

Basic Workplace Safety and Health Rights



Right to information • Outside experts • Refusing unsafe work • OSHA protections • Training • Right to accompany inspectors



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After years of struggle, the labor movement has won certain basic safety and health rights for working people. Some of these rights are mandated by federal and state laws — such as the U.S. Occupational Safety and Health Act — while others are spelled out in contract language.

Stewards should note that health and safety “rights” do not guarantee a workplace free of hazards. However, when workers are educated about basic safety and health protections, including laws and contract language, they can begin to use these tools to push management to clean up the work environment.

It is also important to remember that in the United States, OSHA covers all private sector workers and federal government employees, and state plans cover public employees in 25 states. However, 8.2 million public workers in the remaining 25 states and the District of Columbia have no legal OSHA rights. In Canada, Provincial laws rule.

Your First Step

The first step for stewards is to become familiar with the following safety and health rights, which apply to all workers regardless of whether they are citizens or work in the public or private sector:

- The right to obtain safety and health information from your employer, including information about chemical hazards, workplace air-testing, or medical testing. This right is mandated under OSHA’s Hazard Communication Standard, as well as the National Labor Relations Act.
- The right to bring outside experts into the workplace to conduct walk-through

inspections and evaluations. This is a provision of the NLRA, but it can be strengthened by negotiating contract language, as well.

- The right to be free from discrimination for exercising health and safety rights, such as the refusal of unsafe work. This is a right under both OSHA and the NLRA, but stewards should note that discrimination cases must be carefully documented.

- The right to establish union health and safety committees. A strong health and safety committee provides the first line of defense against hazards on the job. This right should be negotiated in all union contracts.

In addition to the above rights, the following rights apply to workers covered by OSHA:

- The right to a workplace free of recognized hazards. This fundamental right is mandated under OSHA’s General Duty Clause. (Stewards should check with their local or national union’s safety and health department about how the General Duty Clause can be applied.)
- The right to training about chemicals you work with, their hazards, and how to work with them in the safest possible way. This is your right to know — a cornerstone of OSHA.
- The right to participation in meetings between OSHA and management to contest the length of time employers are given to correct OSHA violations. If unions are unaware of this right, OSHA may agree to allow management a lengthy time-frame for abating hazards — a longer time than the OSHA law allows.
- The right to accompany OSHA inspec-

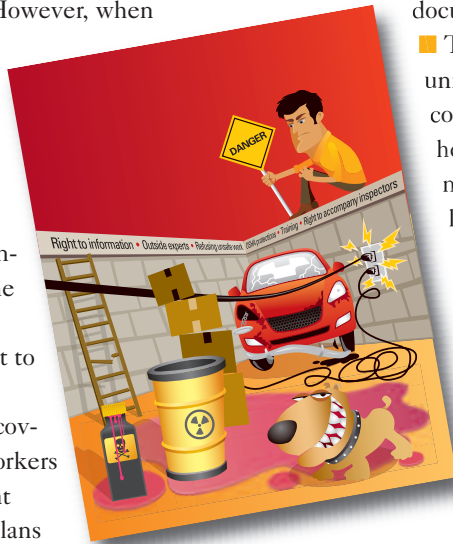
tors while they are conducting an investigation of your workplace. This allows workers, who know the hazards where they work better than anyone, the right to participate in official OSHA inspections.

- The right to participate in hearings between OSHA and your employer regarding a management request for a variance. This provides the union with an opportunity to ensure that employer-requested variances from OSHA standards provide as much protection as the standard itself.
- The right to petition OSHA for new standards.

Because OSHA regulates only about 500 of the estimated 60,000 chemicals in use throughout American workplaces, this is an important right that should be utilized by unions to demand swift passage of regulations for the most hazardous substances.

For more information about health and safety rights, stewards should contact their union.

— Jim Young. The writer is National Director of Education and Program Development for the BlueGreen Alliance, which includes ten large labor unions and four national environmental organizations and is based in the U.S. with a sister organization in Canada, BlueGreen Canada.



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Protections During Probation

Even when the economy is lousy, a lot of employers still have to hire people to replace at least some of their retirees and quits. That's good news for some people, especially if the employer is a unionized workplace. With new hires, though, comes an old problem: what about the probation period?

