

Preparing for the EFCA

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If you are not monitoring what Congress is considering with the Employee Free Choice Act ("EFCA") and deciding what steps your health care organization needs to take in response to the proposed legislation you need to be. Often when new employment legislation or regulations become effective, there is great concern over what the effect will be on the employer. But then things settle down, and there is not such a big effect. However, with the EFCA that is not likely to be true.

The EFCA will allow a union to organize your employees without a secret ballot election. In most situations, an employer will not have the opportunity to champion to its employees the value of remaining union free and the negative consequences to employees of union organizing after an election petition is filed. Under the EFCA, if a union secures union authorization cards from 50% plus one employees in a bargaining unit, there will be no election and within 10 days the employer will have to begin negotiating a first collective bargaining agreement (CBA). If a CBA is not agreed to within 90 days, either party can request the assistance of a Federal Mediation and Conciliation Services (FMCS) mediator. After 120 days if no CBA has been agreed to, the FMCS will appoint a mediator to determine the terms of a two year CBA (wages, hours, and conditions of employment). No ratification by the bargaining unit union members or management will be necessary. There are no parameters set to limit the arbitrator's ability to set the terms of the CBA and no guidelines as to how the arbitrator is to arrive at the terms he imposes on both parties. Different arbitrator will set the CBA for competing employees. And, therefore, the wages, hours and conditions of employment may vary substantially from employer to employer.

In addition, there are serious new penalties which can be imposed on employers. There is mandatory injunctive relief against employers for continuing unfair labor practices during an ongoing or first contract drive. A \$20,000 fine can be imposed for each employer violation during this period. And any employee who is terminated or unlawfully discriminated against during this period will have a right to be reinstated with triple back pay.

In light of this proposed legislation, health care organizations need to be deciding what approach they want to take. Some will choose to do nothing so as not to arouse employee interest. But many will become proactive and take a number of steps to remain union free.

At a minimum, employers should:

1. Educate all managers as to the union organizing and NLRB election process and the changes the EFCA will cause and inform them of the organization's union free position and their duty to communicate that message to their staff. Make them aware of the key role they play in maintaining union-free status. Help them feel comfortable in assuring employees' questions about union organizing.
2. Be prepared to respond to any attempt to organize employees.
3. Make sure their solicitation, distribution and bulletin board access, electronic communication and grievance policies are legally up-to-date and followed.
4. Have managers communicate well with employees and create a positive workplace – that means truly dealing with problems and grievances and having fair and consistent supervision.
5. Review pension, health insurance and other benefit coverage to remain competitive.
6. Alert managers that Human Resources must be notified about any union organizing activity.
7. Contact federal legislators to explain the negative impact the EFCA will have on employees.

More aggressive employers will also want to:

1. Create, publish and distribute a union free statement. Catholic organizations need to acknowledge the employees' right to organize if that is what they want.
2. Include in orientation programs a portion on being union free, why it is best for employees to work in a union free environment, the effect of signing a union authorization card and the negative consequences on the employees if a union is certified.
3. Have managers use department meetings to explain the above information to current employees.
4. Make sure legal compliance is occurring concerning your employee handbook and that wage and hour and antitrust laws are being followed.

And even more aggressive employers will also want to:

1. Insure that all areas of the organization is "off limits" for outside organizations' solicitation or distribution activities.
2. Eliminate public access to cafeteria and meeting rooms.
3. Review subcontractor and other tenants agreements to comply with organizations policies.
4. Familiarize its Board of Directors with EFCA and union organizing.
5. Develop talking points for managers to respond to union questions from employees.
6. Prepare memos to employees to explain management's position on remaining union free and the negative consequences on union organizing.
7. Appoint and develop a team of managers to respond to union organizing.

Someone in your organization needs to be monitoring the status of the EFCA. Labor is pushing hard for the legislation as it sees it as a way to lift Labor from its current low total membership. Health care is one of Labor's targeted industries. To keep your organization union free, you will need to take the appropriate steps now.

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