



## EMPLOYEE FREE CHOICE ACT (H.R. 800/S. 1041) EXECUTIVE SUMMARY

### Stated Purpose

The stated purpose of The Employee Free Choice Act (“EFCA”) is to amend the NLRA “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.”

### Elimination of Secret Ballot Elections

- EFCA requires NLRB to certify a union as the exclusive representative of employees without an NLRB-supervised election where “a majority of the employees in a union appropriate for bargaining has signed valid authorizations” for a particular union.
  - *Current Law:* An employer may lawfully refuse to recognize a union until that union wins an NLRB secret-ballot election. To obtain an election, a union must obtain support from at least 30% of employees and file an election petition. The Board then notifies the employer and schedules an election.
- NLRB is to develop model authorization language and establish authentication procedures to be used to certify bargaining representatives.

### Mandating First Contracts

- Within ten days after receiving a written request for collective bargaining from a newly organized or certified representative, the parties must meet and begin to bargain collectively.
- If the parties fail to reach an agreement within 90 days, either party may request that the dispute be mediated by the Federal Mediation and Conciliation Service (FMCS).
- If FMCS is unsuccessful at bringing the parties to agreement within 30 days, the dispute will go to arbitration.
- Results of binding arbitration are binding on parties for two years.

## New Employer Sanctions

EFCA would revise enforcement scheme under the NLRA with respect to unfair labor practice charges.

- The Board must seek an injunction against employers upon a showing of reasonable cause that an employer discharged or otherwise discriminated, threatened discharge or otherwise threatened to discriminate, or otherwise significantly interfered with employee §7 rights<sup>1</sup> during an organizing campaign or first contract bargaining.
- Courts may grant temporary restraining orders or other injunctive relief.
- Provides back pay plus liquidated damages of two times (2x) back pay for certain unfair labor practices under §7.
- Civil penalties against employers of up to \$20,000 for each willful or repeat violation of employee §7 rights during a campaign or first contract bargaining.

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<sup>1</sup> §7 of the NLRA guarantees employees the right to form, join or assist labor organizations and to engage in other concerted activities for their mutual aid and protection. These rights are enforced through §8(a)(1) of the NLRA, which makes it an unfair labor practice for an employer to interfere with an employee's exercise of his or her §7 rights.