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The Employee Free Choice Act: Meaningful Remedies Against Employer Coercion

AFL-CIO

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Abstract

Prepared by the AFL-CIO, this fact sheet highlights the elements of The Employee Free Choice Act (S. 842, H.R. 1696), including employee's free choice to form unions and meaningful penalties for employer coercion.

Keywords

unions, labor movement, organizing, Employee Free Choice Act, representation, AFL-CIO, National Labor Relations Act, NLRA, remedies

Comments

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The Employee Free Choice Act
Meaningful Remedies Against Employer Coercion

The Employee Free Choice Act (S. 842, H.R. 1696) helps ensure employees' free choice to form unions by providing effective remedies—including injunctive relief and monetary penalties—against employer coercion.

The Employee Free Choice Act was introduced as bipartisan legislation in the 109th Congress on April 19.

The number of employer unfair labor practices has soared since the 1950s and 1960s. Studies document increases of 600 percent to 800 percent.[1] In 1998, roughly 24,000 employees won compensation for being fired or punished illegally for union activity, up from less than 1,000 in the 1950s and about 6,000 in 1969.[2] During worker campaigns to form a union, 25 percent of all employers illegally fire at least one employee for union activity, according to another study.[3]

Current National Labor Relations Act (NLRA) remedies are not sufficient to deter such abuses or to erase their impact on employee free choice.

■ The NLRA's penalties against illegal firing of union supporters are so minimal that employers treat them as a minor cost of doing business. Unlike other federal statutes prohibiting unfair treatment of workers by their employers, the NLRA does not provide compensatory or punitive damages or damages for pain and suffering for violations of NLRA rights. Employers who illegally fire workers for union activity are only required to pay back wages—minus what the worker earned in the meantime. In 2002, the average back pay award for an employee fired for union activity was a mere $2,750.

■ For many violations of the NLRA, there are no monetary consequences for the employer whatsoever. An employer that violates the NLRA by threatening to fire union supporters or to close a plant if the employees vote for a union does not incur any fines or monetary penalties, even though such threats can have as devastating an effect as an actual discharge in making employees afraid to join the union. The only remedy for such a violation is an order requiring the employer to post a notice in the workplace promising not to violate the NLRA again, long after the incident occurred.

■ Because of the complex process for litigating cases before the National Labor Relations Board (NLRB) and the courts, an employer that illegally fires a worker for union activity can typically avoid for nearly three years an enforceable order to pay back wages and offering the worker reinstatement. In the interim, the firing serves as a chilling lesson to the employee's co-workers that they too could lose their livelihoods if they support the union. The employer knows that by the time an order is issued, the organizing campaign will be long over and the worker in most cases will have gone on to other employment. In fact, only one out of three workers who are illegally fired accepts an offer of reinstatement, and those who do are typically so scarred by their experiences that they do not resume union activities.

The Employee Free Choice Act imposes meaningful penalties for violating employees' rights. Monetary penalties must be strong enough to change employer behavior so NLRA violations are not simply treated as a minor cost of doing business.

■ The Employee Free Choice Act increases the damages to three times the amount of back pay an employer must pay to an employee who is illegally discharged or otherwise forced to suffer loss of pay or benefits on account of union

activity during an organizing effort or during the period when employees are seeking a first contract.

■ To further deter illegal discharges and other unlawful conduct, the Employee Free Choice Act also provides for civil monetary fines of up to $20,000 for discharges and other significant violations of employee rights that occur during organizing efforts or during the period when employees are seeking to negotiate a first contract.
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The Employee Free Choice Act gives employees equal access to injunctive relief. Currently, only employers are entitled to mandatory injunctive relief when their rights are violated. Employees and their unions have no similar remedy.

■ Under current law, the NLRB is required to seek a federal court order to protect employers from certain prohibited conduct by unions. These cases receive top priority, and injunction petitions are filed in federal court within 72 hours of an employer filing a charge against a union.

■ The Employee Free Choice Act mandates similar expedited injunctive relief when workers are fired or other significant violations of employees' rights occur during organizing efforts or during the period when employees are seeking to negotiate a first contract. The NLRB must file for an injunction promptly after the filing of a meritorious charge, and courts may grant immediate interim relief, including immediate reinstatement of fired employees.

This fact sheet has been prepared by the AFL-CIO. For more information regarding the Employee Free Choice Act, please contact the AFL-CIO Legislation Department at 202-637-5057.

[1]One study showed in 1969–1976 the number of workers receiving back pay under the act totaled approximately 1.2 percent of voters in representation election. In 1984–1997, that figure increased by almost 800 percent, to a level of 9.5 percent. Other studies found a 600 percent increase in discriminatory discharges between the late 1960s and late 1980s and a 14-fold increase in employer discrimination against union activists during organizing campaigns between the 1950s and late 1980s. Brent Garren, "When the Solution Is the Problem: NLRB Remedies and Organizing Drives," *Labor Law Journal,* v. 51, no. 2 (Summer 2000), pp. 76, 78.
[2]Human Rights Watch, "Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards," (2000).
[3]Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing," U.S. Trade Deficit Review Commission (2000).