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A NEW ERA FOR UNIONS IN AMERICA'S WORKPLACE – KEY PRACTICAL CONSIDERATIONS FOR CORPORATE EMPLOYERS: A CHOICE TO BE MADE

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The proposed Employee Free Choice Act (EFCA) will fundamentally alter the options of a private-sector corporate employer to avoid a unionized workforce and, if unionized under the EFCA, to bargain a workable contract.

The Obama administration views unions as a vital and dynamic part of the American workplace. Perhaps based on the work councils of Europe, the Obama administration believes an evermore collaborative discussion among all would be facilitated by the presence of a union.

It is for American corporate employers to create a workplace where collaboration (thought by the Obama administration to be fostered by unions) is already in place.

The EFCA would amend the National Labor Relations Act (NLRA) in three significant ways:

1. The National Labor Relations Board (NLRB) will certify a union as the exclusive bargaining representative whenever a union has obtained a majority of the employees' signatures on union authorization cards. Traditional secret ballot elections would no longer be an actual part of the process;

2. Businesses and newly certified unions will be required to enter into binding arbitration if they fail to reach an initial contract after ninety (90) days; and

3. Penalties against employers for unfair labor practices will increase dramatically.

Currently under the NLRA, a union can request a representation election upon obtaining the signature of thirty percent (30%) of the workforce on union authorization cards. The NLRB permits a secret-ballot election in such instances. The secret-ballot election is considered an essential component of the current process of establishing a unionized workplace.

With the EFCA, corporate employers will no longer have the option of a secret-ballot election. Union organizers will be able to obtain certification solely on the basis of employee signatures on union authorization cards. Once a union is certified, the employer's terms and conditions of employment are subject to the potential of binding arbitration. An arbitrator could unilaterally impose wage increases, work rules, leave benefits, health benefits, seniority provisions, and limits on discipline.

The new process under the EFCA would permit a union enthusiast to solicit signatures from associates to ensure full union support. In the absence of the secret-ballot election and the traditional campaign process, much of this can happen quickly and without a great deal of input from management.

The key question for corporate America today in light of the proposed EFCA is whether the corporate employer welcomes unions and embraces the opportunity to engage in the labor-management relationship with a third party, or whether the corporate employer wishes to remain union-free, without the participation of a third party.

Recognizing that the EFCA would make the workplace more prone to third-party representation (unions), the corporate employer must face the choice of whether to embrace that approach in light of the Obama administration's philosophy, or to create an environment where a union truly is unnecessary.

If a corporate employer seeks to create an environment where a union is unnecessary, key actions would include:

- Creating an open, collaborative work environment where associates strongly believe there is no need for third-party representation;
- Educating managers and associates with regard to the new law, the impact of unions in the workplace and the significance of signing a union authorization card;
- Starting a "card campaign" that recognizes a union-free effort is needed before the first card is signed; and
- Developing or revising policies on workplace access, solicitation and Internet use.

As the name of the EFCA implies, there is a choice. The choice is for rank-and-file associates; there also is a choice for corporate employers.

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