

# **Chronic Pain: An Invisible Disability**



# Chronic Pain: An Invisible Disability

**A** steward trying to help a worker experiencing chronic pain will have a hard time making the problem fit neatly into a grievance, legal action, or some other kind of formal complaint. Instead, the fixes are likely to be accommodations that involve ergonomics and changes in work rules.

Unlike an amputation or a mobility problem, pain is an invisible disability. Doctors agree that what is severe pain for one person may be only a minor ache to someone else and vice versa. That doesn't mean it isn't real. Pain itself, separate from the effects of medication, can affect attitude and mental sharpness. It can change someone's personality profoundly. It can affect attendance, concentration and the ability to work in a team, which can lead to discipline.

Pain is often associated with people who have a physical job, who operate heavy equipment, drive a bus, or work on assembly lines. But pain also affects people who have desk jobs, work with computers, or write or talk for a living. It can present a serious challenge to people who are expected to be calm and friendly when facing the public, like flight attendants, retail clerks, and healthcare workers.

Also, while an individual can appear to be fit and healthy, she or he might still have a disability. Pain, by definition, is unhealthy, potentially progressive, and an aspect of illness. Actions must be taken to keep it from getting worse.

## No Good Choices Available

Suppose a member comes to you somewhat embarrassed after having been off the job for an illness, surgery or injury. His medically prescribed rehab includes pain medication. It is not clear how long the

pain might last. But the pain medication makes him drowsy and less sharp than normal. To address this, he has stopped taking the pain medication. This gives him back his sharpness and efficiency, but now he's in constant pain, jittery and stressed. Both options are bad.

The worker has come to you, not the boss, for help. He is scared, fearing that he won't be able to do the job right or that he might hurt someone in an accident. And he's just as scared of having the boss find out about the situation and getting fired.

Just as with visible disabilities, you need to get accommodation. Fix the job, not the worker. But the steward's goal must be to fight to ensure the cost of accommodation is borne by the employer. It should not be borne by the employee

or fellow workers, for example, by expecting them to take up a portion of this person's work to lighten the load.

## Negotiating with the Employer

Keep in mind, the steward or worker should not volunteer information that is not requested by management. Only report what is really needed to fix the problem.

Act only on the basis of medical information from a doctor chosen by the member, not by the employer. If the pain is job-related, alert the worker to have the cost covered by workers' compensation, not by personal insurance.

Be sure to remind the employer that they have an investment in this worker that will be permanently lost if that individual has to leave. Hopefully, the accommodation will be temporary because the pain will go away. Any improvement in the pain itself may reduce the need for medication and/or accommodation.



Propose a solution. Pain is cumulative and self-reinforcing, so make rest periods more frequent, perhaps every 20 minutes, so that the pain doesn't have a chance to cycle up. Let the worker keep an ice pack in the freezer of the break room refrigerator. Give him a place to do stretching exercises. Relax the attendance rules so that he has more discretion over when he can come and go. Offer to do this without setting a precedent, but only if you have to.

Look closely at the job itself to see if it can be re-engineered. In the United States, provisions of the Americans with Disabilities Act may come into play while in Canada the Human Rights Act's "duty to accommodate" or provincial law may apply. What are the core functions of the job? Are there aspects of the job that can be trimmed? You might even suggest a temporary shift to a different job.

## Organizing Around Pain

Millions of people go to work every day with pain. If it hasn't come up in your workplace, it's because someone hasn't raised it. But because it is invisible, you can't really organize around it unless a worker has given permission to have his health condition made public. If the worker is willing, organizing around it can buck the tendency of many people on the job to conceal their own experience of pain.

We could all have this problem tomorrow.

—Helena Worthen and Joe Berry. The writers are veteran labor educators.

**You need to get accommodation. Fix the job, not the worker.**

# Right-to-Work: A Steward's Guide

**A**s a union steward, you're the person members will approach when they have union related questions. The term "Right-to-Work" (RTW) is increasingly used by the media and legislators, so it's a good idea to understand what it means, and why it represents a threat to workers and the labor movement.

## What Are "Right-to-Work" Laws?

"Right-to-work" laws prohibit unions from requiring that dues or service fees be collected from all employees covered by, and benefiting from, the contract. By making dues payments voluntary, "right-to-work" laws can erode union membership and resources. They're designed to make it harder for unions to effectively represent workers.

