



**Feature: Assessing Your Risk of Unionization**

## Assessing Your Risk of Unionization

Here is an overview of the various risk-assessment tools organizations use to determine whether they are at risk of being targeted for unionization. Each assessment has its own strengths and weaknesses, so an organization ideally will use a mix of qualitative and quantitative tools tailored to its specific needs.

**By Frank S. Merrick and Thomas C. Grimes**

Over the past year, there has been much talk about the Employee Free Choice Act, but as the year winds down, it appears that card-check representation—a key and controversial aspect of the bill—has lost significant support.

Nonetheless, it is very likely some form of pro-labor legislation will be passed—even by the end of 2009, some commentators claim—making it easier for unions to organize. Therefore, employers need to take preventive steps, including increased training for both management and employees and comprehensive risk assessment.

Here is an overview of the various risk-assessment tools currently in use, along with the relative strengths and weaknesses of each approach. Ideally, an organization will use a mix of qualitative and quantitative tools tailored to its specific needs.

### A qualitative approach

Organizations should periodically assess whether any of their work sites are vulnerable to the possibility of union organizing. However, current law prohibits management from directly asking employees about their union sympathies or desires. Therefore, all assessment approaches require some measure of subjectivity or indirect information gathering.

A thorough and effective qualitative assessment includes a review of key records and documents (such as handbooks, policies, complaint logs and surveys), combined with supervisory interviews by a labor professional with extensive and practical experience in union avoidance and union organizing campaigns. This approach should provide insight on two issues: What is the likelihood that the employee group could gravitate toward union representation? Does the management team have the desire and ability to support a union-free posture?

A qualitative approach provides a solid overall picture of a site's risk, but large organizations with many locations often find this is cost prohibitive and impractical. Here are some alternative assessment approaches:

### Quantitative options

Quantitative assessment tools may be designed for either distinct or multiple purposes. Some only target a “real-time” snapshot of vulnerability. Others provide a baseline and ongoing assessments of progress or regress. Still others provide a roadmap for specific actions to improve overall employee relations and thereby reduce union vulnerability either on a corporate-wide or site-specific basis.

Here are the major types of quantitative assessment tools in use:

**General morale and attitude surveys:** Some union vulnerability assessments are drawn from commercially available employee attitude surveys or internally developed organizational health and culture surveys rather than specific “union” vulnerability surveys. Vulnerability is identified from an interpretation of employee perceptions or issues, and by the selection and examination of certain questions that are believed to identify union sentiment or risk. These questions usually relate to topics such as pay, benefits, the quality of first-line supervisors, the integrity of senior management, fairness in application of policies and procedures, and the respondent’s willingness to recommend the employer to friends or family.

Once problem-resolution efforts are in place, repeat mini-surveys should be conducted to track progress in high-risk locations. However, there is one thing keep in mind: Conducting an employee survey creates employee expectations that can become an additional issue for an employer if such expectations are not met with timely feedback and follow-up action. Therefore, it is important to plan follow-up communication to ensure that employees understand you are listening to their feedback and are taking action to address their concerns and issues.

**Existing HR metrics:** Another quantitative assessment approach involves the use of existing HR metrics as barometers of vulnerability. The most common metrics are: turnover rates, vacancy rates, safety records, number of complaints raised (including anonymous hot-line calls) and actions filed with outside governmental agencies of any type.

While this approach is cost-effective, since most employers gather such metrics as normal practice, our experience is that metrics alone are not an effective measure. The approach can create “false alarms” and can overlook other more significant causes of union activity. In short, we have found that employee unrest does not always correlate with union interest. Assessing quantitative information in a vacuum is not advised. Instead, look to a combination of existing metrics, along with surveys or interviews that capture sentiment, for a more accurate picture.

**Labor-relations vulnerability surveys:** Some employers use specific union-vulnerability questionnaires completed only by management that cover topics or issues that relate to union-organizing activity. These specifically designed tools may be administered either in-house or by an outside firm to encourage participation and reassure management respondents that they are anonymous. Such tools generally allow for comparative analysis between sites, and over time they create a benchmark against which vulnerability and progress can be measured. These tools typically produce a quantitative “score” or rating that indicates when a call to arms is appropriate. To reduce rater bias, such tools are administered to all or at least a significant sampling of first- and second-level management, along with local human resource representatives.

