



What does it mean for your future?

What is it?

Employee Free Choice Act (EFCA)

Get Involved: It's As Easy As 1-2-3!

In 2007, the misnamed "Employee Free Choice Act" (EFCA) was passed by the House of Representatives, but was narrowly blocked in the Senate. Similar legislation was recently introduced as H.R. 1409 and S. 560.

- Under current law, workers have the right to join or form a labor union and to collectively bargain over wages, hours and working conditions.
- EFCA jeopardizes the employer/employee relationship by allowing government arbitrators to unilaterally impose labor agreements.
- The legislation's "binding arbitration" language could force private, newly unionized employers to make changes that result in lower wages, less benefits and fewer jobs for American workers. Under the bill, if an employer and a union cannot reach agreement within a 120-day period, either party could call for a federal arbitration panel that would set binding (unchangeable for at least two years) contract terms on employers related to workers' wages, benefits and work rules.
- EFCA also would eliminate the requirement for secret ballot elections and replace them with a "card check system" that allows workers to sign an authorization card – whether in privacy or in the presence of union organizers and co-workers – which would be legitimately counted as voting "in support" of union representation.

1 Write a letter to your Congressman and Senators

Contact your Congressman and Senator and oppose EFCA and the elimination of the workers' right to a private ballot. Write a letter on your company or personal letterhead, and personally sign it. Use the talking points above as the basis for your letter and explain how the legislation would affect you and your company.

2 Call your Congressman and Senators

Call your Congressman and Senator and tell them to oppose EFCA. Your call will reinforce your letter to ensure your voice is heard.

3 Tell your friends, neighbors, co-workers, and fellow business leaders in your area to contact their Congressmen and Senators

Make sure to talk to people you know and encourage them to write letters to Congress and call to oppose EFCA. Your leadership in your community will make a tremendous difference in stopping this legislation.

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Go to www.wmc.org for resources on EFCA, and to help save the secret ballot in union-organizing drives.



THE IMPACT OF THE EMPLOYEE FREE CHOICE ACT ON CURRENT LAW

OVERVIEW

The Employee Free Choice Act (EFCA) (*H.R. 1409 and S. 560*) fundamentally changes America's labor law system, overturning longstanding principles of fairness and balance between workers and employers, directly threatening employers' ability to create and retain jobs and remain competitive.

PROVISIONS IN THE EFCA	CURRENT LAW	WHAT EFCA CHANGES	IMPACT
Effective elimination of secret ballot elections	<ul style="list-style-type: none"> Section 9(e) of the National Labor Relations Act (NLRA) allows the National Labor Relations Board (NLRB) to hold private ballot elections when union organizers demonstrate a "showing of interest" from within a particular bargaining unit when at least 30 percent of the employees within a particular bargaining unit show interest by signing authorization cards. Union representation elections are administered by the NLRB, which oversees the private ballot voting process to ensure no one — employees, employers or unions — unfairly influences how individual employees vote. Employees who no longer want a union to represent them are entitled to seek an election to determine if a majority of their coworkers wants to decertify the union. If over 30 percent of workers in a bargaining union sign a decertification petition, the NLRB will set a date for the private ballot decertification election. 	<ul style="list-style-type: none"> Amends the NLRB Act that requires an employer and the NLRB to immediately recognize the results of a 'card check' campaign once union organizers collect signed authorization cards from 50 percent plus one of the bargaining unit and submits them to the NLRB. A secret ballot election may be held if 30 to 50 percent of the bargaining unit has signed cards but it is not required. The EFCA would prohibit private ballot elections if over 50 percent of the bargaining unit signed authorization cards. The bill explicitly states that under these circumstances the NLRB would be unable to hold a private ballot election. The EFCA does not allow "card check" to be applied in the decertification process. Even if a majority of employees file a decertification petition with the NLRB that process must still be resolved by a private ballot election. 	<ul style="list-style-type: none"> While private ballot elections can be conducted with signed cards from between 30 percent and 50 percent of the bargaining unit, it is unlikely unions will voluntarily engage in private ballot elections when only a simple majority of signed cards is required to form a union. The card check approach unnecessarily exposes employees to coercion by union organizers and their peers. Courts and the NLRB agree that the private ballot is the most reliable method for determining whether employees want a union. The card check system denies employees' access to information to make well informed decisions regarding union membership. According to the NLRB, the average time for an election is 39 days, and 94 percent of elections are held within 56 days. EFCA makes it easier for union organizers to form a union but difficult for employees to decertify a union — a quick certification process of labor unions, yet requires a more thorough process for decertification.
Imposition of binding arbitration on newly unionized private sector employers	<ul style="list-style-type: none"> After a union is certified, current law requires the union and the employer to bargain in good faith. NLRB may issue bargaining orders to both sides; and order back-pay for wronged employees if employers do not engage in negotiations in good faith. Today employers and unions must mutually agree to wages, benefits and other terms and conditions and the agreement is subject to approval by employees. Under current law, both parties are free to negotiate and the NLRB can not compel either party to binding terms of labor contracts. First labor contracts typically include the terms that set: wages, benefits and work rules within a particular bargaining unit. 	<ul style="list-style-type: none"> After a union is certified by the NLRB, the union and employer must begin first contract negotiations within 10 days. After 90 days, either party may notify the Federal Mediation and Conciliation Service (FMCS) and request mediation. After 30 more days, a FMCS appointed arbitration panel will determine the final contract. The Federal arbitration board's contract decisions are binding upon both parties for a period of 2 years. 	<ul style="list-style-type: none"> Our labor law system never intended to allow individuals that are not familiar with particular workplaces from imposing the binding terms of the first labor contract. Binding interest arbitration fundamentally changes the dynamics of collective bargaining. By removing the incentives to negotiate labor unions and employers would see the negotiating process as a way to better position their self interests for arbitration. Mandatory, binding arbitration prohibits union employees from final approval of the terms of their union contract. Thus, not only does the EFCA allow unions to eliminate an employees' access to a private ballot, it also eliminates their ability to vote for or against the contract terms of their employment. Neither the employees nor the employer could appeal the arbitrator's decision. Under binding arbitration, businesses' ability to respond to competition or other changes in the business environment would be limited; with devastating consequences for employers, employees and their families. Under EFCA, the arbitrator's decision could force a company out of business.
Increased employer penalties	<ul style="list-style-type: none"> Labor unions and employers are prohibited from engaging in coercive or threatening conduct before private ballot elections. Employers that illegally intimidate employees or otherwise attempt to prevent them from forming a labor union are subject to quickly reinstating the employees and proving them with back pay. 	<ul style="list-style-type: none"> Significantly increases penalties for unfair labor practices for employers but not unions during an organizing drive or until a first contract is reached. Changes the NLRA to allow for triple back pay and liabilities of up to \$20,000 if an employer is found to illegally intimidate employees or otherwise attempt to prevent them from forming a union. Charges of unfair labor practices by employers would be given priority over all other cases considered by the NLRB. The Board would be required to seek injunctions requiring reinstatement of discharged workers even before a hearing is conducted on the merits. 	<ul style="list-style-type: none"> Our current labor law system is based on principles of fairness. The EFCA system would fundamentally skew penalties against employers. Increasing penalties against employers undermines the current principles inherent in the NLRA that seek to promote balance among employees, employers and labor unions. The EFCA does not apply any new penalties to labor unions, despite the enhanced need to provide further protection to all employees from coercion under the card check approach.

GET INVOLVED! To learn more, see the back side of this brochure.