



Labor Safety and Health Training Project

Facilitator's Guide

Module 4

Health and Safety Rights of Workers and Their Unions

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- ◆ Atomic energy workers; and
- ◆ Flight attendants who are covered primarily by the Federal Aviation Administration.
- In cases where another federal agency regulates safety and health in a particular industry, OSHA standards still apply if the other agency's regulations do not cover specific working conditions.
- Migrant farm workers are covered by OSHA's safety and health standards, but inspections of their worksites are done by the U.S. Department of Labor's Wage and Hour Division.

State, county and city/municipal workers:

- OSHA does not cover employees of state and local governments.
- However, a state can develop its own "state plan," an OSHA approved occupational safety and health program, for workers in that state. If it does, the state plan must cover state and local government workers.
- Under a state plan, the state government takes responsibility for administering and enforcing the federal OSHA law.
- What is required of a state plan:
 - ◆ Program must be at least as effective as federal OSHA; must provide standards, enforcement, and voluntary compliance activities at least as effective as federal OSHA; and must guarantee same employee and employer rights as does OSHA;
 - ◆ Administered by state, approved and monitored by OSHA;
 - ◆ OSHA funds up to 50% of program's operating costs.
- There are 26 states and territories that have state plans (use Handout/Overhead Slide #8: State Plans):

◆ **The following states and territories have state plans:**

- | | |
|----------------|--------------------|
| 1. Alaska | 14. New Mexico |
| 2. Arizona | 15. New York |
| 3. California | 16. North Carolina |
| 4. Connecticut | 17. Oregon |
| 5. Hawaii | 18. Puerto Rico |
| 6. Indiana | 19. South Carolina |
| 7. Iowa | 20. Tennessee |
| 8. Kentucky | 21. Utah |
| 9. Maryland | 22. Vermont |
| 10. Michigan | 23. Virgin Islands |
| 11. Minnesota | 24. Virginia |
| 12. Nevada | 25. Washington |
| 13. New Jersey | 26. Wyoming |

- ◆ **In 23 of these, the state plan covers private sector and state/local government workers.**
- ◆ **In 4 states – New York, Connecticut, Illinois, and New Jersey – the state plans cover only public sector workers. Federal OSHA covers the private sector in these states.**
- **In states that do not have a state plan, state and local government workers are not covered by any OSHA rules or enforcement.**

Federal government workers:

- **Employees of the federal government have limited protections under Section 19 of the OSH Act and under a federal Executive Order.**
- **According to the Executive Order, each federal government agency must maintain an effective safety and health program that meets OSHA standards.**
- **Federal government employers are supposed to comply with OSHA rules, and OSHA can inspect federal workplaces and issue citations.**

- However, federal government employers cannot be fined by OSHA when they violate OSHA rules. An exception to this is the United States Post Office, which can be fined for OSHA violations.
- OSHA also does not have authority to protect a federal employee whistleblower. Federal employees must go to U.S. Merit Systems Protection Board.

2. Undocumented workers are not covered by the protections of the OSH Act.

True False

Undocumented workers have the same legal OSHA protections as other workers. They are not supposed to be treated any differently from other workers. OSHA as a rule does not ask about immigrants' legal status and focuses on workplace health and safety conditions, not workers' legal status. OSHA has no "memorandum of understanding" with the INS (Immigration and Naturalization Services) to report workers' legal status; but neither does it have a policy ensuring that immigrants involved in OSHA investigations or other safety and health activities will not be reported to the INS. Unfortunately, some employers use immigration status and language barriers to threaten and intimidate immigrant workers, inhibiting immigrant workers' ability to speak up for safe and healthy working conditions.

3. Under the OSH Act, who is responsible for providing a safe and healthful workplace?

- the employer
 the workers
 the union
 OSHA
 all of the above

It is the employer's duty to ensure a safe and healthy workplace.

The Occupational Safety and Health Act requires employers to provide safe and healthful workplaces (use Handout/Overhead Slide #9: General Duty Clause).

The specific language in Section 5(a)(1) of the Occupational Safety and Health Act (known as the “General Duty Clause”) states that each employer “... shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm.”

4. Under the OSH Act, workers are entitled to have a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

True False

Workers are entitled to a safe and healthful workplace under the General Duty Clause and it is the employer’s responsibility to provide this.

5. OSHA health standards establish a safe level of exposure to the substances that they cover.

True False

OSHA standards establish a “legal” level, but not necessarily a “safe” level of exposure. Many OSHA regulations contain exposure limits (called “PELs” or “permissible exposure limits”) for toxic chemicals and hazards such as noise. However, the PELs are not protective enough – they are set at too high a level. Workers can get sick or have their health damaged when they are exposed at or below OSHA’s exposure limits. OSHA’s requirements tend to lag far behind current science. Many of its standards were set in 1969 and have not been updated.

