

If passed, EFCA would Represent the Most Significant Labor Law Legislation in More than a Generation

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On March 10, 2009, the Employee Free Choice Act (“EFCA”) was reintroduced in Congress. If passed, EFCA, which was previously proposed in 2007, would represent the most significant labor law legislation in more than a generation. The 2009 version of EFCA is identical to the legislation introduced in 2007.

Three provisions of EFCA are particularly significant:

- Unions could become certified without a secret ballot election of the employees, if a simple majority of the employees sign union authorization cards. This process, called “card check,” could allow a union to organize a workforce without an employer even knowing about it or having the opportunity to tell employees why they should not support the union. Thus, EFCA effectively eliminates the secret ballot election where employees can decide whether to join a union secretly.
- The National Labor Relations Board could impose fines of up to \$20,000 on employers for certain violations of the National Labor Relations Act during an organizing drive or during contract negotiations.
- EFCA would mandate that if an employer and union are unable to settle upon a first collective-bargaining agreement within ninety (90) days, it

must be submitted to mediation by the federal mediators. If mediation does not result in an agreement, EFCA requires that the parties submit the dispute to a panel of arbitrators who will impose a contract upon the parties.

In 2007, the House of Representatives passed EFCA but it failed to attain the required sixty (60) votes needed to end a filibuster in the Senate. EFCA died in the Senate in 2007. While the legislation introduced this week is the same as it was in 2007, the bill appears to have fewer supporters than two years ago, despite larger Democratic majorities in both the House and Senate. The 2009 EFCA bill has 40 cosponsors in the Senate, six less than in 2007 even though Democrats gained 8 seats in 2008. The current bill has 223 House cosponsors, ten less than in 2007 even though Democrats gained 21 seats in the 2008 elections.

Organized labor and its supporters in Congress have promised a strong push to pass this legislation. President Obama has promised to sign the bill into law. It is expected that this will be a hotly debated topic in the coming weeks and months and that many compromise bills will be proposed. Indeed, one was just introduced March 11, 2009, that would require access to employer facilities for union organizers. Contact your Vorys lawyer for the latest EFCA developments and watch for EFCA updates posted on www.vorys.com.

This alert contains information necessarily of such a general nature that it cannot be regarded as legal advice. Vorys, Sater, Seymour and Pease LLP is available to provide additional information and to discuss matters contained herein as they may apply to specific situations. For additional information, visit www.vorys.com.
