



**Organized Labor's Legislative  
Agenda Will Impact Your Business.  
Are you Ready?**



*Presented by:*  
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# Goals For This Session

- Cover proposed bills that represent most significant changes to labor laws in 75 years.
- Provide you with action plan to get you ready.
- Protect your business no matter what happens

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# Legislative Update -- What's New?

- Lilly Ledbetter Fair Pay Act
- ADA Amendments Act
- New FMLA Regulations

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# Lilly Ledbetter Fair Pay Act

- Signed into law on January 29, 2009
- Retroactive to May 28, 2007
- Overturns *Ledbetter v. Goodyear Rubber Co.*
- Claim period begins with each paycheck
- Allegedly unlawful pay practice may now occur each time wages are paid

# Lilly Ledbetter Fair Pay Act

- Expect more claims of pay discrimination
- Allows workers to “sit” on claims and increase potential damages
- Recover back pay up to two years preceding charge, provided unlawful practices during charge period are similar or related to unlawful practices that occurred outside the time to file a charge

# Lilly Ledbetter Fair Pay Act

- Be aware
- Audit pay policies and actual practices
- Look for any patterns in hiring, promotions, merit increases and premium pay assignments
- Listen to employee concerns
- Do not draw legal conclusions – especially in e-mails!

# The ADA Amendments Act

- Signed into law on 9/25/08
- Took effect on 1/1/09
- EEOC expected to issue new regulations, but no deadline
- Law is not given retroactive effect

# The ADA Amendments Act

- Original ADA signed into law in 1990
- Since then, in Congress' view, Supreme Court and lower court decisions have made it harder for plaintiffs to prevail
- Current regulations defining “substantially limits” as “significantly restricted” set a high standard
- Congress determined that the original legislative intent was not being met (“The ADA’s protections were intended to be generous and inclusive.”)

# The ADA Amendments Act

- Sensitize managers NOW to need for heightened awareness of accommodation obligations (even if they may seem odd or unreasonable)
- Policy modifications – review complaint reporting procedures for discrimination claims
- Review and update job descriptions
- Document efforts to engage in the interactive process and employee response

# The New FMLA Regulations

- Effective January 16, 2009
- Significant changes to forms, definitions and notice requirements for all forms of leave
- Provide employers with greater rights to enforce some call-in policies
- Bonuses and Perfect Attendance awards – disqualification may be permitted
- Regs governing military “caregiver leave” issued
- Regs implement military “qualifying exigency leave” for the first time

# The New FMLA Regulations

- Post New General Notice
- Update FMLA policies
  - Add military caregiver and qualifying exigency leave
  - Coordinate existing military and other leave policies
- Update and adopt new FMLA forms
  - Eligibility Notice
  - Rights and Responsibilities Notice
  - Designation Notice
  - Certification Forms

# The New FMLA Regulations

- Update or prepare accurate job descriptions for Medical Certifications and/or FFD certifications
- Evaluate bonus/attendance award programs
- Audit compliance with new regulations, including working with counsel to ensure that procedures are practical yet legally sound
- Train managers and front line supervisors

# Legislative Update -- What's New?

- New Tobacco Taxes
- Still Fighting on Interchange
- New WOTC eligibility

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# What's on the Horizon?

- Genetic Information Non-Discrimination Act
- Arbitration Fairness Act
- Working Families Flexibility Act
- Employment Non-Discrimination Act
- Protecting America's Workers Act
- Employee Misclassification and Prevention Act
- Civil Rights Act of 2008

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# The Employee Free Choice Act

- In 2007, both the U.S House & Senate passed EFCA
- In 2008, Democrats assumed control in Washington
- President Obama was a co-sponsor of EFCA and has committed to signing it into law
- Senate Democrats now number 58/59
- The bill was formally reintroduced on Tuesday
- 40 Senate co-sponsors (down from 46)
- 223 House co-sponsors (down from 230)
- EFCA will likely pass in some form

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# Our Approach: Don't Panic

- Some claim “the sky is falling” and are pushing off-the-rack “kits.”
- No need to panic.
- But, employers must act now to get ready.

