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The Employee Free Choice Act Introduced in Congress

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With the long-awaited introduction of the Employee Free Choice Act (EFCA) in Congress on March 10, 2009, a major battle on Capitol Hill is expected. The battle over the EFCA is seen as a power struggle between labor unions and businesses, as well as a test of whether moderate Democrats and Republicans will push back on Democratic leadership in Congress and the Obama administration.

The current bill as introduced in both the House and the Senate has two main components. First, it would give workers the option of forming a union by getting a majority of workers to sign "authorization cards" without the requirement of holding a secret ballot election. This differs from current law, which allows an employer to insist on an election before a union can be recognized as the bargaining representative. Second, the bill mandates that if the employers and the union cannot agree on the terms of a contract within 90 days, either party can request mediation, and if after 30 days mediation proves unsuccessful, a government arbitrator is empowered to intervene and establish the terms of the contract.

The bill represents a significant departure from the traditional manner in which workforces have become unionized. It would permit a union and workers who favor a union to potentially coerce and pressure employees into signing a card authorizing the representation by a union. It will make it much easier for a union to solicit the requisite number of employees and force recognition by an employer. The provision allowing for the federal government to impose terms and conditions of employment on a private sector employer is equally revolutionary in scope and could dramatically alter the collective bargaining agreement.

While the bill is expected to pass the House, there is growing opposition in the Senate. According to the Wall Street Journal, at least six Senators who had previously voted to move forward with the card-check proposal, including one Republican, now say they are opposed or not sure -- an indication that Senate Democratic leaders are short of the 60 votes they

need to prevent a filibuster. Nevertheless, if you oppose this legislation, now is the time to contact your representative and senators.

In light of this bill and based on 100+ years of collective experience in labor law, Lindner & Marsack has developed a comprehensive approach to assist companies in responding to the anticipated increase in union organizing campaigns. For more information, please contact either Jonathan Swain or Thomas Mackenzie.

If you have any questions about the issues raised by this e-alert, please feel free to contact Jonathan T. Swain or Thomas W. Mackenzie at (414) 273-3910 or by e-mail at jswain@lindner-marsack.com or tmackenzie@lindner-marsack.com.

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