There's a common misunderstanding that centers on unions, contracts, new workers and probationary periods. The situation is this: There is a probationary period in every contract, usually running anywhere from 30 days to two years. The language of the contract usually blocks the union from challenging the discharge of a probationary worker during this period. The understanding is that the boss wants to take a look at new people before deciding whether to keep them, while the union doesn't want the trouble and expense of defending a "bad" worker right away.

So a myth develops that, during a probation period, "the union can't do anything for a worker."

Wrong.

At the same time, a union security agreement in the contract may compel a new worker to join the union long before the probationary period is up, creating more friction. The lament of the probationary worker is: "If the union can't do anything for me, why do I have to pay dues?"

Wrong again.

It is essential for stewards, who are the first point of contact for new workers, to understand all the things that come with a union contract and with union strength in the workplace. Stewards must be able to explain how these things cover even a new worker.

Describe the Benefits

From the moment a new worker hits the time clock for the very first time, there are enormous benefits to being under a union contract. Here are just some of

them, and stewards should be prepared to reel them off to new workers:

- Because you're working in a unionized workplace, starting pay is generally much higher than minimum wage, with guaranteed wage progressions built into the contract. A worker may get one of these automatic step increases well before the end of a probationary period, but it comes because the contract requires it, not because a boss takes a liking to you.

- Most union contracts provide time and one half after eight hours. So new workers, on the very first day on the job, will be entitled to overtime if they work beyond the normal work day. In fact, by getting overtime pay for just one shift, an individual worker may pocket more than an entire month's worth of union dues — a clear sign of the cash value of a union contract.

- Many union contracts allow all workers — including the probationary workers — to get paid holidays. Or to gain coverage under a health insurance plan, or to pick up any of the other economic benefits that the union has negotiated.

As a contrast, remember that the laws require that a boss provide a worker only with the minimum wage required by law, time and one-half over 40 hours in a week, and workers' compensation. Some laws, like the Family and Medical Leave Act in the U.S., may also eventually apply, but the union contract is the first protection.

Educate New Workers

For a steward, it is important to deal with the ignorance of most probationary workers about the union. After all, workers have been taught in school, and often at home, that "Big Labor" is only after your money. New hires are brainwashed into believing that any benefits they get are a gift of a generous and benevolent boss. The phrase that tips off their thinking is "The company gives us . . ."

A shrewd steward will immediately, but not belligerently, challenge this statement. It is really helpful if the union has prepared a new member kit, welcoming new hires and showing how each improvement was won through tough negotiations and even through sacrifices, such as a strike. This is all part of the process of turning a new worker into a solid union member.

Another Benefit

In addition to the economic benefits brought about by representation, probationary workers immediately gain the protection of the union organization in the workplace. Who better than a steward to protect a new worker against unsafe working conditions or against an abusive supervisor — and on the very first day of work! Or who better than a steward to tell a probationary worker about workers compensation or about the right to full break periods. Or to make sure that the probationary worker is not subjected to any of the forms of discrimination that are specifically banned by the union contract.

So the union is well worth the dues money for every worker, even if there are limits in the contract on grieving a discharge.

Even here, it is possible to stretch the limits, as one union proved. According to a summary in *The Union Labor Report*, arbitrator Fredric R. Dichter in St. Louis demanded that the *St. Louis Post-Dispatch* meet the "just cause" standard of the contract before discharging a probationary worker. Dichter ruled that the contract's nondiscrimination clause applies to all workers because there is no indication that probationary workers were to be excluded.

So an alert steward will let every new hire know that all the terms and conditions of the contract apply, and that the benefits that flow from the contract are not a gift from the boss but are the result of hard work, sacrifice and solid union organization. A probationary worker should be glad for the chance to get the benefits — and to pay union dues as part of the bargain.

Handling Disciplines Involving Profanity

It's the rare workplace in which profanity is never heard. From the blurted-out reaction to a spilled cup of steaming coffee to a confrontation between an upset worker and an equally upset supervisor, bad words happen. In those cases in which things escalate to management disciplining a worker, the question for stewards often arises, "What's next?"

