



**THOMPSON
HINE**

March 2009

**EMPLOYEE FREE CHOICE ACT
INTRODUCED IN HOUSE AND
SENATE**

The misnamed Employee Free Choice Act (EFCA) was introduced in both the House and Senate on March 10, 2009 (bills H.R.1409 and S.560, respectively). The bill language is substantively the same as the version of the EFCA introduced in 2007. As a reminder, if passed, the EFCA would substantially change the law applicable to union organizing campaigns in three ways:

- *Card Check.* Under the EFCA, a union could be certified as the collective bargaining representative for a unit of employees by obtaining the signatures of more than 50 percent of the proposed unit, a modification of the current system, which requires a secret ballot election.
- *Contract Arbitration.* Under the EFCA, if a recently certified union and employer cannot agree to the terms of a new collective bargaining agreement, the matter can be submitted to binding arbitration for a two-year contract.
- *Fines.* Under the EFCA, the NLRB may impose higher penalties against an employer who commits unfair labor practices during a union organizing campaign.

Obviously, at this time, the bill has not passed, and there is at least some encouraging news that several key Democratic senators are re-thinking their support of the EFCA. Still, this news makes it imperative that non-union employers take steps to protect their workforces.

In light of this, we have developed the Thompson Hine EFCA Defense Kit, which provides information for employers interested in implementing union avoidance efforts. To learn more, please go to www.ThompsonHine.com/publications/pdf/EFCADefenseKit.pdf.

FOR MORE INFORMATION

We will keep you apprised of developments regarding the EFCA. In the meantime, if you have any questions, please contact any member of our Labor & Employment team regarding the EFCA or the EFCA Defense Kit. For a list of our Labor & Employment lawyers, please go to www.ThompsonHine.com/practices/labor_employment/lawyers/.

Thompson Hine sends Employment @lerts as a service. If you do not wish to receive future @lerts, please email LaborandEmployment@ThompsonHine.com with the phrase "Unsubscribe: Employment @lert" as the subject line.

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.