

**Americans for
Democratic Action**
Policy Brief



THE EMPLOYEE FREE CHOICE ACT

**PROTECTING THE FREEDOM OF AMERICA'S WORKERS TO
FORM UNIONS**

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An Organization for Liberal Activists

Americans for Democratic Action, the nation's leading liberal advocacy group, urges your support for the most significant workers' rights legislation in decades, the Employee Free Choice Act. Passage of the Employee Free Choice Act will be a giant step to help to restore the right of workers to choose union representation.

According to a recent Peter Hart poll, 53% of non-union workers-- some 60 million American workers--want to have a union in their workplace. Three major obstacles undermine the ability of workers to make a free decision about union representation:

First, workers are forced to endure the lengthy, stressful, and time-consuming National Labor Relations Board-supervised union representation election process, during which they are pressured regularly by their employers to vote against union representation.

Second, even after workers choose union representation, employers often use extensive stalling tactics designed to sabotage negotiations toward a first collective bargaining agreement.

Third, penalties for unfair labor practices, including retaliating against workers who support a union and refusing to bargain in good faith, are so ineffective that many employers simply count them as part of the cost of doing business.

[Key provisions of the Employee Free Choice Act](#)

[Majority Verification](#)

Under current federal labor law, if a majority of employees at a worksite sign authorization cards saying they would like to join a union, then an employer may choose to recognize that union. This almost never happens. Instead, the workers must endure a lengthy, intense, and bitter anti-union campaign prior to a vote.

During these campaigns, employers often use harassment, intimidation and fear tactics to pressure workers against voting for a union. One-sided election rules provide employers with much greater access to workers during this process, and many subject workers to a barrage of anti-union messages. In fact, union election campaigns are a main source of unfair labor practice charges against employers, which can take years to resolve – well after the battle has been lost.

The Employee Free Choice Act simplifies this process and reaffirms the right of freedom of choice: If a majority of workers sign authorization cards that say they want union representation, then the employer must recognize that union and agree to bargain collectively. This form of majority verification has been employed successfully at the state level, and far-sighted private employers such as AT&T Wireless and Kaiser-Permanente have agreed to it voluntarily.

[Mediation and Arbitration for First Contracts](#)

Even after workers vote to unionize, employers often stonewall the collective bargaining process to the point where the parties never agree on an initial contract. According to MIT researcher John Paul Ferguson, fully 44 percent of new unions fail to negotiate first contracts. Without a contract, workers are denied the primary benefits and protections of union membership, and their support for the union often dwindles.

These failures to negotiate first contracts are not accidental. Buoyed by highly paid union-avoidance consultants, employers are engaging in extensive delay tactics to defeat attempts by newly organized workers to reach agreements. Although bad-faith bargaining violates federal labor law, employers know that the legal remedy for such a violation is simply an order to bargain in good faith – a mere slap on the wrist.

The Employee Free Choice Act allows unions to demand mediation when they are unable to negotiate a first contract. If mediation fails, then binding arbitration comes next. The threat of having a first contract imposed by a third party would end many of the stalling tactics currently used by employers to avoid a collective bargaining relationship.

[Beefed Up Penalties for Unfair Labor Practices](#)

Many employers retaliate against workers who express interest in, or support for a union. In fact, one study by Cornell researcher Kate Bronfenbrenner showed that 25 percent of employers illegally fire at least one worker for pro-union activities during unionization drives. Employers do so in part because the penalties for unfair labor practices are so paltry. For example, according to American Rights at Work, back pay awards for workers illegally fired for union activities average less than \$4,000.

The Employee Free Choice Act triples the back pay awards to workers who have been fired illegally, and provides for fines of up to \$20,000 for other illegal employer conduct—such as threats that the workplace will close or move if workers unionize—for which current law provides no penalty at all. It also allows workers to seek injunctive relief in federal court when employers violate their rights, which can include an order of reinstatement when someone has been fired illegally.

Unions, Good Jobs, and Today’s “Wal-Marted” Workforce

We need the Employee Free Choice Act because America needs unions. For most American wage earners, unions are the best way to provide good jobs with good pay. Unionized workers typically earn 20 percent more than non-unionized workers in the same industry. Furthermore, by speaking as a collective voice, union members are in a much better position than many a lone employee to secure vital benefits such as health care coverage and disability insurance.