In addition, OSHA's standards are not comprehensive. OSHA standards do not cover all hazardous substances. For example, OSHA has no standards for many chemicals which are known to be harmful to

workers and new chemicals are developed all the time for which no OSHA limits have been set. OSHA has legal standards for only 500 of the approximately 150,000 chemicals in today's workplaces.

OSHA also has no standards for many other workplace hazards, including fiberglass, extreme temperatures, workplace violence, ergonomics, infectious diseases, hearing conservation in construction, and safety and health programs.

6. If there is a hazard at a workplace, but there is no specific OSHA standard covering the hazard, OSHA can still cite and fine an employer for the hazard.

True False

If there is no specific standard covering a hazard, OSHA can cite and fine an employer under the General Duty Clause. In addition to establishing employers' responsibility to make workplaces safe, the General Duty Clause requires that employers correct hazards that are not regulated by a specific OSHA health or safety standard. In order for OSHA to cite or fine an employer using the General Duty Clause, OSHA has to prove that (use Handout/Overhead Slide #10: In order to cite an employer under the General Duty Clause, OSHA has to prove that):

- **The hazard is a recognized hazard, meaning that the employer or others in the industry were aware of the hazard,**
- **The hazard is causing or likely to cause death or serious physical harm,**
- **There are effective methods to control or correct the hazard, and**
- **These control methods are feasible.**

It is usually not easy to get OSHA to cite employers under the General Duty Clause. Workplace violence and ergonomic hazards (like back

and repetitive strain injuries) are examples of hazards that OSHA has cited and fined employers for under the General Duty Clause.

7. Under the OSH Act, only a management representative is allowed to accompany the OSHA inspector on a walkaround inspection.

True False

Workers have the right to have an “employee representative,” chosen by the employees, accompany an OSHA inspector during an inspection of their workplace. In unionized workplaces, the union designates an individual as the walkaround representative. Although there is no requirement in the OSH Act for this individual to receive pay while s/he is involved in the inspection, some union contracts have provisions for walkaround pay.

8. OSHA will assess heavy fines on employers who are cited for a serious hazard.

True False

Fines against employers for serious violations of the OSH Act are quite low (use Handout/Overhead Slide #11: OSHA Fines Against Employers). In 2003, the average penalty for a serious violation was only \$871. A violation is considered “serious” if “there is a substantial probability that death or serious physical harm could result” to workers. The maximum penalty allowed by the OSH Act for a serious violation is \$7000.

9. If you suspect that something is hazardous in your workplace, the best course of action is to call OSHA right away.

True False

This is a hard one to answer “true” or “false” because it depends on several things, such as the nature of the hazard, the severity of the hazard, and whether the workers are represented by a union.

In most instances, OSHA should be thought of as a “last resort.” All attempts should first be made to document hazards and get management to correct them. An exception to the rule of OSHA being a “last resort” is when workers are not represented by a union. Workers who are not in unions often have more protection against employer retaliation when they go to OSHA first about a health or safety problem.

There are certain situations in which OSHA may not be very helpful and should not be called to make a workplace inspection. Sometimes workers are exposed to a hazard for which OSHA has no regulations and OSHA probably will determine there is not enough evidence of a hazard to issue a “General Duty Clause” citation. In addition, many OSHA regulations, particularly “permissible exposure limits” for toxic chemicals and hazards such as noise, are not protective enough. Workers can get sick or have their health damaged when they are exposed at or below OSHA’s exposure limits. Workers and unions have had bad experiences when OSHA came to inspect a workplace and found no violation of OSHA rules. Their employer claimed they had received a “clean bill of health” from OSHA. However, workers and unions knew that workers’ health or safety was still in jeopardy.

Always remember that sometimes the THREAT of calling in OSHA can get employers to correct a hazard. And sometimes this threat can accomplish as much *or more* than an actual OSHA inspection. This often works best with hazards that the union has tried, and failed, to get the employer to correct.

10. Under the OSH Act, workers have rights to which of the following safety and health information from their employer?

_____ information on toxic or hazardous substances to which workers are exposed

records of exposure testing (tests that show amount of particular chemicals, noise or other hazards present in the workplace)

a worker's own medical records kept by the employer

injury and illness records for the workplace kept by the employer

all of the above

none of the above

Workers and their unions have the right to this information under three OSHA standards (use Handout/Overhead Slide #12: OSHA Right to Information Standards).

Under the Hazard Communication Standard, workers and unions have the right to information on toxic or hazardous substances to which workers are exposed. This standard requires employers to: have material safety data sheets on toxic or hazardous substances available in the work area; label containers of hazardous substances; train exposed workers; and have a written hazard communication program.

Under the Access to Employees Exposure and Medical Records Standard, employers must provide workers and unions access to records of exposure testing, and must provide workers with access to their own medical records.