## What Makes These Laws Possible?

Federal law. In the United States, the National Labor Relations Act (NLRA) has, since 1947, allowed states to enact "right-to-work" laws. Unions became firmly established in the Northeast, Great Lakes Midwest, and West Coast during the 1930s and 1940s; RTW was passed in 1947 to discourage unionization in the rest of the United States. Canada does not currently have an RTW law, but there is concern that some anti-union trends may lead in that direction.

## How Common Are These Laws?

Too common—and the list of "right-to-work" states is growing. The present RTW campaign aims to spread these laws throughout the United States and into regions that were former union strongholds. Now 25 states have enacted RTW laws. Recent additions to the list include Wisconsin (2015), Michigan (2012), and Indiana (2011). Other states are now targeted.

## Do They Affect Private and Public Sector Unions?

Yes, they can. A state legislature can, for example, enact one RTW law for the private

sector and another for the public sector. That's what happened in Michigan in 2012.

## Do These Laws Give People the "Right to Work"?

No. These laws have nothing to do with anyone's right to a job, and working people did not campaign to get these laws passed. The RTW campaign is driven by super-wealthy forces. The American Legislative Exchange Council (ALEC), funded by the billionaire Koch brothers, is a lobbying group that writes RTW model legislation and aggressively pushes it in state houses throughout the nation. Efforts are also underway to enact RTW at the local level, such as in Illinois where the governor is promoting the notion of "empowerment zones" which would "empower" voters to take power *away* from workers by making union membership voluntary.

## What Does RTW Mean for Union Membership?

It means that employees in the bargaining unit must choose to be dues-paying union members, making unions "all-volunteer" organizations. Employers often respond by encouraging current members to opt out and discouraging new employees from signing up to be dues-paying members.

## Are Non-dues-payers Excluded from the Contract?

No. This is what makes RTW so unfair. Unions are still legally bound to fairly represent everyone in the unit, whether or not they belong and pay dues: this is called the duty of fair representation. So, people can get the benefits of a contract without supporting the union. In other words, they get something for nothing.

## How Can the Union Do Its Job?

The idea is to make unions less effective—on the job and in politics—through membership attrition and loss of dues income. "Right-to-work" laws are an

attempt to destroy the union's financial lifeline and force it to divert resources. Imagine, for example, 20 percent or 30 percent of your co-workers dropping their membership. The union's ability to act as a unified force would be seriously undercut, and managers would have another divide-and-conquer tactic to weaken union solidarity.

## What Does This Mean for Union Stewards?

There's no doubt about it—"right-to-work" laws make a union steward's job harder. If you're in an RTW state, you have the additional responsibility of educating members about why they should voluntarily pay dues. If you're not in an RTW state, you have to make sure your members are aware of what "right-to-work" really means.

The big challenge is that many members feel disconnected from the union. They may see the union as a kind of insurance agency, with members as passive consumers of union services: paying dues like they pay insurance premiums, filing grievances like they file insurance claims.

Stewards can promote member participation by reflecting and acting on these questions:

- What do members expect of leaders and staff?
- What does the union expect of its members?
- Who's doing the work? Are a few people carrying "all the bricks"?
- Is there an effective new member orientation program?
- Have we taken an "inventory" of member skills, interests and experience?
- Are social events that build a sense of community held?
- Is there an effective communications network, especially one-on-one?

When members have the experience of group action and the chance to make a contribution to the group, they're no longer passive consumers. When goals are explained, understood and supported and everyone has a role to play, everyone feels responsible for the organization.

—Fred Kotler. The writer, a long-time organizer and labor educator, is currently on the staff of the Michigan Nurses Association.

# How to Handle the Haters

If you haven't run into this type yet, you will: union members who seem to think their good union wages and benefits come from the generosity of their employer rather than from union solidarity and collective bargaining. They complain about union dues, believe all unions are corrupt, or bad-mouth political candidates the union endorses.

They're the kind of person you'd love to ignore completely, but you can't, because you're a union steward.

Haters are a pain in the neck, but pay attention to them anyway because that pain may be a symptom of something more serious. Members who are hostile toward unions can be sources of misinformation to other members, and their attitude can be infectious. When management finds out who the haters are, they'll try to use them to weaken the union at the bargaining table.

