



The Employee Free Choice Act Toolkit

This Employee Free Choice Act Toolkit is being provided to members of the Nevada Association of Employers so they can better understand how the EFCA will impact existing law. It will also give employers information that will help in their efforts to maintain a union free workplace should this law pass.

What is the Employee Free Choice Act?

The National Labor Relations Act is the major federal law that addresses labor/management relations. It has been around over 70 years. Currently under the NLRA, should a group of employees wish to be represented by a union, certain steps must be followed:

Showing of Interest: Normally there is first what is called a showing of interest. Here, a union will try to collect signatures of employees in a bargaining unit on authorization cards. If the union can collect signatures of 30% of those within the bargaining unit, then the union can file for a secret ballot election with the National Labor Relations Board. The employer will be notified by the NLRB and an election date set, usually within about 60 days.

Campaign: During this time period, both the union and the employer will have the opportunity to “campaign” the employees and persuade them to vote one way or the other. The unions can try to convince the employees that they should be their third party representative in collective bargaining with the employer, and the employer will try to convince the employees they do not need a third party.

Secret Ballot Election: Once election day arrives, the NLRB will set up and oversee the entire voting process. Both the union and employer are allowed to be present at the election, however, only as observers as they may not speak with any of the voters or see how a particular employee votes. Each member of the bargaining unit will be allowed to cast their ballot, either for or against the union, in secret. Once all employees have voted, the NLRB will count the ballots and the results will be known at that time.

The Employee Free Choice Act changes current law in the following way:

If a union is able to get 50% plus one in a collective bargaining unit to sign authorization cards, then that will be sufficient to establish them as the third party representative and obligate the employer to go directly into collective bargaining. There will be no campaign; there will be no secret ballot election! Often times the card check process goes on without the employer being aware of it and an employer can literally be union free one day, and the next day they are told to go to the table with the union!!



Other aspects of the EFCA are:

- Collective bargaining must begin within 10 days of union certification.
- If a collective bargaining agreement has not been reached after a 90 day negotiation period, either party may request mediation from the Federal Mediation and Conciliation Service (FMCS).
- If the FMCS cannot bring about an agreement within 30 days of the request for their assistance, the negotiations shall be referred to a Federal arbitration board.
- The Federal arbitration board's decision is binding upon both parties for a period of 2 years.
- Charges of unfair labor practices by employers during an organizing drive, or subsequent collective bargaining negotiations, shall be given priority over all other cases considered by the NLRB and the NLRB would be required to seek injunctions requiring reinstatement for discharged workers before a hearing is held on the merits.
- Increases remedies for unfair labor practices by employers during an organizing drive or until a first contract is reached:
 - increases back pay restitution to employee to back pay and, in addition, two times that amount
 - \$20,000 civil penalty for the employer, per violation

The Employee Free Choice Act would eliminate over 70 years of precedent established under the National Labor Relations Act. It would take away an employee's access to a federally supervised private ballot when deciding whether or not to join a union. It would replace the secret ballot election with a card check system that would allow a union to organize if a simple majority signed the cards. And, it would obligate the employer and union to negotiate a first contract within 90 days or risk having an arbitration board imposing upon the parties their idea of a contract.



Current Status of the EFCA

The Employee Free Choice Act is not yet law. However, the likelihood of its resurrection in the 111th Congress is great. The bill was introduced in early 2007 and passed through the House of Representatives. From there it went to the U.S. Senate. It did not have the votes at that time to get out of the Senate where it remains today. However, sponsors and supporters of the bill have said that when the 111th Congress convenes in early 2009 they will bring this bill back.

Democratic presidential candidate Sen. Barack Obama has already gone on record as supporting this bill, while Republican presidential candidate Sen. John McCain has said he'd oppose any such legislation.

Many pundits, labor law attorneys, human resources professionals, etc. have resigned themselves to the fact that this law will likely pass. And, with the labor unions dumping over \$400 million dollars into the campaigns of those supporting this bill, it's certainly easy to understand why they think this will ultimately pass.

