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## Legal Developments Affecting Business

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### **CARD CHECK & THE EMPLOYEE FREE CHOICE ACT**

By Randy Sutton & Ryan Orr

#### ***Significant Changes to Labor Law May Make Your Company a Union Target***

It's your business, and you understand better than anyone how to make it successful. Most employers prefer to manage their workforce directly, choosing the package of working conditions, compensation and benefits that best motivates their employees. The unionization of a workforce can place an unnecessary barrier between the company and its employees.

If passed, the Employee Free Choice Act ("**EFCA**") will make it much easier for unions to insert themselves between you and your workforce. EFCA is not law yet, but has strong support in Congress. The same bill passed in the House of Representatives in 2007. Given the changes in the political landscape, EFCA is likely to be high on the list of priorities for Congress and the new Administration.

So . . . what exactly would this law do?

**1. Card Check.** Under current law, a union inserts itself into a company in one of two ways. First, the company may voluntarily allow certification of the union. This usually happens only after the union has exerted overwhelming pressure on the company and its customers through a negative public campaign. Second, unions may distribute interest cards to the company's employees. If enough employees sign cards, the union will be entitled to a secret ballot election to decide if the workers really want the union. The company then has time before the election occurs to inform employees about the disadvantages of letting the union into the company.

EFCA would skip these steps and add an element of surprise. The law would force you to recognize the union once it obtains interest cards from a majority of your affected employees. The law bypasses the secret ballot election entirely. The effort to unionize your workforce could occur entirely off work premises and with no warning to you. Once presented with enough cards, you would be forced to recognize the union.

**2. Negotiation & Mandatory Arbitration of the CBA.** EFCA imposes another change that gets less press, but is equally troubling. EFCA imposes a strict timetable on negotiating the first Collective Bargaining Agreement ("**CBA**"). The CBA is a contract between your company and the union which describes your relationship with the union and the wages, benefits and working conditions you promise to provide. Under the current law, unions and employers must negotiate in good faith until they reach an impasse. These negotiations can take a long time. The parties hold leverage over each other, which can help keep each negotiating in good faith. The company may impose the terms of their last offer and lockout the union employees, and the union may call a strike.

In contrast, EFCA imposes an inflexible timetable on CBA negotiations. EFCA also eliminates the parties' ability to call a lockout or strike. If the parties can't come to agreement within a few months, the dispute is submitted to an arbitrator who decides what the CBA will look like. In other words, an arbitrator will decide the wages, benefits and working conditions that you must provide your employees, and how you and your employees must interact with the union.

**3. What do you need to do now, before the law is passed?** Cards signed now may be valid if EFCA is passed. Therefore, employers must act now to protect their company. The best preventative measure is to train supervisors how to properly handle union and workplace issues fairly and in accordance with the law. A supervisor who mishandles questions about unionization can expose the company to unfair labor practice violations. You should also consider whether employees should be informed about what may happen if they sign interest cards. Making

sure your company follows good human resource practices is also very important. Happy employees, who feel the company will treat them fairly, are less likely to sign unionization cards. Supervisor training on all of these issues can help keep unions out of your company.

If you have any questions about EFCA, or labor and employment law in general, please call the firm's Employment Law Practice Group.