

CLIENT ALERT: EFCA Deal May Clear Way for Congressional Action

Multiple reports in the past days indicate that unions have abandoned their demand for card check recognition and are willing to accept compromise legislation related to the Employee Free Choice Act ("EFCA") worked out with their Democratic supporters. The compromise legislation to amend the National Labor Relations Act will reportedly include the following:

- A requirement that union elections be conducted within 5 to 10 days from the date of filing a petition;
- A denial to employers of the right to require employees to attend meetings on work time to discuss unionization issues and/or a requirement that union agents be given full access to the workplace following the filing of a petition;
- The right of the union to employees' names and addresses immediately upon the filing of the petition;
- Mandatory arbitration to set the terms of a first contract; and
- Enhanced penalties on employers (up to \$20,000 per occurrence and treble back-pay damages) who commit unfair labor practices.

Perhaps the most troubling aspect of this "compromise" legislation is its retention of mandatory arbitration of first contracts. This provision will permit unknown third parties to mandate employer pay, benefit, and other terms and conditions of employment. Employers need to continue to be heard that such a "compromise" is unacceptable.

With respect to speedy elections and other related aspects of the proposed legislation, employers will need to have an effective strategy in place before the union comes knocking. Any such strategy should include the following:

- Training of supervisors with regard to unions;
- Employee-education programs about unions, including the meaning of authorization cards;
- Identification of supervisors as defined by the National Labor Relations Act;
- Identification of unit issues which can be raised immediately upon the filing of any petition; and most importantly
- Compensation practices, policies, and procedures that blunt desires for union representation.

For further information about EFCA, please see our earlier Client Alerts of [March 10, 2009](#) and [January 29, 2009](#), and contact your MBJ attorney.

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