

# Be aware and ready

How to prepare for possible passage of the Employee Free Choice Act **Interviewed by Meredith McKenzie**

**E**ven if your company does not currently deal with unions, passage of the Employee Free Choice Act could have a negative impact on your business.

The EFCA would amend the National Labor Relations Act, changing the way in which companies are unionized and requiring a new strategy for dealing with unionization and employee relations. And because any business with two or more workers can be unionized, you could be subject to the requirements of the bill should it pass.

“The EFCA was initiated to make organizing easier,” says Mary Beth Ortvals, a member of the labor and employment practice group at Greensfelder, Hemker & Gale, P.C. “Disadvantages of it include the elimination of secret ballots, an expedited election process and binding arbitration in the event that both parties are unable to reach an agreement.”

In preparation for the bill’s possible passage, you need to stress communicating with your employees now to educate them about your position on unions.

“You need to establish a union avoidance plan before the Act is voted on,” says Dennis Collins, chair of the labor and employment practice group at Greensfelder, Hemker & Gale, P.C. “You need to communicate to employees your position on unionization and the potential risk factors in advance of a union organizing campaign.”

*Smart Business* spoke with Ortvals and Collins about the Employee Free Choice Act and how to prepare for its possible passage.

## What is the Employee Free Choice Act?

The proposed act has three provisions. The first authorizes a card check procedure, where a union can be certified without a secret ballot election if 51 percent of workers sign authorization cards supporting the union. There may be a compromise bill to retain the secret ballot election, but this would require quick elections and mandatory arbitration.

The proposed act also puts further restraints on businesses, with triple back pay to employees who are discriminated against or terminated while involved in union organizing activities or in the time leading up to the first union contract. It also imposes penalties — up to \$20,000 per incident — on employers that engage in willful or repeated unfair labor practices.



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It takes away the rights of the company and the union to agree or not agree to collective bargaining agreement provisions if the first labor contract is not reached within 120 days from the start of bargaining. Instead, an arbitrator will establish matters such as wages and benefits for the first contract, which will be in effect for two years. You then will no longer be able to say no to the demands of the union.

## How does a card check procedure negatively impact a business?

This procedure could take away the right of an employer to require that workers vote in a secret ballot election to determine whether they want to be unionized. The union can be certified without an election if more than half the work force signs authorization cards.

You may have no idea that a union is trying to organize your work force until after the union obtains authorization cards from 51 percent of employees. This does not give you an opportunity to present your views on unionization before your business is unionized. A signed authorization card is valid for one year, so this gives the union a long time to collect cards.

A compromise has not been reached to remove the card check provision from the bill. Some efforts have been made to reach a compromise because of the opposition

to the elimination of secret ballot elections, but the AFL-CIO has not signed off on this compromise.

## Do business leaders still have reason to worry about the EFCA, even if the card check provision is dropped?

Yes. If the card check procedure is dropped, there will, in all likelihood, be a provision granting unions the right to force fast elections — within five to 10 days — after 30 percent of workers sign authorization cards. Now, union campaigns typically run for two months. This time frame gives you little opportunity to communicate with workers regarding your stance on unionization.

Another possible condition that may be included in the compromise bill is a requirement that union organizers be allowed access to workers at your office location. This would be a further intrusion on management’s rights.

Another compromise provision would bar you from holding work-time meetings to present your views on unionization. These alternatives take away a level playing field and disrupt business operations. However, the EFCA, as proposed, requires mandatory arbitration, and an outsider would then impose an employer’s wages and benefits for the first two years of the agreement.

## How can you prepare for the possible approval of this act?

You need to establish a union avoidance plan and inform workers about your view on unionization. Employees need to be educated on the tactics unions will use to impose unionization on a company without an employee vote. Make sure employees also understand that signing a union authorization card is the same as a vote for the union.

Even if the card check provision is removed from the final bill, the fast-track election compromise provision would only give you several days to communicate your stance against unionization to workers. The compromise bill may also prohibit you from requiring workers to attend these meetings. <<

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