



Illinois Chapter

MERIT UPDATE

MARCH 23, 2009

WHAT'S NEXT FOR OPEN SHOP EMPLOYERS? BIG CHANGES IN LABOR LAW EXPECTED IN THE NEW ADMINISTRATION

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NOW THAT THE OBAMA ADMINISTRATION HAS TAKEN OFFICE, ORGANIZED LABOR IS CLOSER THAN EVER TO SEEING A REVOLUTIONARY AGENDA ENACTED IN 2009. PLAINTIFF TRIAL LAWYERS AND EMPLOYEE RIGHTS ADVOCATES LIKEWISE ARE SEEKING CHANGES THAT WILL IMPOSE DRAMATIC NEW BURDENS ON EMPLOYERS. IF THE PROPOSALS ON THE TABLE BECOME LAW, EXPECT A SIGNIFICANT NEGATIVE IMPACT ON OPEN SHOP CONTRACTORS IN THE CONSTRUCTION INDUSTRY.

THE CENTERPIECE OF THE PRO-UNION LEGISLATION CONGRESS IS EXPECTED TO CONSIDER THIS SESSION IS THE EMPLOYEE FREE CHOICE ACT (EFCA), ALSO KNOWN AS THE CARD CHECK BILL. THIS BILL WOULD FUNDAMENTALLY TILT THE PLAYING FIELD IN FAVOR OF UNION ORGANIZING. ALL OPEN SHOP CONTRACTORS SHOULD LEARN THE RAMIFICATIONS OF THIS BILL AND SHOULD PREPARE TO DEFEND AGAINST A MAJOR UNION ORGANIZING ASSAULT IF THE BILL BECOMES LAW.

THE FIRST SECTION OF THE EFCA ELIMINATES THE RIGHT OF EMPLOYEES TO A SECRET BALLOT ELECTION ON THE SUBJECT OF UNION REPRESENTATION, FAVORING INSTEAD A MERE CHECK OF AUTHORIZATION CARDS THAT UNIONS WOULD COLLECT FROM EMPLOYEES AND SUBMIT TO THE NATIONAL LABOR RELATIONS BOARD (NLRB). THE CARD SIGNING PROCESS WOULD HAVE NONE OF THE PROTECTIONS OF SECRET BALLOT ELECTIONS, AND EMPLOYEES COULD BE SUBJECTED TO PEER PRESSURE, THREATS AND MISCOMMUNICATION THROUGHOUT THE CARD-SIGNING PROCESS. EMPLOYERS MIGHT NOT KNOW A CARD SIGNING CAMPAIGN IS UNDER WAY AND COULD LOSE ANY OPPORTUNITY TO SPEAK TO THEIR OWN WORKERS ABOUT UNIONIZATION.

BEYOND THE CARD CHECK PROVISIONS, THE EFCA WOULD REQUIRE UNIONIZED EMPLOYERS TO SUBMIT TO COMPULSORY ARBITRATION OF THEIR FIRST UNION CONTRACTS IN THE ABSENCE OF AN AGREEMENT. THIS WOULD MEAN THAT, FOR THE FIRST TIME IN THE HISTORY OF THE NATIONAL LABOR RELATIONS ACT (NLRA), EVERY ASPECT OF PRIVATE BUSINESSES' WAGES AND WORKING CONDITIONS WOULD BE DICTATED BY THE FEDERAL GOVERNMENT (THROUGH ENFORCEMENT OF THE ARBITRATION DECISION).

FINALLY, THE PROPOSED EFCA WOULD IMPOSE NEW PENALTIES AGAINST VIOLATORS OF THE NLRA. EMPLOYERS WOULD BE SUBJECTED TO POTENTIALLY CRIPPLING FINES AT THE BEHEST OF UNION ACTIVISTS WHO HAVE SUFFERED NO ACTUAL DAMAGE. THESE PENALTIES WOULD BE COUPLED WITH A STRONG UNION PUSH FOR GOVERNMENT "BLACKLISTING" OF LABOR LAW VIOLATORS.