Under the Recordkeeping Standard, workers and unions have the right to copies of workplace injury and illness records which the employer is required to keep (OSHA 300 Injury and Illness Log; Annual Summary 300-A; and Form 301 Incident Reports).

Note to facilitator: Section D in this Module, "Legal Rights to Safety and Health Information," has a detailed explanation of these three OSHA standards and also includes a resource handout on the standards. If Section D will not be covered in this training and participants have questions about these standards, you can explain some of the information in Section D now and also distribute the Resource

Handout: “Legal Rights to Safety and Health Information.”

11. Workers and their union have the right to see the OSHA 300 injury and illness log for their workplace, but only with the names of injured workers removed.

True False

Under OSHA’s Recordkeeping Standard, workers and unions are entitled to copies of the OSHA 300 Log and the names of employees must be left on the Log. The only exception is that the employer cannot include on the 300 Log the names of employees in “privacy concern” cases. Privacy concern cases are recorded injuries and illnesses where the injury or illness occurred to an intimate body part or the reproductive system; sexual assaults; mental illnesses; HIV infection, hepatitis, or tuberculosis; needlestick injuries and cuts from sharps where the objects are contaminated with another person’s blood; and other illnesses if the employee “independently and voluntarily requests his or her name not be recorded.”

12. If you are faced with a serious or life-threatening hazard on a job, you have the right to refuse to do that job.

True False

Under Section 11(c) of the OSH Act, workers have limited rights to refuse to do a job if they believe in good faith that they are exposed to an “imminent danger” (danger of death or serious injury). The U.S. Supreme Court, in the Whirlpool decision in 1980, upheld this OSHA regulation.

Under Section 11(c) and the Whirlpool decision, a worker’s right to refuse to do a task is protected if all the following conditions are met (use Handout/Overhead Slide #13: Right to Refuse Dangerous Work):

- **The worker has a reasonable belief that there is a real, imminent danger of death or serious physical injury,**

- The worker first asks the employer or supervisor to eliminate the danger,
- The worker has no reasonable alternative to refusing to do the work, and
- The danger is so urgent that the worker cannot risk waiting for OSHA to conduct an inspection.

Note that these conditions are generally very difficult to prove.

If all of these conditions are met and a worker is punished for refusing to do a task that the worker believed was especially dangerous, an 11(c) complaint should be filed with OSHA within 30 days and the worker may be protected. It may also be possible to file a grievance under the “just cause” provision of the union contract. However, the best way to protect workers from having to do unsafe work and from discipline for refusing unsafe work is strong union contract language.

Note that there is also a limited right to refuse unsafe work under the National Labor Relations Act (NLRA) and other bargaining laws.

13. According to the OSH Act, it is illegal for an employer to fire, discipline or discriminate against workers because they complain to supervisors or to OSHA about unsafe or unhealthy conditions on the job.

True False

Section 11(c) of the OSH Act makes it illegal for employers to fire, demote, or take any adverse action against an employee who complains about job safety or health hazards [use Handout/Overhead Slide #14: Under Section 11(c) Your Employer Cannot Punish You In Any Way For; and #15: Employer Retaliation, Section 11(c)]. If a worker is in any way disciplined or discriminated against by the employer for exercising any of his/her rights under the OSH Act, the worker has 30

days to file a Section 11(c) complaint with OSHA. OSHA can investigate a complaint and has the power to order reinstatement, back pay, and in certain circumstances, punitive damages.

14. In addition to rights under the OSH Act, workers and their unions also have safety and health rights under bargaining law.

True False

Bargaining law also gives workers and unions safety and health rights (use Handout/Overhead Slide #16: Safety and Health Rights Under Bargaining Law).

Right to bargain over workplace safety and health: Under most bargaining laws, workplace safety and health is a “mandatory subject of bargaining”. This means that the union has the right to bargain over safety and health matters. However, the union must request bargaining, or it may give up its right to bargain. The request should be made in writing. The employer must bargain with the union over safety and health and cannot make unilateral changes in anything having to do with safety and health. This right to bargain applies during the term of the contract as well as during contract negotiations.

Right to safety and health information: Under most bargaining laws, the employer must give the union requested safety and health information. Information an employer must provide includes information also available under OSHA, and in addition includes any other safety and health information the union feels it needs to represent the workers (like accident/incident reports, health and safety inspection records, and information on workers’ compensation claims).

Right to participate in safety and health activities: Workers have the right to participate in safety and health activities as long as these activities are “concerted,” meaning that two or more workers participate. Workers who participate in concerted safety and health activities should be protected against employer retaliation under the bargaining law.

Right to refuse unsafe work: Workers have a very limited right to refuse to do unsafe work under some bargaining laws.

(NOTE TO FACILITATOR: Go back to page 21, “5. Conclusion” for concluding discussion to this activity)