Workers can be fired for insubordination. Profanity, directed at either fellow employees or the boss, is considered just that. It's not a question of freedom of speech: strong language, whether it's blasphemous, abusive or just plain dirty, can be construed as insubordination and cost a worker's job.

But how language is construed depends on how you look at it, and it can be the steward's job to establish the proper standpoint from which the charge of insubordination should be viewed. What do you do? You investigate and ask questions: of yourself, of the contract, of the worker facing discipline. For example:

Is there any specific language in the contract that defines insubordination in this particular workplace?

Is guilt clearly established?

Are there witnesses?

Was this typical, routinely accepted "shop talk" in this workplace, or with this supervisor?

What were the circumstances when the strong language started to flow?

Was the worker trying to uphold a contractual right such as the right to representation, the right to refuse unsafe work or an illegal order?

Is this worker being treated differently than other workers who've been in the same situation?

Were there unusually tense circumstances during the incident, either for the worker or the supervisor?

Was this worker set up? That is, did someone know the worker had a short fuse and aggravate him on purpose?

Is there some bad history between the parties?

If discipline has already been meted out, was it excessive?

If the worker was terminated, did the infraction rise to a level justifying that? Most contracts call for progressive discipline, so what the worker said would have to be pretty extreme to be outside the bounds of the progressive system. Remember that many arbitrators will support progressive discipline as an element of just cause, even if the contract does not specifically mention it.

As you look into the case be aware that because of the historic, legally acknowledged master-servant relationship between employers and workers, profanity that ridicules a supervisor, undermines the authority of management, or weakens the morale of employees and thereby hinders production is likely to be construed as insubordination. The master-servant context is considered insulting and discriminatory by many workers and unionists, but it is, unfortunately, the reality of the workplace.

The best approach is to make sure your members understand the potential consequences of using profanity. Prevention is better than cure.

OK, but what about stewards themselves — are stewards different? Yes, when they're in their steward role. The general rule here is called "the equality principle." When a steward is functioning

as a representative of the union he or she is no longer in that master-servant relationship, according to the National Labor Relations Board. (This principle has been adopted in almost all state public sector labor laws and in Canadian shop floor jurisprudence.) The steward is free, in the words of the Board, to "use some profanity and even defiance must be tolerated during con-

frontations over contractual rights," because "the relationship at a grievance meeting is not a master-servant relationship but a relationship between company advocates on one side and union advocates on the other side, engaged as equal opposing parties in litigation."

This equality principle provides what is often called "steward immunity." It means that stewards can speak in a loud voice, gesture, use language that would be considered profane and abusive in another context, even demean a supervisor's intelligence and threaten lawful protests. But be careful: this immunity is not absolute. Physical violence, threats of physical violence or other actions that would be considered illegal outside the workplace are not only dumb, they're not protected by law.

After all is said and done, stewards should be very careful in their use of strong language. Don't lose control. If you use profanity, use it in a calculated way, maybe even to make the employer believe you are so offended by what management has unjustly done that you can't help but get a little out of control. Remember that these confrontations are like theater, just like negotiations at the bargaining table. And if you feel yourself truly getting out of control, back off and get some help.

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Three Good Steward Habits

Habits can be good or bad. Developing good work habits can make a steward more successful. Here are three such habits that have been found to be particularly effective.

Brief — Do — Debrief

Before every meeting, task or event of any consequence always meet with others involved or with yourself if it is an individual project and “brief.” This means reviewing the goal of the activity, what to expect and a plan for how to proceed. If it is a group effort the plan should always clearly define the role everyone will play and contingencies for dealing with unforeseen occurrences. When everyone is clear on the “brief” then it is time to “do.”

In doing the “do” the main task is to follow the plan developed in the “brief” but also to be aware of how it is going and taking notes if necessary to facilitate an evaluation during the debrief.

In the debrief, after reviewing what happened and how everyone felt about the outcome, make sure there is an evaluation of whether the goal was reached and why or why not. The most important part of the “debrief” is determining what was learned from the “do” and identifying the next steps.

By following the “brief — do — debrief” habit you will find that goals are more often met, people in teams develop better working relationships, and, perhaps most importantly, there is a constant process of learning. In the current difficult times when things change very quickly stewards must always be learning from their experiences to keep up and meet new challenges.

