatically the labor landscape for many employers, not only changing the rules for employers with unionized workers but also bringing new life to union organizing activities in all workplaces.

TIP

Anticipating passage of the EFCA in 2009, employers should take a proactive approach now by (1) training managers and supervisors to recognize and respond to signs of union organizing activity, and (2) preparing strategies to be ready to explain to employees, if the new law passes, why they should not want to become union members.



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