ENACTMENT OF THE EFCA WOULD RADICALLY DEPART FROM DECADES OF SETTLED LABOR LAW, AND THE NEGATIVE IMPACT ON OPEN SHOP EMPLOYERS IS LIKELY TO BE DRAMATIC.

IN ADDITION, THE UNION AGENDA INCLUDES NEW SUPPORT FOR UNION-ONLY PROJECT LABOR AGREEMENTS (PLAs) ON FEDERALLY FUNDED CONSTRUCTION WORK. ANOTHER UNION-BACKED PIECE OF LEGISLATION, THE SO-CALLED RE-EMPOWERMENT OF SKILLED AND PROFESSIONAL EMPLOYEES AND CONSTRUCTION TRADE WORKERS (RESPECT) ACT, WOULD CHANGE THE DEFINITION OF "SUPERVISORS" SO THAT MANY CONTRACTORS WOULD BE FORCED TO ALLOW WORKING FOREMEN TO JOIN A UNION INSTEAD OF TREATING THEM AS PART OF THE MANAGEMENT TEAM.

ORGANIZED LABOR ALSO HAS OPENLY ANNOUNCED ITS INTENTION TO SEEK REPEAL OF SECTION 14(b) OF THE NLRA, WHICH CURRENTLY PROTECTS THE RIGHT-TO-WORK LAWS OF 22 STATES.

OPEN SHOP CONTRACTORS THAT ARE UNPREPARED FOR THE NEW LABOR LAW ENVIRONMENT FACE A SERIOUS THREAT OF BEING "PICKED OFF" BY UNION ORGANIZERS, OR DEBARRED FROM GOVERNMENT CONSTRUCTION CONTRACTS, WITHOUT ANY OPPORTUNITY TO PROTECT THEIR BUSINESSES. AT A MINIMUM, CONTRACTORS MUST TRAIN THEIR MANAGERS ON HOW THEY CAN LEGALLY RESPOND TO UNION ORGANIZING. MORE IMPORTANTLY, CONTRACTORS MUST GREATLY IMPROVE THEIR SUPERVISOR-EMPLOYEE COMMUNICATIONS TO YIELD EFFECTIVE RESPONSES TO THE EARLY WARNING SIGNS OF INCREASED UNION ACTIVITY.

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OTHER BURDENSOME REGULATIONS

OPEN SHOP CONTRACTORS ALSO NEED TO BE CONCERNED ABOUT THE NEW “EMPLOYEE RIGHTS” AGENDA OF PRESIDENT OBAMA’S SUPPORTERS IN CONGRESS. ALREADY THIS YEAR, THE AMERICANS WITH DISABILITIES ACT (ADA) HAS BEEN AMENDED TO GREATLY EXPAND ITS COVERAGE OF WORKERS CLAIMING TO BE DISABLED. AS A RESULT, MORE DISCRIMINATION LAWSUITS WILL BE FILED AND SUCH SUITS WILL BE HARDER TO DEFEND. IN ADDITION, PENDING PROPOSALS WOULD GREATLY INCREASE DAMAGES AVAILABLE TO EMPLOYEES MAKING CLAIMS OF RACE AND SEX DISCRIMINATION.

THE FINAL MONTHS OF THE BUSH ADMINISTRATION ALSO SAW NEW REGULATIONS ISSUED UNDER THE FAMILY AND MEDICAL LEAVE ACT AND THE E-VERIFY PROGRAM, MANDATING MORE NEW OBLIGATIONS FOR EMPLOYERS.

