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Labor & Employment Alert
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EMPLOYEE FREE CHOICE ACT (EFCA)
REINTRODUCED IN BOTH HOUSES OF CONGRESS

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Employee Free Choice Act

Today the “Employee Free Choice Act” (“EFCA”) was reintroduced in both houses of Congress. Last year it passed the House, but died in the Senate. With a new administration and Congress, passage of the legislation – in at least some form – seems inevitable. President Obama told the AFL-CIO Executive Council last week that “labor unions are a big part of the solution...as we confront this [economic] crisis and work to...pass the Employee Free Choice Act, I want you to know that you will always have a seat at the table.”

If enacted in its current form, the EFCA would dramatically alter the landscape of labor organizing in the United States. The two most important changes are its “card check” provision and its regulation of first contract negotiations. The EFCA would also give the National Labor Relations Board (“Board”) enhanced enforcement powers, including in some cases mandatory injunctions, treble damages and civil fines.

Card Check

Under EFCA, an employer can become unionized on the basis of a so-called “card check”. Rather than requiring a secret ballot election as in the current law, signed authorization cards from the majority, *i.e.* 50%+1, of employees will result in the employees being represented by the union and will require employers to bargain with the union.

This is a major change in the law which can have significant effects on the employer/employee relationship. Now is the time to develop your position and consider how best to communicate with your employees in a clear, concise and legal way. This would include, at a minimum, training supervisors and managers about the impact of the law.

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First Contract Negotiations

At present the only rule for negotiating a first contract is the obligation to bargain in good faith. The EFCA, however, sets up a specific timeline for reaching a first contract. If there is no contract within 90 days, or after mediation for another 30 days, the negotiations go to an arbitration panel, which “shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years”.

This is also known as “interest arbitration.” What it means is that an arbitration panel could be determining, among other things, contract language, management rights, wage rates and increases, benefits, and a host of other issues that the employer would be bound to for at least two years.

From a management point of view, achieving a contract that adequately protects management rights to run its business is essential. If these rights are not provided in the first contract they can, as a practical matter, be much more difficult to add to future agreements. Also, even where all parties are fully committed to the process and are bargaining in good faith, experience shows that 120 days would be insufficient to reach an agreement.

Murphy, Hesse, Toomey & Lehane, LLP, has over 150 years of combined experience dealing with the complete range of union/ labor issues that may confront companies from pre-election and National Labor Relations Board hearings to the negotiation and administration of contracts.

For questions about pending or proposed laws or regulatory enforcement priorities, and how they will affect your operations, please contact Arthur Murphy, Nan O’Neill, Geoffrey Wermuth or the attorney assigned to your account.

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