

The following Labor & Employment news may be of interest to you in your business and is provided as a bulletin for our clients and friends from the attorneys in the Hall Estill Labor & Employment practice group. Should you have any concerns, questions, or assistance relating to the topics in this update or any other matter, please contact any one of our attorneys.

**FREEDOM FROM UNIONS IS UNDER ATTACK - THE TIME FOR EMPLOYERS TO ACT IS NOW**

Employers must have the right to control costs and manage their workforces efficiently to compete in today's business world. A Union bill now pending in Congress (H.R. 800) can effectively eliminate those rights. That bill is deceptively titled "Employee Free Choice Act" ("EFCA"). It deprives employers and their employees of historic rights under existing federal labor law. It is a no-holds-barred attack on employers and employees who are "union free."

The EFCA is a law designed to unionize employers without a secret ballot election. The so-called Employee Free Choice Act is in reality the "No Election Act" because it substitutes "Union Cards" for the ballot box. Those Union Cards are unreliable because the circumstances under which they are purportedly signed by employees are not monitored for fraud or misrepresentations. When a union convinces only a simple majority of employees to sign union representation cards, and that majority card signing is confirmed by the National Labor Relations Board, those employees and their employer are automatically unionized.

Under current labor law, employers and unions negotiate employee wages, hours and other conditions of employment in what is known as a "Union Contract." The EFCA allows unions to invoke arbitration of terms and conditions in a Union Contract if unions cannot achieve in negotiations what they promised to employees to entice them to sign Union Cards. As a consequence, arbitrators can dictate wage rates, work hours, fringe benefits, benefit costs and restrictions on managing the workforce. There are no appeal rights from arbitrator-imposed Union Contracts under the EFCA.

The U.S. House of Representatives has passed the EFCA and there is significant support for it in the Senate. The largest federation of unions, the AFL-CIO, has made the EFCA a top legislative priority for 2009. It seeks to have over one million volunteers to lobby for immediate passage of EFCA in the new Congress. As a condition for monetary and voter support, the AFL-CIO is requiring commitments from Congressional candidates to vote for the EFCA.

The Right-To-Work Law in Oklahoma will not benefit employers under the EFCA. Unions know how to obtain signatures of uninformed employees on Union Cards. Because of Right to Work, many employees, figuring they won't join the Union, often go ahead and sign the cards to enable their union-leaning co-workers the opportunity to have the issue thrown up to a vote. If this law passes, the signed card acts as "vote" and no election need be held. As a consequence, employee support of unions will be unnecessary because Union Cards will replace secret ballot elections and Union Contracts can be decided by arbitrators, not in bargaining between management and the employees through their Union bosses.

To remain Union Free, employers must ACT NOW. Simply stated, employers must immediately design and implement comprehensive programs to educate employees on the consequences of signing union cards that deprive them of a “free choice vote” on union representation. That education must also focus on the adverse consequences to employees of being unionized. Employers must understand and comply with the numerous legal restrictions on both the content and implementation of those programs.

To comply with legal restrictions and avoid the new penalties under the EFCA, an employer must also design and implement a comprehensive education program to instruct management on the following nine (9) points: 1) the legal rights of management, employees and unions under EFCA; 2) the new penalties of stiff fines and injunctions for employer violations of the EFCA; 3) how to legally and effectively communicate to employees about unions; 4) how to legally modify or eliminate existing policies and create new ones; 5) how to lawfully control campaigning during work time, on company property and with company communications systems; 6) how to gain the support of line management and employees; 7) how to determine which personnel under current law are considered “management” and what their role should be in educating employees on the consequences of “union cards” and operating with a union; 8) how to legally assist employees who oppose unions; and, 9) how to create a Union Free culture in the workplace.

Hall Estill has experienced labor attorneys to provide more information on the EFCA and counsel employers on remaining Union Free.

For more information about any Labor & Employment law topic, please contact one of the attorneys in Hall Estill’s Labor & Employment practice group:

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