

SWIPE RIGHT FOR UNIONS? COMPANIES SHOULD BRACE THEMSELVES FOR LABOR ORGANIZING VERSION 2.0

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Unless you've been hibernating, hiding under a rock, or vacationing in a location without Wi-Fi reception, you may have noticed that the last several months have been kinder to labor unions than any in recent memory. Changes in labor laws have provided an opening for labor unions to reassert their relevance in the American workplace after decades of decline.

But Big Labor is not resting on its laurels. Labor advocates are looking to build upon their gains through, among other things, the development of a mobile application ("app") designed to facilitate and improve employee organizing. Consider it version 2.0 of the organized labor movement, and you should get prepared now to live in this new electronic world.

Not Winning

As noted above, unions have enjoyed a resurgence in the past 12 months, buoyed by some significant legal victories. In December of last year, the National Labor Relations Board (NLRB) held that employees have the right to use company-provided email systems during non-working times for purposes of engaging in union activities ([see Alert here](#)). Then, in April 2015, the Board implemented its ambush election rules, which shorten timelines to a union election and entitle unions to employee phone numbers and personal e-mail addresses beforehand.

Already these changes appear to have had a disturbing effect. During the first month under the new rules, the Board

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saw a 17% increase in organizing petitions filed over the same period of 2014. You can expect that number to increase into 2016.

Labor Organizing? There Might Soon Be An App For That
But Big Labor is not satisfied with its current winning streak, and is aiming for more success. The Century Foundation, a pro-labor think-tank, recently published a report (found [here](#)) advocating for the development of an app that would modernize the labor organizing movement by supporting worker efforts, opening plenty of doors for unions in the process.

As contemplated by the Century Foundation, the app would combine abilities to generate template-based legal documents with social networking features of chatrooms. It would allow employees to communicate anonymously about working conditions, communicate to identify an appropriate bargaining unit, and even gather electronic signatures for a union petition.

Most troublesome for employers is that with the ubiquity of smartphones, these activities could be happening right under your nose without you being at all aware that an employee organizing campaign is even occurring.

"If virtual organizing took hold, it could transform the way in which the nation's top labor unions deploy their organizing capabilities," the report concludes. "Rather than just engaging resource-intensive retail organizing, they could become wholesalers of union formation, investing in large-scale promotion of an online resource, backed by call-centers and a significant network architecture standing behind this powerful tool."

If this app takes hold, one can even envision the day where employers could no longer ban workers from using smartphones at work, with the NLRB concluding that they are essential pieces of equipment for concerted and protected activity.

Success Or Flop?

Whether such an app gains traction among workers is of course an open question. For every triumph of social media technology in the marketplace, there are scores of companies, products, and apps left to rot on the trash heap of consumer rejection. Nonetheless, regardless of whether

unions and disgruntled employees begin to leverage these new technologies in more organizing campaigns, employers hoping to avoid unionization must be proactive.

Employee organizing tends to be the product of employee dissatisfaction in the workplace. When employees feel listened to by their employers and secure in their positions, they are less likely to seek representation from an outside union.

Steps To Take Now

You should work with your frontline supervisors to maintain an understanding of employee concerns, and should take steps to ensure that employees feel that they have a voice in your operations. Additionally, you can do yourself a favor by developing workplace policies that neutralize these recent pro-union tilts to the playing field.

Well-crafted policies that clarify company rules on solicitation and the use of personal mobile devices during worktime, as well as expectations of privacy when using company computer equipment, can be invaluable in preserving a union-free workplace. This is especially true when combined with management responsiveness to employee concerns.

Of course, you could stick your head in the sand and continue to use your trusty flip phone, hoping this all goes away. But our advice: failure to act now on these issues could leave your employees clicking and swiping their way to unionization.

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