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# Unions Have Been In Steady Decline

- Membership is down from 34% at its peak
- Total union membership is now below 13%
- It's down to **7.7%** in private sector
- Only 2,000 elections last year vs. 8,000 30 years ago
- 84% of all petitions involved employers with less than 100 employees
- Unions won 62% of RC elections in 2007

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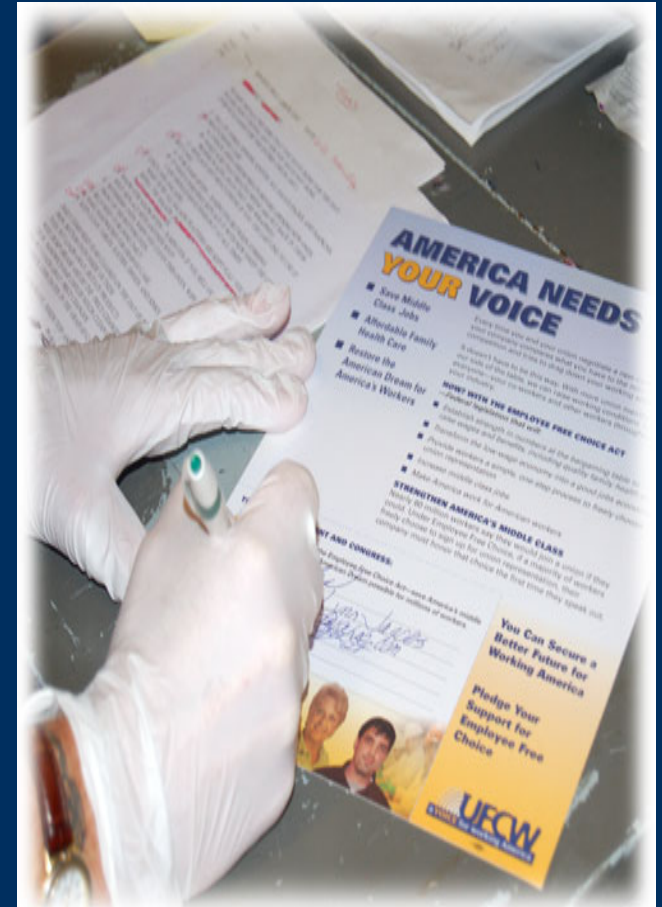
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# Two Proposed Laws Would “Change the Rules”

- EFCA
- RESPECT Act



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# EFCA: The Ironically Named “Employee Free Choice Act”

## 1. No more secret ballot elections

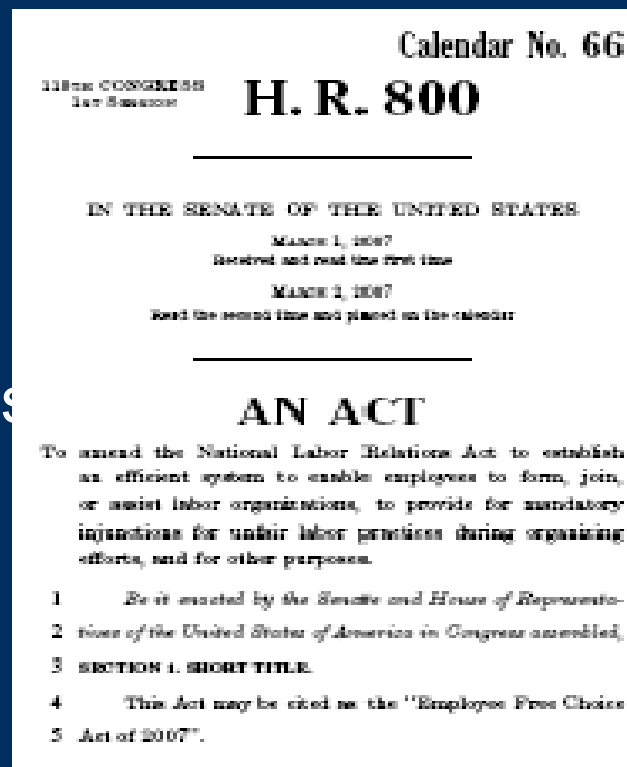
- Unions would gain recognition through card check

## 2. Changing rules of bargaining

- Mandatory mediation after 90 days
- Interest arbitration after 120 days

## 3. Increased penalties against employers

- Treble back pay damages
- \$20,000 fines



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# Current NLRB Election Process

