



**Stepping Stones:
Understanding the Employee Free Choice Act
& Creating a Solid Defensive Strategy**

Today, organized labor has an agenda - and the pocketbook to back it. Unions like the Teamsters, UNITE-HERE, UAW and SEIU are spending hundreds of thousands of dollars to elect officials who will help them get what they most want – more members, and more dues money. The proposed legislation aims to do everything from eliminate “Right to Work” laws to redefining who is and isn’t a supervisor. The list is extensive, and it has many American employers alarmed.

The legislation that has gotten the most attention recently, however, is the “Employee Free Choice Act (EFCA).” It’s an artfully created bill that has inspired thousands of employers to begin a proactive course of reinforcing their positive employee relations and continuing to communicate their union-free philosophy.

To quickly understand what the Employee Free Choice Act proposes, take a look at the chart below:

EFCA At-A-Glance

	Under Current Law (NLRA)	Under EFCA
Authorization cards	30% means the union can petition the NLRB for a secret ballot election. If the majority of employees sign cards, the union can ask the employer to recognize them as the employees’ bargaining representative, but the company has no legal obligation to do so, and can still ask for a secret ballot election.	If 50% of employees plus one signs, the union is automatically recognized under the law as the employees’ bargaining representative. This effectively eliminates the secret ballot election.
Organizing Campaigns	Once the petition has been filed with the NLRB, employees have up to 42 days to hear the facts and make an informed decision.	Campaigns are perpetual and never end until the union is able to get a majority of employees to sign. Potential for enormous cost to company and loss of morale among employees.
Collective Bargaining	The company and the union determine timeframe, establish points for bargaining, and work together to reach an agreement.	90 day deadline
Mediation	Optional, either party can request	30 days of Federal Mediation and Conciliation Service (FMCS)
Arbitration	Optional, either party can request, very rarely used.	Mandatory after 120 days. Contract decided by arbitrator, in force for two years.
Decertification	Can be initiated by employees after 12 months following the union’s certification.	Cannot occur until the contract expires, allowing the union to collect dues for two years or more.
Penalties for Violations	<ul style="list-style-type: none"> •NLRB supervised notice •Reinstatement and back pay •Order to bargain in good faith •Injunction •Contempt proceedings (very unusual) 	Employer only: <ul style="list-style-type: none"> •3x back pay •\$20,000 civil penalty <i>per violation</i> •Injunctions

Companies that have taken action are those that understand that positive employee relations – not just in times of political change, but always – is the way to make unions and their promises irrelevant to employees.

A good way to create an EFCA action plan today is to break it down into what you need to do immediately, what should be accomplished in the near future, and what should be done if (when?) the legislation becomes law.

But first, it's important to understand what these companies know and practice. The following tips are simple, basic ways to begin a proactive program:

1. Begin at the beginning – Staying union-free starts with day one on the job. All new employees need to understand that joining the company means that they are now part of something larger than themselves, a company with a history, a vision, a mission, and a union-free guiding principle.

2. Look for communication opportunities – New benefits plans, employee achievements (company, group, individual), even just personal one-on-one interaction between employees and supervisors is vitally important. Anytime you have an opportunity to thank employees publicly or even one-on-one, do it.

3. Create win-win rewards – Show employees and supervisors how much you value the good job they do with training that improves their skills and enhances their ability to do a good job.

4. Celebrate – Achieve a goal? Earn certification? These are prime opportunities to celebrate as a team. Be sure these and other milestones don't go unappreciated.

5. If you think education is expensive, try unionization. Ask any labor relations professional and they'll tell you one of the most important things you can do to remain union-free is educate your supervisors. No matter what method you choose – live, in person, video, eLearning or a combination of all of the above, make sure every single supervisor is ready to recognize and handle signs of card signing activity.

6. Enlist the entire company – Inspire employees to take ownership over their job and the company by soliciting their input and feedback. An online suggestion box on your intranet or dedicated labor relations website makes this easy and instantaneous. You can then respond publicly to the best ideas, giving credit where credit is due.

7. Get Professional Help – It's imperative to craft your union-free strategy with the help of counsel and/or a labor consultant. They've been there, they've done that, and they can help you, too.

So, with these best practices in mind, now is the time to craft a proactive program that will keep the company union-free.

Step One –Now – Enlist the decision makers

The first step for your program is the education of all decision makers. Start the conversation with the bottom line – that this legislation would create an environment

where future wage and benefit decisions could be made by an arbitrator. As unbelievable as that may sound, you can also provide them with information on the RESPECT Act, which seeks to change the definition of who is a supervisor, making even more employees eligible to belong to a union.