Note: Nevada is a Right to Work state meaning an employee does not have to join a union or pay dues in order to work in an organized bargaining unit.



What Can an Employer Do Now?

Employers have two options in preparing for EFCA: they can either stand pat and see how things develop over the next few months or they can be proactive now and better position themselves should this bill become law.

Opinion Surveys: Employers need to be aware of current issues within the workplace. One way to accomplish this is through an employee opinion survey or employee attitude survey. A well crafted survey can allow you to determine what some of the problems/issues are within the workplace. Once the survey reveals to you what the concerns are, you have the chance to address them and make positive changes. However, this should be done well in advance of any union organizing. Now would be the time to do this, not after the EFCA should become law. By then it may be too late.

Pay & Benefits: How is your organization compared to other like companies in the area regarding pay and benefits? Review your compensation practices against local pay surveys. Are you underpaying your employees? Review your benefits package against local surveys, too.

Supervisors: Do you have good supervisors? Do your supervisors treat all employees fairly and equally? Do they understand the company policies and treat employees consistently within those policies? Do they make themselves available to the employees? Are they approachable? Having poor supervisors has always been a main reason employees wish to organize.

Education: Educate your employees what union authorization cards are. Explain their meaning under today's current law and how that would change should EFCA pass. Explain that they have no obligation to sign any cards under any circumstances. Train your management team about what they can and cannot do or say during an organizing effort.

Union Free Policy: Communicate to your employees your desire to remain union free. Tell your employees that a third party is not necessary and that the ability for an employer to communicate directly with the employees works the best.

Union Free Policy

We believe in an open door policy. Employees have the right, and are encouraged, to deal directly with their supervisor and other members of management regarding conditions of employment and other company issues.

It has not been necessary in the past, and it will not be necessary in the future, for you to belong to a labor union in order to work here. You are not required to use any other person or organization to represent you in presenting complaints, problems or questions to management. There are no deductions from your wages for union dues.

Our business is union-free and it is our firm intention to lawfully remain this way. We believe your needs and ours are best met by avoiding the addition of an outside party to come between us.

No Solicitation: Make sure you have a solid no solicitation/no distribution policy. A policy that prohibits non-employees from coming into the workplace and handing out literature and prohibits employees from passing out literature during working time is crucial.

Solicitation and Distribution

To avoid disruption of operations or disturbance of employee, the Company's policy on solicitation and distribution on Company property is stated below:

- 1) Employees may engage in solicitation on Company premises only during their nonworking time. Nonworking time means time during meals or breaks and before or after work.
- 2) Employees may distribute non-Company written materials only during nonworking time and only in nonworking areas.
- 3) Solicitation or distribution of literature for any purpose by non-employees is strictly prohibited on Company property at any time.
- 4) Violation of any of the above rules will result in immediate disciplinary action up to and including termination.

Bulletin Boards: If you have bulletin boards, make sure to have a policy that only company information can be attached to it. Ensure that employees don't have the right to summarily attach whatever they wish to the bulletin board.

Bulletin Boards

The Company maintains a bulletin board to post information of interest and importance to employees as well as notices required by law. You are encouraged to read the information on the bulletin board regularly. No information may be posted or removed without prior permission from the Human Resources Department.



Community of Interest: The EFCA allows the union to gain representation through a card check in an appropriate bargaining unit. The NLRB's test for an appropriate bargaining unit is whether the petitioned for employees share a "community of interest". Applying this standard, employers should investigate the bargaining unit possibilities that exist in their workplace today, and whether alternative configurations are possible.

Call to Action: As the EFCA is not yet law, employers are urged to contact their elected officials either directly or through other associations and communicate to them their objection to this bill. The Coalition for a Democratic Workplace has published results of polls across several states that show a vast majority of those polled favor the secret ballot process. Forcing elected officials to adhere to the wishes of their constituents can be powerful, too.