## Identify the Source

The first step in dealing with anti-union members is to find out the source of their antipathy. When they make anti-union statements, try engaging them in some friendly conversation. Were they raised in an anti-union household, or did they have a bad experience somewhere else that colored their views of all unions? Did they have a bad experience with *your* union?

If a co-worker feels she's been mistreated by your union you should, of course, try to straighten out the situation if you can. In many cases the problem stems from a misunderstanding. A new member with little union experience may have the wrong idea about the grievance process, for example, or may be unaware of how arbitration works. He may feel that you've shown favoritism by filing a grievance for one worker but not for another, because he doesn't understand that grievances aren't simply worker complaints but a means of enforcing the contract that was negotiated with your employer. If the anti-union sentiment you encounter is the result of this kind of misunderstanding, it means there's a gap somewhere in the

education of new members that needs to be addressed. Make sure your new member orientation is as informative as it can be, and encourage members to participate in any additional labor education programs your union offers. To prevent misunderstandings from happening in the first place, know your contract and educate your members about what's in it.

## Stay Focused

Things can get really dicey when electoral politics are the source of the problem. Some people are so tied to their personal views on certain cultural issues they consistently vote against their own economic interests—and may encourage others to do the same. Your best option is to stick to economic issues as you explain why the candidates endorsed by your union are better for all working families.

One way to keep your cool with haters is to have ready answers to their arguments against unions. Make a list of facts about the advantages your union gives over non-union workers in your industry, and become familiar enough with the list that you'll be able to cite the facts when you need them. Your union's website no doubt has such a list, which you should

download and keep handy. You can also download a more general list, "The Union Difference," from the AFL-CIO's website, [aflcio.org](http://aflcio.org).

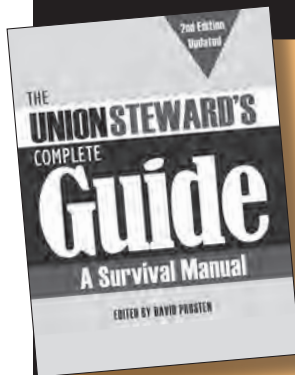
## Keep a Positive Attitude

It's easy to lose your cool when interacting with members who love to hate the union and even more so when they come to the union for help. When a union hater comes to you asking to file a grievance, you may be tempted to tell them to go to management for help since they seem to trust them so much—but don't. You have a duty of fair representation (DFR) that applies to everyone in your bargaining unit, even the ones who are anti-union, and union haters will be more likely than most to try to slap your union with a failure-to-represent charge. Just as important, when union haters come to you for help, it's an opportunity to show them just how important union protections are to them. Your behavior and attitude under these circumstances could be enough to turn a union member around, so be as impartial and good-natured about their grievance as you would be for your most loyal members.

—Joan Collins Lambert. The writer is a long-time labor journalist and activist.

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# Is It a Grievance?

One of the most common problems faced by stewards is also one of the most basic: deciding whether a complaint is a legitimate grievance.

A boring or limited food selection in the employer's cafeteria probably couldn't be considered grounds for a grievance. Nor could a co-worker's insistence on showing you—over, and over, and over again—the pictures of his new grandchild.

But how about the price of food in an employer's cafeteria when there's no other eating establishment for miles around? And what if the proud new grandfather is your supervisor, and he's insisting you look at photos while you're supposed to be working, and it's cutting into your earnings?

Determining what is a grievance, and what isn't, can be tricky. And it's important. A steward who pursues nongrievances quickly loses his or her credibility—with co-workers, with the union leadership and with the employer. On the other hand, a steward who turns away workers' complaints out of the belief that they aren't legitimate grievances, when in fact they are, will quickly find him or herself on the sidelines.

How do you determine if there are legitimate grounds for a grievance? There are five basic ways.

## Does It Violate the Contract?

Look at the union contract (or memorandum of understanding or whatever it's called in your workplace). While the meaning of a specific piece of contract language can be debated, you're usually in a pretty good position to argue that a certain section or clause has been violated.

## Does It Violate Past Practice?

Is what's going on a violation of past practice? Even if something isn't spelled out in the contract, if it's been done that way for years, a change or crackdown may as well be a violation. Let's say an employer has always given a little slack to workers who arrive late during bad weather. All of a sudden he starts docking people who arrive even five minutes late when a

blizzard is roaring outside. In such a case, you've got a pretty good past practice grievance on your hands.