A variation on this approach is an overall HR/labor relations assessment tool completed by local senior leadership, rather than the organization’s first- and second-level management team. Highly personalized to each organization, the tool may result in a quantitative rating or merely a review of documentation that identifies issues for further assessment, clarifies the need for further actions to correct or minimize vulnerability, or both. Some organizations have expanded participation to include local or regional HR. In some cases, HR alone completes it, in an attempt to negate the potential risk of a leadership “cover-up.”

A note of caution: Even if this approach involves local or regional HR and is personalized to each organization’s local culture and practices, there is still a risk that both senior and HR leaders may attempt to hide their weaknesses or downplay certain programs, policies, decisions or actions that they want to personally defend and justify. If an organization chooses a senior and/or HR leader’s assessment tool, potentially significant vulnerabilities may be missed unless there is an unbiased employee/labor relations “auditor,” internal or external,

who candidly reviews the results for inconsistent or questionable input.

**All of the above:** A combination of the tools described above typically provides the most comprehensive and accurate view of an organization's risks and vulnerabilities. However, using tools in combination can be cumbersome and lack timeliness if the approach is not tightly coordinated and managed. It is therefore important for an organization to make sure it has the internal or external resources and time necessary to coordinate these efforts.

### **Frequency of assessments**

The frequency of site assessments varies by organization, but assessments are typically carried out based on geographical location or perceived risk. Some employers assess each site periodically, such as quarterly or annually. For others, frequency is based on the prevalence of union-organizing activity, the concentration of union representation or new or renewed collective bargaining agreements in one geographical area versus another. Often, the frequency of risk assessment is based exclusively on results from the last assessment, with more susceptible sites reassessed sooner.

### **Response plan**

Unlike risk-assessment tools and methodologies, follow-up responses to assessment results are typically uniform. Based on the tools that an organization uses, "break points" for low-, medium- and high-risk sites usually are identified and an appropriate follow-up status is designated.

Generally, low-risk sites are subject to a "maintain and monitor" status. Medium-risk sites are placed on a "watch list" for a deeper level of review, more frequent monitoring and possible follow-up actions. Sites determined to be at high risk typically require prompt action and receive a visit from senior leadership, corporate HR, or both. Such a visit would include employee focus groups, round tables or some other forum in which employees can speak directly to upper management without fear of retaliation or retribution. Prompt follow-up actions to clarify or correct an issue or concern identified by these visits are necessary to "close the communication loop" with employees in an appropriate manner.

### **The right mix**

When determining the appropriate mix of tools to assess risk, we recommend organizations consider the following:

1. Use a tool that provides enough detail to identify actual and potential issues.
2. Factor in geography. Unionization risks vary considerably by metropolitan area, region and state.
3. Pay particular attention to locations where a union has recently had some success, or where there is a large concentration of unionized organizations, particularly in your industry.
4. Include both local management and local or regional HR in each site's review.
5. Conduct a baseline assessment of all locations, then reassess each site at least annually.
6. Take appropriate follow-up action in order to minimize risk factors, consistent with the specific needs of the business, such as financial or operational issues and situations vital to sustainability.
7. Reassess high-risk sites at least quarterly.

### **Finding the right solution for your organization**

Assessing an organization's risk for unionization is more an art than a science. The gathering of valid, timely and reliable data is always the first step. However, it is the analysis of the data that will make or break the organization's efforts to identify and assess vulnerability.

There are no reliable national or industry standards against which an organization can measure its assessment tools, its vulnerability compared to others or its progress. As a result, the best standard against which an employer can measure its vulnerability is its own performance. An organization's "standard" is

best established by creating a benchmark, setting goals and comparing progress against that benchmark through ongoing reassessments.

As always, the best approach to maintaining union-free status is to create an environment where a significant majority of employees do not believe a union will add value to their employment relationship. Employers can achieve a positive union-free environment by paying close attention to the basics of employee relations:

- Competitive pay and benefits
- Open, two-way communications
- Fair policies that are consistently administered
- Behaviors and actions that demonstrate respect
- Problem-resolution procedures
- Effective change management

Any effective assessment approach needs to provide an accurate evaluation of how these basic aspects of employee relations are valued by employees.

Finally, regardless the specific outcome of the Employee Free Choice Act, we believe that pro-labor reforms are inevitable. The time for preparedness is now, including—at a minimum—training, education and some form of comprehensive risk assessment to assist in the development of appropriate actions.

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*The information contained in this article is intended to provide useful information on the topic covered, but should not be construed as legal advice or a legal opinion. Also remember that state laws may differ from the federal law.*

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