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## Contacts

If you have questions or would like more information, please contact any of the attorneys listed at the end of this Alert. Hunton & Williams' [labor and employment law practice](#) covers the entire spectrum of labor and employment litigation, arbitration, administrative practice before the NLRB, EEOC, and the DOL, federal contract compliance, wage-hour standards, workplace safety and health standards, workers' compensation, contractual rights and remedies, Sarbanes-Oxley and whistleblower claims, workplace investigations and client counseling under federal and state labor and employment laws.

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## Employee Free Choice Act Introduced in House and Senate

*"Since When Is The Secret Ballot A Basic Tenet Of Democracy?" says Teamsters President Jim Hoffa in support of EFCA*

The Employee Free Choice Act ("EFCA"), S.560, was introduced on March 10, 2009 in both Houses of Congress. The text of the bill is identical to the one introduced in 2007 which was passed by the House of Representatives and rejected by close vote in the Senate. The House version has 222 sponsors while the Senate version is sponsored by 40 Senators, all of whom are Democrats. A variety of union leaders, led by Jim Hoffa, Teamsters General President, praised the introduction of the proposed statute. Hoffa went so far as to question whether the secret ballot election was even a "basic tenet of democracy."

The Senate Committee on Health, Education, Labor and Pensions conducted a hearing on the morning of March 10, 2009, entitled "Empowering Workers to Restore the Middle Class." The hearing was entirely devoted to promoting the introduction and passage of the proposed statute. Witnesses called to testify at the hearing, described EFCA as a "reasonable, modest approach" to "level the playing field." Senator Casey from Pennsylvania continued to propound the fiction that EFCA does not eliminate the secret ballot, but rather allows employees to choose between a secret ballot election and majority card check.

### How The Process Would Change Under The Employee Free Choice Act

- EFCA would make employer recognition mandatory if the union collects written authorization cards signed by a majority of employees in an appropriate unit. If the union collects cards from a majority, EFCA **prohibits** the NLRB from conducting an election. The employees do not get to choose whether to have an election. It's the Union's choice. This would effectively eliminate the secret ballot election since no union would choose a campaign and an election over automatic recognition based on authorization cards.
- If the union and the employer are unable to agree on a first contract within 90 days, mediation by a federal mediator is mandatory. Absent agreement within 120 days of the election, EFCA requires the parties to submit to binding arbitration. The arbitrator would be empowered to decide the terms of the first contract and impose them on the parties for two years.
- EFCA would authorize civil fines of up to \$20,000 per violation against employers found to have willfully or

repeatedly violated an employee's rights during an organizing campaign or first contract drive.

EFCA would also create additional penalties, including triple damages, for employers who are alleged to have interfered in union organizing among their employees.

### **There Is Still Time To Act**

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While it is difficult to predict EFCA's legislative path, the current wisdom is that the House will await Senate action on cloture and EFCA itself before taking up the measure. Apparently, House members are reluctant to take a stand on this legislation until they are certain it is necessary. On the Senate side, it seems unlikely that EFCA's sponsors will press forward until the second Senator from Minnesota is seated and the clouds hanging over President Obama's Illinois replacement have

been lifted. In other words, there is still time for interested parties to make their voices heard in Washington.

If you are opposed to the passage of EFCA in its current form, you should be aware that the key vote on EFCA will occur in the Senate on the question of cloture. Both sides agree that currently it is an extremely close question which may be decided by one vote. The following Senators are NOT co-sponsors:

Arkansas — Blanche Lincoln  
Arkansas — Mark Pryor  
California — Dianne Feinstein  
Colorado — Mark Udall  
Colorado — Michael Bennet  
Indiana — Evan Bayh  
Louisiana — Mary Landrieu  
Missouri — Claire McCaskill  
Montana — Jon Tester  
Montana — Max Baucus  
Nebraska — Ben Nelson

New Mexico — Jeff Bingaman  
North Carolina — Kay Hagan  
North Dakota — Bryon Dorgan  
North Dakota — Kent Conrad  
Virginia — Jim Webb  
Virginia — Mark Warner  
Wisconsin — Herb Kohl

While a number of organizations are engaged in this lobbying effort, the U.S. Chamber of Commerce and various state chambers of commerce have been extremely active in the lobbying process and would welcome your support. In addition, Hunton & Williams has several lobbyists who are actively engaged in the process concerning EFCA and can assist in or coordinate your efforts to oppose this legislation.

For more information, please contact any one of us or e-mail us at [EFCA@Hunton.com](mailto:EFCA@Hunton.com).

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