If you're going to cite past practice as the reason for your grievance, be sure the practice has existed for a substantial period of time. Using the example above, be able to document how long the liberal arrival time for inclement weather has been the unspoken rule.

## Does It Violate Employer Rules?

Has there been a violation of your employer's own rules and regulations? Uneven enforcement of the rules can provide the grounds for a grievance. For example, a worker caught smoking in a nonsmoking area can't be fired if other people routinely do the same thing and are not disciplined. If supervisors escape employer discipline when they take extra-long breaks, even though the employee handbook says you will get in trouble by doing so, then workers should get the same latitude.

## Does It Violate the Law?

Even if your contract is silent on a specific issue, you still have the right to grieve if the employer does something illegal.

Let's say your contract doesn't speak to health and safety issues, but your boss orders you to do something that's clearly dangerous. You don't have to cite contract language as the basis for your grievance; you can point instead to state, or provincial, or federal occupational safety and health legislation.

## Does It Violate Basic Rights?

Finally, you can have legitimate grounds for a grievance if a worker's basic rights are violated. If there's been discrimination, you may have something to grieve.

Discrimination occurs when two people are treated differently under the same conditions, in a way in which one of them

is harmed or treated unequally. While the most common types of discrimination tend to be based on race or sex, there are other ways as well, including age, physical appearance, personality—and union activity, for that matter.

Be aware that discrimination charges can be awfully hard to prove. If you can base your case on contract language, you'll find it a lot easier to pursue.

## Winning the "Illegitimate" Grievance

Now that we've established the grounds for a formal grievance, let's take things one step further. Say you've gone through these guidelines and determined that you don't have grounds to file a grievance.

Does that mean you can't do anything?

Not necessarily. There are few grievances—"legitimate" or "illegitimate"—that can't be won, one way or the other. You just have to use a little imagination.

Consider the problem we mentioned earlier: a boring or limited food selection in your employer's cafeteria. While it may not be a grievance in the contract sense of the word, that doesn't mean you and your co-workers have to live with it. Instead of filing a grievance, you can win change by getting everyone involved in a little education project.

One way to convince management that change is needed would be to simply stop buying your food there. Arrange for everyone to bring their own lunch one day, and have the union award a prize for the most creative sandwich. The next day you could order out for pizza; the third day you could have the union cart in a huge pot of chili. Cafeteria sales would be in the tank. Management would notice and pretty likely be interested in getting things back on track.

There are few workplace situations that can't be improved by people working together in common cause—"legitimate" grievance or not.

—David Prosten. The writer is founding editor of *Steward Update*. With thanks to James Wallihan of Indiana University and the Labor Education Service of the University of Minnesota.

**There are few grievances that can't be won.**

**International  
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Machinists and  
Aerospace Workers**



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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

As this edition of the *IAM Educator* was being prepared, we were in the midst of the fight to stop Fast Track Trade Authority, which, if passed, would make it much easier to pass the deeply-flawed Trans Pacific Partnership Agreement (TPP).

Thanks to your phone calls, emails and activism, there is much more public awareness about the harmful effects on our jobs, our communities and North America's middle class than ever before.

Win or lose on this issue, we have made our voices heard. And that's important. For there are many other issues affecting working families in the United States and Canada where we will have to call on the same spirit of activism and community involvement.

In the United States, Right-to-Work (for less) laws are being pushed in local and state governments. Wisconsin is now the 25th state to pass this terrible legislation. We do everything we can to stop its spread to other states and roll back right-to-work laws in states that have them.

In Canada, working families have a chance to end the rule of the fiercely anti-labor government of Prime Minister Stephen Harper. The pro-worker New Democratic Party is surging in popularity and has a real chance of winning in the federal elections in October 2015.

Whatever the challenge, sticking together and taking action is how we have won in the past and how we will win in the future.

When we work together to fight corporate greed, help win a better contract, ensure safe working conditions, make our communities stronger or our workplaces more fair, we are helping workers everywhere.

Thank you for all you do and keeping the Machinists Union one of the strongest and most progressive labor unions in the world.

In Solidarity,

R. Thomas Buffenbarger  
International President

