

The Employee Free Choice Act: An Overview

The Employee Free Choice Act (EFCA) is legislation being considered by Congress that would change the methods for establishing how a union represents employees in a workplace, and the process for determining the initial contract, or collective bargaining agreement, between the employer and the union.

“Card Check” Provision

Under current labor law, the U.S. National Labor Relations Board (NLRB) certifies a union as the exclusive representative of employees if the union is elected in a secret-ballot election conducted by the NLRB. The election is held if more than 30 percent of employees sign statements asking either for representation by a union, or for such an election. After a campaign period typically lasting 40 days—in which employees hear all sides of the issue from the union, the employer and coworkers—the election is held, supervised by the NLRB, which ensures that employees cast their ballots in a confidential manner with no coercion by either management or the union.

Assuming EFCA became law, here’s what would happen:

If 50.1 percent of employees signed cards indicating they support the creation of a union, it would require the NLRB to certify the creation of a union. There would be no secret ballot election. EFCA would not explicitly prohibit elections, but votes would only take place if a union or a group of employees filed a petition with authorization cards signed by less than a majority of the workers, which rarely occurs under current law.

Additionally, there are no time limits on card collection. The unions would be able to collect the signed cards from employees and independent contractors for as long as it takes to get the 50.1 percent majority. Once a card is signed, it gets counted, even if employees change their minds. Because of the lack of time limit, it is possible that some unions have already started collecting signed cards in anticipation of the passing of EFCA.

Current Process	Card Check
Union gathers signatures of at least 30% to have an election	Union gathers card signatures of at least 50% + 1, unsupervised by NLRB, and a union is formed (no private ballot, no election)
Employers and unions mount informational campaigns to present both sides	
NLRB supervises a private-ballot election	
If majority approve union in the election, NLRB certifies the union	

“First Contract Arbitration” Provision

Under current law, once a union is elected, the union and the employer negotiate over a collective bargaining agreement that will define the wages, benefits and other critical workplace issues, such as seniority, overtime, job classifications, grievance procedures, compulsory union agency fees (except in “right-to-work” states) and myriad other issues.

Both parties are required by law to bargain in good faith to try to reach an agreement.

Under EFCA, bargaining would begin within 10 days after the union requested it. The union would serve as the exclusive bargaining representative for an appropriate unit of employees via the card check process.

If the union and employer cannot agree upon the terms of a first collective bargaining contract within 90 days, either party could request federal mediation. If after 30 days of mediation, there is no agreement, a panel of arbitrators appointed by the Federal Mediation & Conciliation Service would write the contract.

Where government arbitration determines terms of the agreement, employees would not have a right to ratify the terms of that agreement. The terms of these agreements would include decisions on wages, hours and all other work-related issues (seniority, promotions, overtime, job descriptions, etc.).

Current Process	First Contract Negotiation
Union and management are required to negotiate in good faith to try to reach an agreement that is decided entirely by the parties	Union and management begin bargaining within 10 days of the union’s request Union and management have 90 days to negotiate If no agreement after 90 days, mediator works with union and management for 30 days to try to reach agreement If mediation fails, government appoints panel of arbitrators to write the contract which will govern all workplace employment issues for two years

Penalties

Finally, EFCA would provide for liquidated damages of three times back pay if employers were found to have unlawfully terminated pro-union employees. (Under current law, the employer only owes back pay.) EFCA also would impose a \$20,000 penalty upon employers for each labor law violation if the NLRB and/or a court deem the violation willful or repetitive and the violation occurs either while the union is seeking to organize the employer's employees or the while the employer and union are negotiating the initial contract. Under the proposed legislation, unions would not face any fines for similar violations.