Union May Send Demand Letter For Recognition

## Employees

- \*Dissatisfied
- \*Discouraged
- \*Disenfranchised

PETITION  
FILED W/  
NLRB

SECRET BALLOT  
ELECTION

ELECTION  
BAR

Win

Lose

BARGAIN

CARD SIGNING

\*30% (Required)/\*60-70% (Targeted)

CAMPAIGN PERIOD  
6 weeks

Hearing

Objections

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# Authorization Cards

Focus of organizing drive

Like a “**blank check**” or “power of attorney”

Good for one year from the date signed

Once signed, not easily revoked

30% for an election

65-70% is union’s objective

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# Obtaining Signatures

- A union can and will tell employees almost anything to get them to sign a card.
- Card signing may occur without employer knowing anything about it.
- Unions frequently tell employees to keep card-signing secret.
- May use cards to certify without election in limited circumstances.

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# What Happens If Union Wins?

- Bargain for 1 year
- Neither party required to make concessions
- No guarantee of a contract
- No 3rd party can force either side to agree
- No time limits on bargaining

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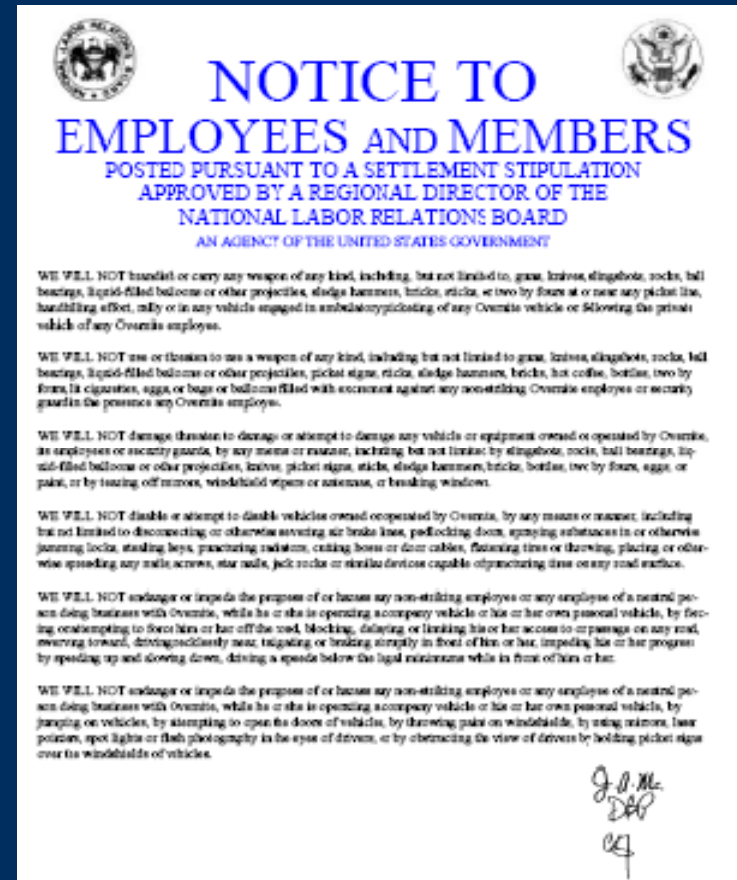
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# What Happens If Employer Makes Mistakes?

- No civil money penalties
- Back pay only
- Reinstatement
- Limited injunctive relief
- Bargaining Orders in special cases



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# Representation Process If EFCA Passes

**UNION DEMANDS  
RECOGNITION**

Employees  
\*Dissatisfied  
\*Discouraged  
\*Disenfranchised

**INTEREST  
ARBITRATION**

**CARD SIGNING**

**\*50% (Required)**

**BARGAINING BEGINS  
90 Days**

**MANDATORY  
MEDIATION**

**30 Days**

**Hearing/Certification/Appeals**

**NO ELECTION**

**COMPRESSED  
BARGAINING**

**ARBITRATOR  
DECIDES**

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# So What Does EFCA Change?

