

THOUGHT LEADERSHIP

LEGAL UPDATES

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Service

Labor & Employment

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The Employee Free Choice Act

The Employee Free Choice Act (EFCA) is a pro-labor proposed amendment to the National Labor Relations Act (NLRA). As currently constituted, the legislation would enable labor unions to organize and gain recognition without a secret ballot election. It would also empower unions to force negotiations away from the bargaining table (where they have traditionally been held) to arbitration, where a third party would set the wages, benefits, hours of work and other terms and conditions of a first collective bargaining agreement if bargaining impasse has been reached. If passed, EFCA will bring about the most dramatic change to the NLRA in over 50 years.

Senator Barack Obama was a co-sponsor of EFCA when it was introduced in the Senate in 2007. The legislation passed in the House of Representatives in 2007, but stalled in the Senate. Support for EFCA was almost exclusively along party lines in 2007 and 2008.

Since his election, President Obama has been mostly silent about his intentions regarding EFCA. However, spokespersons for the incoming administration have continued to comment favorably on the legislation since the national election.

EFCA will change the NLRA in three ways. In addition to the elimination of secret ballot elections and the addition of interest arbitration to the collective bargaining process (for first contracts), EFCA will impose stiff penalties for unfair labor practices.

We anticipate that some form of EFCA will pass in 2009. Employers with non-union workforces should consider advance planning in the event of passage.

Several attorneys in the Labor & Employment Department at Husch Blackwell Sanders LLP have assisted employers in developing union avoidance strategies.

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