ANOTHER DANGEROUS PROPOSAL, SPONSORED BY PRESIDENT OBAMA WHEN HE WAS A SENATOR, IS THE INDEPENDENT CONTRACTOR PROPER CLASSIFICATION ACT. CONSTRUCTION FIRMS RELY HEAVILY ON INDEPENDENT CONTRACTORS, BUT THE PROPOSED BILL WOULD FORCE SUCH WORKERS TO BE TREATED AS EMPLOYEES UNDER MANY NEW CIRCUMSTANCES. MORE PROBLEMS FOR CONSTRUCTION CONTRACTORS COULD BE PRESENTED BY NEW PROPOSALS TO EXPAND THE OCCUPATIONAL SAFETY AND HEALTH ACT.

FINALLY, OPEN SHOP CONTRACTORS FACE TOUGHER AND POSSIBLY DISCRIMINATORY REGULATION FROM THE APPOINTMENT OF NEW PRO-LABOR OFFICIALS THROUGHOUT THE LABOR REGULATORY AGENCIES OF THE U.S. GOVERNMENT, INCLUDING THE NLRB, THE DEPARTMENT OF LABOR, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE OFFICE OF APPRENTICESHIP. THESE NEW OFFICIALS NOT ONLY WILL INTERPRET THE LAWS BEING ENACTED BY CONGRESS, BUT ALSO ARE EXPECTED TO TOUGHEN ENFORCEMENT OF THE LAWS ALREADY ON THE BOOKS.

IN THIS NEW REGULATORY ENVIRONMENT, IT IS INCUMBENT ON ALL OPEN SHOP CONTRACTORS TO BE AWARE OF THE CHANGES THAT COULD AFFECT THEIR ABILITY TO DO BUSINESS. MANAGEMENT TRAINING ON THE PRACTICAL IMPACT OF THESE LABOR AND EMPLOYMENT CHANGES IS ESSENTIAL TO PRESERVING OPEN SHOP STATUS.

SOURCE: CONSTRUCTION EXECUTIVE, ARTICLE WRITTEN BY MAURICE BASKIN
MAURICE BASKIN IS A PARTNER WITH VENABLE, LLP, WASHINGTON, D.C., AND GENERAL COUNSEL TO ASSOCIATED BUILDERS AND CONTRACTORS. FOR MORE INFORMATION, CALL (202) 344-4823 OR EMAIL MBASKIN@VENABLE.COM.



2009—2010 Directory



RENEWALS

WHY YOU SHOULD RENEW YOUR MEMBERSHIP:

- ➔ ADVOCACY FOR OPEN COMPETITION AND FREE ENTERPRISE
- ➔ STRENGTH IN NUMBERS AND EXPERTISE WHEN FIGHTING THE UNIONS
- ➔ BUSINESS DEVELOPMENT AND NETWORKING OPPORTUNITIES
- ➔ APPRENTICESHIP TRAINING AND EDUCATIONAL SEMINARS
- ➔ LEGISLATIVE AND POLITICAL ACTIVISM
- ➔ AFFINITY PROGRAMS THAT SAVE YOU MONEY

VISA, MASTER CARD, DISCOVER, AND AMERICAN EXPRESS ARE ACCEPTED. IN TODAY’S ECONOMY WE UNDERSTAND THAT SOME MEMBERS MAY BE HAVING FINANCIAL DIFFICULTIES.

WE CAN HELP!

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**2009-2010
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THURSDAY
JULY 23, 2009

LOCATION: TBD

MARCH 24, 2009

SPRINGFIELD REGIONAL LUNCHEON

GUEST SPEAKER: DOUG WHITLEY REUBLICAN CANDIDATE FOR ILLINOIS GOVERNOR. EVENT BEGINS AT 11:30 AM AT BENNIGANS (IN THE LOBBY OF THE HILTON HOTEL), 700 E. ADAMS STREET. SPRINGFIELD, IL. \$20.00 PER PERSON

TO REGISTER OR FOR MORE INFORMATION PLEASE CONTACT KARI AT 217-523-4692

MARCH 26, 2009

GALESBURG REGIONAL MEETING

PLEASE JOIN US FOR AN EVENING OF NETWORKING, DINNER, AND A PRESENTATION ON THE ECONOMIC STIMULUS PACKAGE/BILL AND THE EMPLOYEE FREE CHOICE ACT/CARD CHECK BY AN EXPERT POLITICAL ATTORNEY. EVENT BEGINS AT 6:00 PM AT CRAPPY'S, 441 E MAIN ST GALESBURG, IL. \$25.00 PER PERSON.