Once you have the attention of upper management, you can provide more specific information on the proposed legislation. The next step is to suggest action items that will help protect the company. Drafting and implementing your strategic positive employee relations program is the best way to take a comprehensive approach to these issues. Enlist your internal team as well as your attorney and labor consultants.

Make sure your strategy includes these 11 “Union Free Best Practice” areas:

Hiring / Selection process – educate your HR department

First Line Supervision - including job descriptions, as they might relate to the RESPECT Act

Communication – open door policy, corporate messages

Union Avoidance Training – essential for all employees at every level

Organizing (Third Party) Detection – Supervisors need to know the warning signs

Employee Relations – All management employees need to be trained on positive interaction and relationships with the workforce

Wage and Benefit Structure – review for any potential PFA or other issues that could be damaging if called into question, regardless of validity

Retention – put an employee retention program into place, reward for hiring referrals

Policies and procedures - includes internal communication policies regarding email, public notices, etc.

Employee Involvement – invite feedback, look for opportunities to solicit opinions

Management visibility / accessibility – now is the time to begin making upper management available, not when there’s union activity. Their involvement should be genuine, and will be, if they are visible and accessible to employees.

Step Two - Soon - Train your supervisors, educate your employees.

Supervisors are a vital link to remaining union-free. Make sure they are fully trained in labor relations and that they have a thorough understanding of employee rights, what they can and can’t say, and the best ways to help the company remain union-free through positive employee relationships. Additionally, they should be made aware of the pending legislation (EFCA, RESPECT, PFA, etc.) and should be kept up-to-date as the laws evolve.

All current wage employees should be aware of the company's union free philosophy and the reasons for it. New employees need to hear the message starting on day one with a comprehensive Orientation. All employees, regardless of tenure, should be given an annual refresher on the company's pro-employee, union free position. Every single employee needs to understand the value of their signature.

Step Three - After the legislation becomes law – Strategize and re-train

First of all, don't hesitate. While Barak Obama has publicly said he will make EFCA the law, it may very well make no difference who is elected President. Organized labor is focused on their goals. Once the Employee Free Choice Act is passed in one form or another, Unions will begin an all-out campaign to organize employees, and they won't waste any time. Re-train all supervisors on the implications of the law, as well as the warning signs of organizing activity. Continue annual refreshers on this training. Additionally, a communication center that can consistently deliver ongoing information to all management-level employees, as well as providing them with a tool to report any observances of activity, anywhere in the country, can be a powerful tool in your revised strategy. This can be achieved with a dedicated website that includes 2-way communication channels. No matter how you create or maintain this website, be sure it is engaging, and kept up to date or your managers and supervisors won't use it.

Realize that organizing campaigns will become perpetual under the new law. Organizers will no longer be concerned with concepts of "time" or "money," and will simply continue to collect signatures until they have what they need to collect dues. Every company must prepare a strategy that can be implemented at a moment's notice if there is evidence that cardsigning activity is occurring (and it's not always obvious). While steps one and two of this plan should serve your company well during this time, no successful company should consider themselves immune to possible organizing attempts. Your immediate action strategy should include communication tools (videos, handouts, etc), any specific training for supervisors, and calling on your established team of experts, both internal and external.

In The End

It all comes down to awareness, at every level of the company. By educating upper management, supervisors and employees on those things that matter most to them, you can create an environment that truly makes unions irrelevant. It can be a daunting task, to create and execute an effective proactive strategy, so it's highly recommended that you call on industry experts. By gathering advisors and resources that support your union-free philosophy, you'll be prepared to address any situation that arises.

As you consider your proactive strategy, keep in mind that Projections offers a wide variety of communication products, both custom and "off-the-shelf," that can assist you in your efforts to remain union-free. Please visit the Projections website at www.ProjectionsInc.com for more information.

Helpful Online Resources

More on the Employee Free Choice Act, and additional resources:
www.EmployeeNoChoiceAct.com

Networking to remain Union-Free:
www.CUEInc.com

www.LittleCardBigTrouble.com
The top-selling communications tool on cardsigning for 20+ years.

Obama's Pledge:
<http://employeecentric.blogspot.com/2008/09/law-of-land.html>

Comprehensive training for Supervisors"
www.Supervisors.tv

Employee-Centric websites:
www.UnionFree.com
and
www.LaborLook.com

Powerful book on creating positive employee relations:
www.UnionProof.com

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