

# PUBLICATION

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## Employee Free Choice Act Inching Closer to Becoming Law

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President Obama this week assured the leadership of the AFL-CIO that the Employee Free Choice Act (EFCA) will be enacted. The new United States Secretary of Labor, Hilda Solis, a former union member, vowed to "fully implement" the EFCA if it becomes law. An AFL-CIO Executive Council member has predicted that the Act will pass in the next four or five months.

Closely related to the EFCA is the National Relations Board (NLRB). President Obama will soon be appointing the majority of people to the five-member NLRB, whose decisions impact union/employer relations nationwide. He will also appoint the NLRB's General Counsel, who formulates litigation policy.

In addition, President Obama recently issued several Executive Orders forbidding federal contractors from using federal money to oppose their employees' attempts to organize unions, and also urged federal agencies awarding construction contracts to use "Project Agreements," which obligates contractors awarded such jobs to sign union contracts.

In an obvious uphill battle to slow this momentum, Senator Jim DeMint (R, South Carolina) has introduced a bill entitled the "Secret Ballot Protection Act of 2009," which has 18 Senate co-sponsors. The bill would not only ensure, by ingraining into federal law, a secret ballot election for employees to determine whether or not they want to be unionized, it would also prohibit employers from voluntarily recognizing a union based upon the union's showing that a majority of employees have designated the union as their bargaining agent. Under current law, employers, if they are so inclined, can recognize a union, even absent a secret ballot election, by simply confirming that a majority of its employees in an appropriate unit have designated a union to be their bargaining representative. This is usually done by the union showing the employer that a majority of employees either have signed union authorization cards or a petition authorizing the union to represent them. Although such recognition agreements already entered into would not be disturbed by the proposed legislation, such agreements would be forbidden if entered into in the future.

Given that the DeMint bill will initially be considered by the Democrat-dominated Senate Health Education Labor and Pension Committee (HELP), coupled with the Democrat majorities in the House and Senate, the chances of this bill passing the HELP Committee and going to a vote on the Senate floor is remote. It is highly unlikely that the bill will be passed by the House of Representatives, either.

The purpose of Senator DeMint's bill may very well be a trial balloon to see how effective the lobbying efforts against EFCA by many employer associations, including the United States Chamber of Commerce, has been. It may also be used as a test to see whether any Democratic Senators may be wavering in their support of the EFCA.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, is watching these developments most closely, as the effect on American business of all these attempts to either enhance or restrict union organizing will be dramatic.