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BE ON ALERT! WITH THE NEWLY-CONSTITUTED NLRB FIRMLY IN LABOR'S CAMP, EXPECT UNIONS TO COME KNOCKING AT YOUR DOOR.

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In what may turn out to be a shrewd move that could shape labor law for years to come, President Obama recently made two pro-union recess appointments to the National Labor Relations Board (NLRB) – Craig Becker and Mark Pearce. Of the two, Mr. Becker is the more controversial appointment, having been extremely vocal regarding his views that the NLRB may be able to shape labor law through its rulemaking powers and does not have to wait for legislation like the embattled Employee Free Choice Act (EFCA) to be passed by Congress. With these two additions, the NLRB is now stacked 3-1 firmly in labor's camp. This time last year, the labor and employment community was bracing for a fight over EFCA, a.k.a. the "card check" bill, which proposed to effectively eliminate the longstanding secret ballot election process that unions claimed was a key reason why their ranks had diminished so significantly over the past decades. With health care as the Obama Administration's top legislative priority, EFCA was set aside, with the expectation that its passage was just a matter of time. However, with the election of Scott Brown to succeed Teddy Kennedy earlier this year, and with Arlen Specter and other Democrats in tough battles to retain their Senate seats later this year, EFCA will certainly not pass anytime soon.

So why should employers be concerned now? Even without EFCA, the newly-constituted NLRB is empowered to make changes to the pre-election process that will blindside employers if they are not prepared. Expect shorter election periods, drastic reductions to the scope of authorized employer speech, and substantial increases in labor's authorized access to employees on company property. The collective bargaining process and enforcement of unfair labor practices are also ripe for reform. Knowing what may be coming, what can savvy employers do to prepare? First and foremost, assess your organization's vulnerability to unionization by considering the following:

Workforce Awareness: Do employees understand the legal significance of union authorization cards and the secret ballot election process? Are supervisors prepared to respond quickly and effectively to unionization efforts within the boundaries of the law? Will employees be prepared to protect themselves against potential pressure from union organizers – or their co-workers – to sign cards?

Communication: Do managers listen to employees? Is there regular, constructive two-way communication between managers and employees? Do employees have good reason to believe that management is interested in them and concerned about them as individuals? Do employees feel valued and part of the team?

Management: Are managers and supervisors credible to the employees? Are progress reviews being held regularly and, where applicable, according to policy? Are they completed objectively and fairly? Do employees feel that they are involved in the process?

Policies: Are company policies and procedures documented in writing? Are employees aware of them? Are they followed in an evenhanded, non-discriminatory manner?

Hiring and Firing: Is care being taken with regard to discipline and terminations, making sure that each is fair, well-documented and thoroughly justified? Is care being taken with regard to new hires to see if their backgrounds are compatible with company expectations and their references support their employment?

Right now, news of an organizing petition serves as a warning call to employers, providing several weeks' advance notice of an election and time to address employees' concerns that prompted the unionization effort. If the new NLRB uses its rulemaking powers to effect changes to the pre-election process, there will be no warning call. There will not be sufficient time to answer these questions about your workplace. There will only be a quick election, with a union likely coming up victorious. It is often difficult to be truly objective about your organization's vulnerability to an organizing drive. Accordingly, training and outside assessment can be keys to success in maintaining your independence in employee relations. Educating managers, supervisors and employees today is the best way to keep your organization union-free tomorrow.

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