- Use and importance of cards – only 1 chance to win (if you even know about card signing)
- Time frames of legal process (recognition and bargaining)
- Bargaining requirements and outcomes
- Penalties

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# Impact of Card Check on Employers

- May get stuck with union before learning of employee interest
- Lose right to educate employees about risks associated with unions in a 42+ day campaign
- To avoid union “ambush,” employers will need to invest more resources up front

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# Impact Of Changing Bargaining Rules

- Time frame for bargaining would shrink dramatically
- Employers would effectively lose right to say “no”
- Would have to compromise between giving in and accepting decision of outside arbitrator
- Arbitrators could impose wages, benefits and other terms of employment, including neutrality, union welfare or pension plans
- Unions would be able to “guarantee” a first contract
- Parties would be “stuck” for at least 2 years

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# Impact of Changing Penalties

- Unions could harass employers with “shotgun” charges
- Some employers may be afraid to speak out against unions
- Those who choose to fight would need to spend more resources educating supervisors



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# Other Potential Forms of EFCA

Some Democrats are rumored to be waffling.

Possible compromises include:

- 5-10 Day “Quickie” secret ballot election
- Unions could get equal access to employer premises
- Modified bargaining process

Employers should act now to protect themselves—and employees



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# What EFCA Will Not Do

- Force employees to join unions
- Eliminate employer free speech rights
- Change procedures for determining an “appropriate unit”

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# What is the RESPECT Act?

- Changes NLRA definition of “supervisor”
- Deletes words “to assign” and “responsibility to direct” from definition
- Requires the worker to spend majority of hours on “supervisory duties”



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# Impact On Employers

- Redefines who is included in “management”
- Could lose front-line communicators
- Supervisors would become part of unit
- CBA could cover supervisors
- Changes supervisors’ duty of loyalty

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# Strategic Planning

1. Oppose passage of EFCA--it's not too late!
2. Assess vulnerability to union organizing
3. Review policies to protect your union-free status
4. Focus on building "Pro-Employee" track record
5. Train Supervisors on union-free philosophy
6. Train Supervisors to detect early warning signs
7. Think strategically about future legal issues
8. Make safety a priority
9. Promote open communications
10. Resolve employee issues

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# Strategic Planning

11. Make “fair” employment decisions
12. Sell employees on union-free philosophy
13. Hire the “right” employees
14. Keep pay and benefits competitive
15. Conduct security audits
16. Build your image in the community
17. Monitor off-site union activity
18. Have a contingency plan

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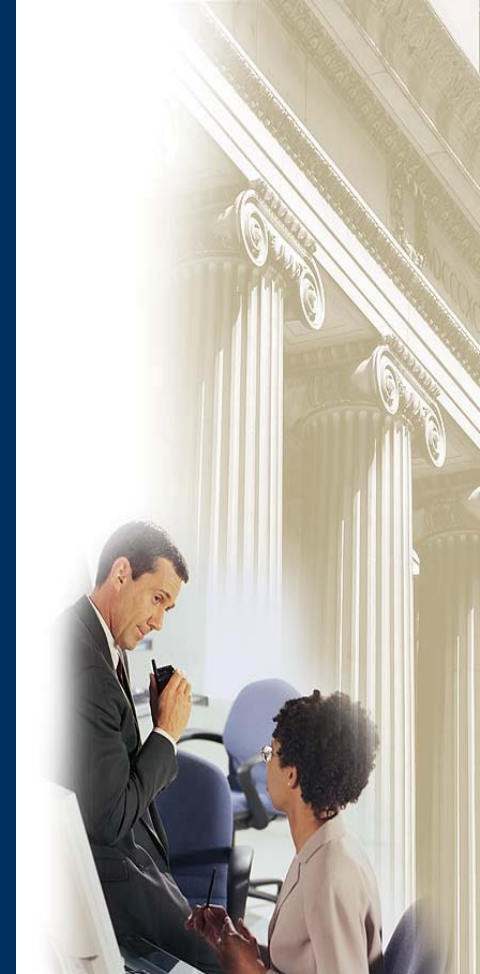
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# Summary

- EFCA and RESPECT will likely pass
- They could threaten any business
- NOW is the time to “get ready”
- Be proactive, not reactive
- Develop a customized action plan
- No need to panic
- Regardless of which laws get passed,  
**EXPECT AND MANAGE CHANGE**



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# Final Questions?

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