

EFCA – Employee Free Choice Act Understanding the Impact to Your Dealership

If you do not already know the specifics of unionized labor, you need to begin to understand them. There is a law that has been re-introduced for legislation in March 2009 which would have a significant impact on the ability of a workforce to become unionized. The current law regulating unionized activity is The National Labor Relations Act of 1935. Some significant details of the current law are:

- Upon filing a petition for election of a union, the National Labor Relations Board in most cases will schedule a secret ballot election about 40 days later
- During the election period, the employer may discuss the pros and cons of a union with employees
- The union does not have the right to hold “town hall” meetings at the dealership to discuss the benefits of joining a union, but it can do off premises and can call the employees at their homes
- All votes are cast in a secret ballot booth

Some of the proposed changes to the law under The Employee Free Choice Act (EFCA) include, but are not limited to:

- Eliminating the secret ballot in virtually all cases, resulting in the disappearance of the 40-day election period and allowing a union to begin representing dealership employees without the knowledge of the employer
- Some observers speculate that employers may be required to allow a union access to the facility to discuss the benefits of joining a union with the employees
- Once a union is certified through the “card check” process, the employer has 90 days to reach a contract agreement and after that time either party can request mediation
- If mediation fails to produce a contract within 30, any unresolved issues go to arbitration and a binding contract for two years is created
- Increase in fines and penalties under new law. Fines up to \$20,000 can be charge per violation and penalties for termination if employer violated Section 8 requiring three times back pay since termination

Labor lawyers see this proposed legislation as the most significant changes to federal labor law in decades. Steve Roppolo of Fisher & Phillips LLP in Houston, TX has been counseling dealers and speaking with dealer associations about the potential impact of this law. Here's what Steve had to say at a recent presentation to dealers in San Antonio:

Big Labor has been waiting for years for this opportunity, and it plans to make the most of it. Organized labor's admitted purpose behind the proposed law is to make it easier to organize employees. It should come as no surprise that unions would like some help; recent statistics show that the percentage of unionized employees of private employers dropped to 7.6 % in 2008, and only 4.5% in Texas. The so-called "Employee Free Choice Act", would change that by virtually eliminating secret ballots, relying instead on the notoriously unreliable "authorization card" process.

Even worse, the new law would require employers who discover that their employees have gotten a union by signing cards to turn the negotiation process over to a federal arbitrator if an initial deal can't be worked out in four months. This means employers will lose the right to say "no" to unreasonable union demands, and they could find the federal government dictating the wages and benefits that it must pay its employees.

What Actions Should Dealers Take Now

Dealers should take the following steps to help reduce the negative impact of this legislation:

- 1) Contact your state's federal legislators – especially Senators – and express opposition to this law
- 2) Educate your managers on the impact of this law on dealership operations and encourage them to contact the state representatives
- 3) Review dealership processes related to employee compensation structure, promotions, handling complaints and issues, etc.
- 4) If you have reason to believe an area of employees in your dealership are a target of a union (e.g. service technicians), develop an assessment on vulnerable areas
- 5) Stay educated on the passing of this law and be ready to have training on the law and have a plan to begin your campaign in the dealership

It is important that Dealers are aware of EFCA and its impacts on your dealership and employees. Please [consult today](#) with your Dixon Hughes advisor for more information on EFCA and how you can protect your dealership. Contact the Dixon Hughes Dealer Services group at dsg@dixon-hughes.com or via phone at (877) DLR.CPAS.

For additional information regarding the Dixon Hughes Dealer Services Group, please contact us at dsg@dixon-hughes.com, (877) DLR.CPAS or visit us on the web at www.dixon-hughes.com/dsg.



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About Steve Roppolo

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