During the economic heyday that followed the Second World War, millions of Americans enjoyed steady employment in thriving auto factories, steel mills, and other manufacturing plants. However, as former union vice president Beth Shulman points out in her book *The Betrayal of Work*, these jobs did not start out as “good jobs.” It took a combination of “worker mobilization through unions” and political pressure from a “socially conscious, aspiring middle class” to raise wages, provide health care benefits, and ensure better working conditions.

The percentage of employees who are represented by unions has plummeted, from some 35% during the 1950s to fewer than 13% in 2007. Our industrial base is disappearing, and the vast majority of workers in the expanding service sector are not unionized. Not surprisingly, these retail clerks, domestic workers, clerical staffers, and fast-food servers rank among the lowest paid members of the labor force. Wal-Mart may be an easy target, but it captures what this growing bloc of workers is all about: The average Wal-Mart wage earner makes \$8.23 an hour – less on an annual basis than the poverty line for a family of three. Nearly three out of five Wal-Mart employees have no health care coverage through the company, and those who do must pay for 42% of its cost – versus 16%, on average, for large employers nationally. Of Wal-Mart’s 1.2 million employees, not one is represented by a union. According to the handbook Wal-Mart distributes to managers:

Staying union free is a full-time commitment. . . . The commitment to stay union free must exist at all levels of management – from the Chairperson of the “Board” down to the front-line manager. . . . The entire management staff should fully comprehend and appreciate exactly what is expected of their individual efforts to meet the union free objective. . . . Unless each member of management is willing to spend the necessary time, effort, energy, and money, it will not be accomplished.

Freedom to Form Unions and Human Rights

Thus, it is no exaggeration to say that the state of collective bargaining in America has sunk to the level of a human rights violation. In 2000, Human Rights Watch published a major report, *Unfair Advantage*, which documented widespread abuses of the right to choose union representation. These included numerous instances where employers fired workers who supported union representation and where employers bargained with no intention of signing a contract with the union.

If the nation’s political leaders do not champion the basic rights of America’s workers, then this allows the right-wing to use divisive wedge issues to win support from rank and file voters. Thus, progressive politicians of both major parties have a strong stake in the passage of the Employee Free Choice Act.

How You Can Help

Your support for the Employee Free Choice Act will play a critical role toward its eventual passage. Here are ways in which you

can help.

- Use your voice to support vigorously the Employee Free Choice Act and workers' rights in general.
- Ask your Senators and Representative to co-sponsor the Employee Free Choice Act if they have not already done so, and thank them if they have already signed on to the bill. In the 110th Congress, a large majority of Representatives and 51 Senators voted for this vital bill—but support in the Senate fell short of the 60 votes needed to overcome a filibuster. We can and must build even more support in the 110th Congress, and if necessary in the 111th, for this vital bill.
- Spread the word about the Employee Free Choice Act throughout your organizations, unions, and community groups. We need to build a broad base of public support for the Employee Free Choice Act.
- Join Americans for Democratic Action (www.adaction.org), so that together we can advocate for the EFCA and other vital issues facing our nation. ADA was founded in 1947 by liberals such as Eleanor Roosevelt, Walter Reuther, and John Kenneth Galbraith. Today, our commitment to liberal ideals and to the labor movement is as strong as ever.

[We hope you will join us.](#)

Credits

This policy brief for DNC delegates was prepared by the ADA Workers' Rights Committee, which is comprised of labor and employment policy experts drawn from the academic and non-profit communities. David Yamada, former chair of the Committee and professor of law at Suffolk University Law School in Boston, is the primary author of this paper.

There are many excellent reports, articles, monographs, and books, most of which are freely downloadable from the Internet, that provide useful information about the important issues facing America's workers and the virulent assault on the right to union representation. We recommend the following:

AFL-CIO Issue Brief, "The Silent War," available from the AFL-CIO.

Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards*, available at www.hrw.org/reports/2000/uslabor.

Lawrence Mishel with Matthew Walters, Economic Policy Institute Briefing Paper, "How Unions Help All Workers," available at www.epinet.org/content.cfm/briefingpapers_bp143.

John Schmitt (et. al), "Unions and Upward Mobility for Low-Wage Workers," Center for Economic and Policy Research (August 2007): <http://www.cepr.net/documents/publications/UnionsandUpwardMobility.pdf>

Harley Shaiken, "The High Road to a Competitive Economy: A Labor Law Strategy," Center for American Progress Report, available at www.americanprogress.org/atf/cf/{E9245FE4-9A2B-43C7-A521-5D6FF2E06E03}/unionpaper.pdf.

Beth Shulman, *The Betrayal of Work* (New York: The New Press, 2003).