TO REGISTER OR FOR MORE INFORMATION PLEASE CONTACT KARI AT 217-523-4692

MARCH 27, 2009

CHANGE IS INEVITABLE

THIS ONE-DAY INTERACTIVE WORKSHOP COMBINES PROVEN LEADERSHIP BEHAVIORS WITH PRACTICAL SKILLS FOR HELPING LEADERS RESPOND TO THE CHANGES THEY FACE IN TODAY'S RAPIDLY CHANGING AND HIGHLY COMPETITIVE ENVIRONMENT. THIS PROGRAM IS DESIGNED TO PROVIDE LEADERS WITH THE STRATEGIC AND TACTICAL SKILLS NOT ONLY TO LEAD CHANGE, BUT ALSO TO IDENTIFY AT WHAT STAGE THEIR FOLLOWERS ARE EMOTIONALLY IN A CHANGE PROCESS. DURING THE PROGRAM, PARTICIPANTS ARE ENCOURAGED TO EXAMINE THEIR OWN REACTIONS TO CHANGE, RECOGNIZE WHERE THEIR FOLLOWERS ARE IN THE CHANGE PROCESS AND DEVELOP IDEAS ON HOW TO SKILLFULLY LEAD THEM THROUGH THIS CHANGE. PARTICIPANTS ARE ENCOURAGED TO ANALYZE AND THEN APPLY THE STRATEGIES AND SKILLS THAT WILL HELP THEIR FOLLOWERS DEVELOP RESILIENCY FOR ADAPTING TO CHANGE AS RAPIDLY AND EFFECTIVELY AS POSSIBLE.

TO REGISTER OR FOR MORE INFORMATION PLEASE CONTACT ROB AT 217-523-4692

MARCH 27, 2009

DIRECTORY ADVERTISEMENT DEADLINE.

TO ADVERTISE OR FOR MORE INFORMATION PLEASE CONTACT LISA AT 847-709-2960

MARCH 31, 2009

EFCA, PLAS AND UNION ORGANIZING: A SURVIVAL GUIDE FOR THE MERIT SHOP—WEBINAR

PRESENTED BY: ABC GENERAL COUNSEL, MAURICE BASKIN, VENABLE, LLP

THIS WEBINAR WILL PROVIDE YOU WITH THE TOOLS AND RESOURCES TO:

- UNDERSTAND THE MOST SERIOUS LEGAL AND REGULATORY THREATS TO MERIT SHOP CONTRACTORS, INCLUDING EFCA, DISCRIMINATORY PLAS, AND TOP-DOWN UNION ORGANIZING;
- LEARN WHAT ACTION YOU SHOULD TAKE NOW TO DEAL WITH THE PRO-LABOR AGENDA BEING PUSHED BY THE OBAMA ADMINISTRATION, INCLUDING LEGAL DOS AND DON'TS; AND IDENTIFY ADDITIONAL ISSUES TO PREPARE FOR IN 2009, INCLUDING OSHA EXPANSION, EXPANSION OF THE AMERICANS WITH DISABILITIES ACT, THE FAMILY AND MEDICAL LEAVE ACT, CLASSIFICATION OF INDEPENDENT CONTRACTORS, STRONGER IMMIGRATION SANCTIONS AND STRICTER FEDERAL AGENCY ENFORCEMENT ACROSS THE BOARD.

EVENT IS FROM 11:00 A.M. - 12:15 P.M. (ET) OPEN TO ABC MEMBERS ONLY. COST IS \$69.00 PER PERSON. PLEASE CONTACT ABC NATIONAL FOR MORE INFORMATION OR CLICK [HERE](#) TO REGISTER!