



by Donald R. Lee

The pro-labor legislation of EFCA will have a drastic impact on hoteliers

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Introduced in the U.S. House of Representatives the second week of March, the egregiously misnamed Employee Free Choice Act (EFCA) could result in a sweeping pro-union overhaul of federal labor law. As we first warned hoteliers over two years ago in a TRC article on this very topic, there is a significant chance that EFCA will become law in the near future, given the Democratic majorities in both congressional houses and that President Obama is a public supporter of EFCA.

This article provides a brief overview of the EFCA and offers suggestions for helping hoteliers maintain their union-free status in a post-EFCA world.

The EFCA would do away with elections

In 1954, over 34% of the private sector was unionized. Union membership has declined dramatically since then to under 8% of the private sector workforce. Known to some as the “Big Labor Bailout Bill,” EFCA supporters hope to reverse the decline in union membership by stripping away employees’ right to a secret ballot election to determine whether or not they wish to be represented by a union.

The EFCA would impose a process known as “card check.” Under card check, hotel management and other employers would be forced to recognize the union as the employees’ collective bargaining representative once a simple majority of employees have signed union authorization cards. No elections to choose a collective bargaining unit would ever occur, secret or otherwise!

Card check makes it much easier for unions to organize because not all employees who sign cards actually support the union. Some employees will sign a card without understanding the implications. Some employees will sign and have a change of heart later once they have the facts about unionization, but the card still remains valid for 12 months. Still others will sign a card simply to get a union organizer off their backs or will succumb to peer pressure in order to avoid being ostracized or harassed by fellow coworkers. This is a virtual certainty given that there will be almost no oversight of the methods union organizers utilize to get employees to sign cards.

Only a secret ballot allows employees to make a fully informed decision in an environment free of coercion! In fact, for nearly 40 years the Supreme Court has recognized that “secret ballot elections are generally the most satisfactory – indeed the preferred – method of ascertaining whether a union has majority support.”

The EFCA would impose more stringent penalties on hoteliers

Federal labor law currently provides that employees who have been discriminated against are entitled to make-whole relief. For example, an employee who is unlawfully terminated because she supported the union is now entitled to reinstatement, full back pay and interest. Under the EFCA, employers who are found to have violated employee rights during an organizing campaign could be subject to a penalty of up to \$20,000 per violation and required to pay *triple* damages to employees subject to unlawful discrimination. Given that the EFCA is entirely one-sided, it should not come as a shock that unions would NOT be subject to similar penalties when they are found to have violated the law.



The EFCA could saddle hoteliers with unlivable initial CBAs

Presently, unionized hoteliers have a duty to bargain in good faith with the union, but cannot be forced to agree to anything that is unacceptable to them. The EFCA would radically alter the bargaining process for an initial collective bargaining agreement (CBA). If the parties fail to reach agreement on an initial contract within 90 days, either the hotelier or the union may request mediation by the Federal Mediation and Conciliation Service (FMCS). If the parties still cannot reach agreement after 30 days of mediation, the FMCS would refer the dispute to an arbitration panel. The panel would have the ultimate power and authority to decide and impose the terms of the initial two-year contract, even if the terms are unacceptable to the hotelier and the employees.

More information about the EFCA

For more information about the U.S. lodging industry's concerns on the EFCA and card check, visit www.ahla.com/cardcheck. Here hoteliers can read a summary of the EFCA, learn about the many myths of the legislation, and view or download an easy to play educational video about the card check issue.

The AH&LA co-chairs a grassroots effort to defeat this legislation entitled the **Coalition for a Democratic Workplace** (CDW). The website contains fact sheets, current video clips of television commercials, news articles, sample letters, and much information that hoteliers can use to educate themselves and their workforce on this serious threat to America's workforce. Additional information about the coalition's work and current educational campaigns is available on their website at www.myprivateballot.com.

Act now before it is too late!

Hoteliers should partner with the American Hotel & Lodging Association (AH&LA), the U.S. Chamber of Commerce and other organizations in an effort to stop EFCA's passage. Hoteliers would also be wise to put a strategic plan in place now to reduce their vulnerability to union organizing if EFCA becomes law. Below are just a few steps that hoteliers should consider.

- *Train Your Supervisors Now* – A hotel's supervisors are the front line in any organizing campaign. They are the ones who know your employees the best and talk to them the most. Your supervisors should know the telltale signs of organizing, and how to enhance their relationships with employees. Foster open communications with supervisors, act upon their feedback, and most importantly, educate them about the detriment of the EFCA before it is too late.
- *Make the Union Irrelevant* – Employees usually unionize if they feel they are powerless and do not have a voice. Hoteliers should have a robust "open door" policy. Get employee input and act on their recommendations when appropriate. Consider peer review of disciplinary decisions. Hotels where employees are involved in the hiring, disciplinary, and decision-making processes are much less likely to turn to a union to seek representation on their behalf.
- *Conduct Employee Assessments* – Utilize employee surveys, focus groups, and anonymous feedback mechanisms to proactively identify and resolve employee concerns (vulnerabilities) now. Failure to take action on appropriate employee concerns will crack the door wide-open for a union to promise anything and everything to the hotel's employees. To paraphrase the old axiom... "Once the door has been opened, it is near impossible to get the horse back into the barn anytime soon."
- *Make the Only Appropriate Unit the One You Want* – Unions will try to cherry-pick employee classifications where they believe they have strong support, especially if there are other employee classifications on the property where the union has little or no support. Hoteliers should try to derail a union's cherry-picking strategy by increasing the likelihood that the only appropriate unit is a "wall-to-wall unit". A wall-to-wall unit is more likely if there is significant employee interchange between classifications, similar terms and conditions of employment, and common control of personnel among all employees on the property.
- *Educate Your Employees* – Develop a proactive "Don't Sign the Card" communications strategy focusing on the downside of unionization and the positive aspects of a direct employee-hoteliers relationship without third party interference. Seek to work with supervisors to have informal discussions with front line and support employees. On this issue, employees will believe that their immediate supervisors have far more credibility than Management typically because they will not see their supervisors as Management or Ownership. Remember, most supervisors are hired directly from the rank and file.
- *Review Your Policies* – A lawful and consistently enforced no solicitation/distribution policy is an operational necessity. Review your policies now to ensure they are enforceable and are not overbroad. Because of National Labor Relations Act legislation, hoteliers that wait until they are the target of organizing may NOT be able to lawfully implement an enforceable no solicitation/distribution policy.



Stay tuned for further EFCA developments. It is sure to be quite a political battle; but with potential exposure so substantial, hoteliers should be proactive so they are not scrambling around when and if the EFCA is passed. ✧

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