Start and End Meetings on Time

Many people try to make meetings start and end on time with limited success which often diminishes as time goes on. However, it can be done with a lot of work and persistence even within organizations with long-standing cultures of never doing so. In many unions the fact

that meetings always start late is a running joke, but one that not everyone finds amusing.

In making a change the first step is very clearly communicating that 9 am really means 9 am and not 9:30, 9:45 or 10 am. Then it is crucial that you actual start the meeting at 9 regardless of how many people are present. If you do this consistently people will see that you are serious about starting on time and gradually you can change the culture concerning meetings, at least when it comes to meetings you run.

In doing this it is important that everyone understand that coming to meetings late without a very good reason is disrespectful to you and everyone else at the meeting. Those who come on time will be your allies in sticking to the schedule and they will apply peer pressure to get others to comply. Of course, your meetings need to be well-planned and run efficiently. If you show enthusiasm and make people feel welcomed and valued they will look forward to meetings rather than avoiding them.

Always Show and Demand Respect

Just as framing the issue of coming on time to meetings as an issue of respect helps get people to change their habit of

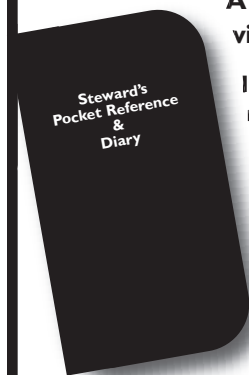
coming late, demanding and showing it in everything you do will increase your effectiveness. Just talking about respect is not enough, people need to see that you not only demand respect but always show the utmost respect for others.

You must treat everyone with equal respect regardless of what languages they speak, how much education and degrees they might have and whether they are an officer in the union or a new member. In particular show respect and appreciation in public when people are dedicated, follow through on what they say they will do and work as a team. If they do not act in those ways talk to people respectfully in private about why that happened. As a result, people will be more motivated to contribute to the union.

I learned these habits from a former colleague, Jessica Govea Thourborne, who developed them when she was one of the founding members of the United Farm Workers Union with Caesar Chavez. Cancer took Jessica from us, but her legacy lives on and there are hundreds of dedicated union and community activists inspired by her who have adopted her good work habits.

— Ken Margolies. The writer is on the Labor Extension faculty of Cornell University.

Steward's Pocket Reference & Diary



A handy pocket-sized reference booklet packed with vital information and tools important to every steward.

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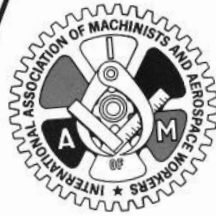
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Dear Sisters and Brothers,

The IAM has always been at the forefront of new technology, and in this rapidly changing world of digital communications we must keep pace. That's why I'm proud to announce the IAM APP, an exciting and new way to communicate that is more current, more useful, more video intensive, more quickly read and more action-oriented.

The new IAM APP is being built around the *IAM Journal*, our award-winning magazine. With print and postage costs escalating, we have ended the printed version of the *IAM Journal* and will start publishing monthly digital versions in November 2011 using the IAM APP. Smartphone and tablet users will be notified automatically through the IAM APP when new versions of the *Journal* are available. The digital *Journal* will also be available on www.goiam.org in a format that can be printed if need be.

As Stewards, you can play a key role in spreading the word about this exciting new technology. After November 2011, look for the "IAM APP" section on the homepage of www.goiam.org. There will be links to the Apple iTunes Store and Android Market to download the IAM APP. This is an exciting new way to get information about your union, your contract and the issues that directly affect your job and family.

Just as important as keeping pace with new technology is our union's long-standing commitment to excellence in labor education at the William W. Winpisinger Education and Technology Center. By now, all local and district lodges should have received enrollment information and the calendar of classes for 2012.

We encourage you make use of the Leadership programs and other educational opportunities at the Winpisinger Center to prepare the next generation of members, officers, and IAM activists to lead this great union. For more information about the 2012 schedule of classes at the Winpisinger Center, go to <http://winpisinger.iamaw.org> or call 301-373-3300.

As always, thank you for being an IAM Shop Steward.

In Solidarity,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

