

Date: January 9, 2009

Re: The Re-Empowerment of Skilled and Professional Employees and Construction Tradeworkers Act (“RESPECT”)

What it is:

Unions cannot represent employees who qualify as “supervisors” defined under the National Labor Relations Act. A 2006 NLRB decision expanded the number of employees capable of qualifying as supervisors by focusing on employees authorized to “assign” and “responsibly to direct”. The RESPECT Act seeks to reverse this decision and to narrow the definition of supervisors who cannot belong to a union-represented bargaining unit.

The present version of the federal law recognizes 12 types of authority that create supervisor status if used to further the employer’s interest, and exercised with independent judgment. The RESPECT Act would reduce the types of authority by two, removing “assign” and “responsibly to direct.” The proposed law would further restrict conferring supervisor status to only those employees who exercised one or more of the remaining ten types of authority for the majority of their work time.

How it affects you business:

If passed, the RESPECT Act will add to the population of employees eligible for union representation supervisors whose status depends on the authority to assign, or responsibly to direct. The law also has the potential for making additional supervisors (whose authority is other than that to assign, or responsibly to direct) eligible for union representation because they exercise their authority less than the majority of their work time. At a minimum, the RESPECT Act promises to add confusion to the question of whether an employee can join a union despite his or her close involvement in the management of the work.

The information contained in this Bulletin is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.