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10 Ways for Companies to Stay Union Free With or Without the Passage of the Employee Free Choice Act

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The Employee Free Choice Act (EFCA), in its present form, would result in three sweeping changes to labor law. First, the EFCA allows unions to more easily organize employees by eliminating the secret ballot in a National Labor Relations Board election. Instead, the union would merely present signed cards supporting unionization (authorization cards) of 50 percent plus one of the targeted work units to the National Labor Relations Board. The company would then be required to recognize the union as the collective bargaining agent and bargain with the union.

Secondly, the EFCA forces companies to reach an agreement with the union within 90 days of the National Labor Relations Board certification of the union or either party can demand mediation. If an agreement is not reached at the mediation table within 30 days, the contract is referred to binding arbitration and the arbitration results will then be binding on both parties for two years.

Finally, the EFCA grants the Board the power to award liquidated damages at twice the amount of back pay and to impose civil penalties of up to \$20,000 per violation.

These changes may seem overwhelming, unreasonable, and highly skewed in the union's favor, yet the company is **still in control**. The company has the opportunity to create a culture **now** that encourages informed, engaged, and productive workers that have little incentive to organize.

Create your own competitive advantage in your industry by taking the actions below so the union walks away from your workforce and shows up at a competitor's door instead. Wage your election campaign now by thinking and acting proactively!

1. Competitive Wages & Benefits—Outside & Inside

Companies should evaluate wages of similarly situated employees of other companies to determine if their workers are being paid a competitive wage. Similarly, companies should analyze their internal compensation system (salary/wage ranges and rates) to determine if compensation is set

for "position" rather than individual and whether a uniform approach is used for length of service and experience. If there are disparities that cannot be justified, they should be evaluated.

2. Communication with Employees—What are the Wants?

Companies should allow employees to communicate with management regarding complaints and concerns. Methods of communication include having open door policies when appropriate, surveys, suggestion boxes, bulletin boards, job orientation, forms which communicate to the employee various hidden employee benefits, and company events such as picnics and holiday parties.

3. Education of Employees

Employees should be educated about what changes will occur should they unionize. Companies should point out that unionization brings changes to the company environment such as lack of ability to communicate directly with management, dues and fees which may go to international union efforts and political causes, fines for crossing picket lines, and employees being replaced if the union strikes.

4. Identification/Training of Supervisors

True supervisors may not vote in a union election. Thus, it is critical to identify who the supervisors are within the organization and define their job responsibility. Passage of the Re-Employment of Skilled Professional Employees and Construction Trade Workers Act ("Respect") would cause workers who do not spend more than 50 percent of their time directly supervising others to lose their classification as a supervisor (currently only 10 to 15 percent) and thus be part of the proposed employee unit.

Analyze the duties of your employees to determine who is tasked with supervisory jobs and define their titles as such. Once identified, training, attitude and ownership mentality is crucial. Taking ownership of policies and decisions of

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management and not blaming unpopular decisions on management is essential to leadership.

Finally, train supervisors on the “do” and the “don’t do” of a union campaign—what to say and not to say, what management acts are prohibited and the importance of enforcing policies consistently.

5. Education of Management

Management should be educated as to the company’s position and strategy for dealing with union activity. Being familiar with whether competitors are facing unionization, having an ability to identify the major unions in your area, researching their organizing tendencies, strengths and tactics, and recognizing union advertising are critical. Management should be able to respond to employees’ questions about union activity taking place within the company.

6. Obtain Legal Counsel

Legal counsel can help you review employment agreements, the company’s bulletin board announcements, confidentiality policies, and assist with the education of management about labor laws. Legal counsel can also help you train your management on how to wage a legal campaign. Legal counsel can also assist with terminating employees with a history of poor work performance.

7. Hiring & Promotion Policies—Who are the Agitators?

Companies should regularly review their hiring and promotion policies. Processes should include centralized final review by a human resource manager to ensure supervisors are consistent and use appropriate documentation. Poor and marginal employees almost always vote for a union; therefore, such employees should be terminated as soon as poor work performance is discovered.

Consistent and regular review processes that use objective determination to the extent possible and require specific examples and documentation in subjective cases will assist in identifying both employees with stellar work performance and those with marginal work performance. Ensure that

disciplinary action is reflected on employee’s performance evaluations.

8. Quality Working Conditions

Working conditions should be clean and safe. Companies should work to identify areas that could use improvement and maintain general safety standards.

9. Resolve Complaints Efficiently & Effectively

Companies should make sure the right people are placed in supervisory positions. Complaints by employees should be immediately and fairly resolved. The process should be viewed as fair and not needing the outside influence of a union. If employees complain about favoritism or disparate treatment by a supervisor, the company should address it immediately. Unions tend to exploit unaddressed employee complaints about supervisors when initially forming.

10. Teamwork

Employees that feel invested in a company as part of a team are less likely to be swayed by union leaders. Holding regular meetings where management communicates with the employees about the company and allowing communication by the employees regarding suggestions for process/ production, etc. improvements can help employees feel invested in the company.

Conclusion

Whether or not the Employee Free Choice Act is enacted, use this threat to improve your culture thus improving your productivity and profit. Study after study shows that when employees feel valued and heard, they don’t look to unions to protect them from the very one who is providing them the job. Likewise, with a 92 percent unorganized private sector, unions won’t throw “good money after bad” but will target work places that are more vulnerable to union representation. Simply said, a union cannot create a vote of no confidence in management policy unless management gives it the keys.

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Ruth A. Binger is a principal in firm serving both mature and emerging businesses concentrating in the areas of corporate, intellectual property and technology, and labor and employment law. Both her commitment to businesses and her understanding of multifaceted issues inherent in operations distinguish her practice.



Misty’s legal practice is dedicated to estate planning and administration, as well as employment law. She helps prepare well designed strategies for companies and owners to maximize wealth and protect assets.