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The Employee Free Choice Act: Are you prepared?

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There is a good possibility that The Employee Free Choice Act may become law. If so, such can have a dramatic impact on your employees, your operations and guests. The law is intended change the National Labor Relations Act to establish an easier system to enable employees to form, join or assist unions. Simply stated, this law will permit union organizers to become the legally recognized representative of your employees by simply obtaining signed Authorization Cards from a majority of employees. If this becomes law, unions will make a greater effort to organize your employees. Union organizers may start showing up at your property and stand outside your doors waiting for your employees. Because of your "public accommodation" status, they may believe they have the unfettered right to enter your premises and start roaming the lobby, restaurant, pool areas, hallways, etc. and stop and talk to your employees while they are working. You may begin to hear rumors that union organizers are having "pizza parties" for your employees at the local bar and/or showing up unannounced at your employee's homes (maybe with another employee present) and "encourage" them to sign Authorization Cards. What do the union organizers promise your employees? Job security, higher pay, paid sick leave, more holidays, easier performance standards, better pension and health care benefits if such are already provided, or promising to get these benefits for them.

The law provides that once a union obtains Authorization Cards from a majority of your employees, there will be no private ballot election. The NLRB must authorize the union as the representative of your employees and you will be obligated to negotiate terms of a collective bargaining agreement with the union that will control your employment relationship with your employees. The law does not provide any guidelines or government oversight as to how union organizers must conduct themselves in securing these Authorization Cards. Thus, your employees may be subjected to threats, intimidation, false promises and other means to secure their signatures on the Authorization Cards. What can you do to protect your Company and employees from falling prey to union organizers? Plenty!

There are certain fundamental principles that you need to be aware of regarding Union organizing and general laws that govern the hospitality industry. Under state law, the Public Accommodations statute prohibits a hospitality property to deny the full and equal enjoyment of its property to any person based on that person's sex, race, color, creed, disability, sexual orientation, national origin or ancestry or age (over 18 years). Wis. Stats. 106.52. Thus, this statute does not give Union organizers any protected status. However, federal law does grant



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Union organizers limited rights. A company may properly prohibit solicitation/distribution by nonemployee union representatives on its property, if reasonable efforts by the union through other available channels of communications will enable it to convey its message and if the employer's prohibition does not discriminate against the union by permitting others to solicit/distribute. It has been held that Union organizers may stand on your public sidewalks and parking lots and "solicit" your employees so long as they do not harass or interfere with or obstruct employees and guests while they are entering into or exiting from the premises or are on the public sidewalks or parking structure/lot.

Given these circumstances, the following are recommendations should be considered by your organization to minimize the risk of unionization:

- (1) Properties should draft a Non-Solicitation Policy that clearly states that there is no loitering at the property which is enforced across the board, not just against union organizers. All persons must either be staying at the property, eating in the restaurant, attending functions or visiting guests, including charities. The policy should state that no one is permitted to disrupt guests or employees. Persons who violate this policy should be subject to sanctions, including eviction or criminal sanctions. This policy should be posted in a public area.
- (2) Any person caught violating the above policy, should be asked to leave the premises and if the person refuses, contact the police.
- (3) If Union organizers come to the property and remain on the public sidewalks in front of the property and/or are on the parking lot, they should not be permitted to harass, threaten, intimidate, block, interfere with or engage in any disrupted conduct. The police should be called if there is any "breach of the peace."
- (4) You should review your Employment Handbook, your policies and practices and wage and benefits. Are you fair with your employees? Are you paying them at, above or below the local market?
- (5) You should audit your employer-employee relationship -- do you have a good Open Door policy and lets employees express their concerns? Are employees being treated fairly and equally?
- (6) Consider conducting an anonymous Employee Attitude Survey.
- (7) Be proactive with your employees and communicate with them about issues that effect the property -- develop the "team spirit."



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- (8) Conduct supervisory training so that your supervisors and managers know the labor and employment laws, as well as, your policies and practices.
- (9) If you see signs of union organizing, such as, seeing Authorization Cards being passed around at work or hear that Union organizers are coming to employees' houses, do not ignore it. You should contact the WIA and/or your labor/employment attorney to combat the organizing attempt.

Although the new law may give the Union an unfair advantage in organizing your employees, you still can do things now to help minimize that risk from occurring.

Barry L. Chaet, Esq. is the president the law firm of Beck, Chaet, Bamberger & Polsky, S.C., and Legal Counsel to the Wisconsin Innkeepers Association. Mr. Chaet has extensive experience in representing management in issues involving union avoidance, organizing campaign, negotiations, grievances, designing Employee Handbooks, policies and practices, conducting Employee Attitude Surveys, and experience in handling other labor and employment related matters, as well as, federal and state litigation. Mr. Chaet also represents several hotel/restaurants in the local Milwaukee area in negotiations with the union that represents hotel properties.