



## **LEGAL AND LEGISLATIVE UPDATE: APRIL 2007**

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### **EMPLOYER FREE CHOICE ACT MOVES FORWARD**

A potentially dangerous piece of legislation for employers is moving very quickly through the new Congress. The deceptively named “Employee Free Choice Act” (H.R. 800) recently passed the House of Representatives and now goes to the Senate. The bill is expected to pass the Senate and ultimately land on the desk of President Bush. It is expected that President Bush will veto the legislation, which is also opposed by the Department of Labor.

The bill would dramatically alter the landscape of labor relations by eliminating the private, secret ballot process run by the NLRB in which workers currently decide whether they wish to be represented by a union. Instead, a union would be certified to represent workers if a majority of employees sign authorization cards designating the union as their representative. This is known as a “card check” election.

Employees have had the right, since 1947, to choose whether to be represented or not through a private ballot election process. The new legislation would eliminate the secret ballot option and replace it with the card check process.

Of particular concern to employers is the degree of influence unions can exert in obtaining signed cards from employees without employers having the ability to tell its side of the story. Unionization would likely become much easier, leading to the potential for unions to organize in industries that have historically not been the subject of concerted organizing efforts.

Employers should also be concerned about other provisions of the legislation beyond the elimination of secret ballot elections. For example, the Act provides that if the parties are unable to reach a first contract after 90 days of negotiating, the Federal Mediation and Conciliation Service (“FMCS”) would be called in. To the extent that FMCS could not reach an agreement with the parties after 30 days, the matter would be referred to arbitration. The results of that arbitration would then be binding on the parties for two years.

In addition, civil penalties and even treble, or three times, damages could be assessed against employers who are found to have willfully or repeatedly violated employee’s rights during an election campaign or the efforts to obtain a first contract.

As a result, concerned employers should contact their Federal representatives to indicate their opposition to the Act and support for maintaining secret ballot elections. SHRM has also started its own grassroots effort to lobby Congress against this troublesome legislation. It is also recommended that employers continue to develop and maintain strong employee relations programs to help prevent unwanted organizational efforts, regardless of whether the Act and the card check process of selecting a union ever becomes law.

For more specific guidance on these issues, you may reach Mr. Gold at (717) 237-6702 or by email at [kgold@rhoads-sinon.com](mailto:kgold@rhoads-sinon.com).