



# The Employee Free Choice Act: ARE YOU PREPARED?

by John C. Hauge and B Kyle

**The Employee Free Choice Act** (EFCA) is important to all employers because its enactment would result in sweeping and fundamental changes to the National Labor Relations Act (NLRA).

First, EFCA proposes to do away with the current secret ballot election process that allows employees to vote for or against union representation, which means that unwary employers may find themselves with a bargaining obligation before they learn they have been targeted by a union.

Second, EFCA radically changes the ground rules for negotiating a first contract between an employer and a newly certified labor union, introducing an expedited process, culminating in binding interest arbitration. In other words, if the employer won't agree to union demands, they may be forced to accept terms imposed by an arbitrator.

Finally, EFCA significantly expands the government's power to penalize employers who violate the NLRA.

In January, after the Democrats took power, many commentators assumed EFCA quickly would become

law. However, bigger issues, like the financial collapse and health care, pushed EFCA off of the Democrats' fasttrack. Many commentators believe EFCA may pass in a watered down version that eliminates the onerous card check and binding arbitration provisions, but replaces them with fact-track elections and some form of expedited bargaining.

Even a weakened EFCA will make it harder for employers to fend off unions. Currently, the election cycle takes approximately 42 days, and most employers need every one of those days to communicate their position to employees and to rebut often wildly inaccurate union propaganda. A campaign period reduced to something in the 14- to 21-day range will make it very difficult for unprepared employers to get out their message and win over employees.

Regardless of the form, if EFCA becomes the law of the land, nearly every private sector employer in America will be more vulnerable to union organizing tactics. Employers

should evaluate their vulnerability to union organizing in light of EFCA likely passage.

Reducing risk must start with developing a plan to detect and defeat union infiltration. This plan should include developing lawful and appropriate policies and protocols to control your workplace and inform your employees of your company's position on unions. A second focus should be on educating supervisors and managers about unions and the organizing process, and providing them with the information and skills necessary to identify and respond to the first signs of union organizing activity without violating the NLRA. <sup>PM</sup>

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## H.R. 1409: Employee Free Choice Act of 2009

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

### OVERVIEW

**Sponsor:** Representative George Miller (D-CA) • 228 cosponsors, including one Republican, John McHugh (R-NY)

#### Status:

✓ Introduced	Mar 10, 2009
✓ Referred to Committee	House Education and Labor Committee; Subcommittee on Health, Employment, Labor and Pensions
Reported by Committee	-
House Vote	-
Senate Vote	-
Signed by President	-

This bill is in the first step in the legislative process. Introduced bills and resolutions first go to committees that deliberate, investigate and revise them before they go to general debate. The majority of bills and resolutions never make it out of the committee.

**Last Action:** Apr 29, 2009: Referred to the Subcommittee on Health, Employment, Labor, and Pensions.

#### Related: Other Legislation With the Same Title

The list below shows legislation in this and previous sessions of Congress that had the same title as this bill. Often bills are incorporated into other omnibus bills, and you may be able to track the status of provisions of this bill by looking for an omnibus bill below. Note that bills may have multiple titles.

111th Congress: S. 560	Introduced	110th Congress: S. 1041	Dead
110th Congress: H.R. 800	Passed House	109th Congress: S. 2357:	
<i>(99 percent of Democrats supporting, 94 percent of Republicans opposing.)</i>		United States Workers Protection Act	Dead
109th Congress: S. 842	Dead	109th Congress: H.R. 1696	Dead
108th Congress: S. 1925	Dead	108th Congress: H.R. 3619	Dead

## SUPPORT

Service Employees International Union (SEIU)  
 Economic Policy Institute  
 American Rights at Work  
 AFL-CIO  
 Jobs with Justice  
 American Public Health Association  
 Catholics United  
 Pax Christi USA  
 Catholic Scholars for Worker Justice  
 Democratic National Committee  
 United Food and Commercial Workers International Union  
 International Brotherhood of Teamsters  
 UAW  
 American Federation of Teachers  
 American Federation of Government Employees  
 United Mine Workers of America  
 American Federation of State and County Municipal Employees  
 United Steelworkers  
 Communication Workers of America  
 National Association of Letter Carriers  
 American Postal Workers Union  
 International Brotherhood of Electrical Workers

## OPPOSE

Home Depot  
 Heritage Foundation  
 Citigroup, Inc.  
 U.S. Chamber of Commerce  
 Coalition for a Democratic Workplace  
 National Mining Association  
 American Hospital Association  
 Americans for Tax Reform  
 American Health Care Association  
 American Frozen Food Institute  
 American Hotel and Lodging Association  
 American Meat Institute  
 Associated Builders and Contractors  
 National Grocers Association  
 National Electrical Manufacturers Association  
 National Petrochemical and Refiners Association  
 Real Estate Roundtable  
 National Stone, Sand, and Gravel Association  
 National Association of Manufacturers

Information courtesy of [www.govtrack.us](http://www.govtrack.us). Current as of January 29, 2010.