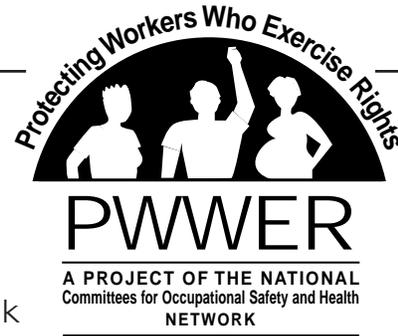


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# Contract Language for a Safe and Healthy Workplace:

- Preventing or Addressing Employer Retaliation
- Giving Workers Rights to Refuse Hazardous Work



FACTSHEET OF THE “PROTECTING WORKERS WHO EXERCISE RIGHTS” PROJECT OF THE NATIONAL COSH NETWORK

## Preventing Employer Retaliation Against Workers Who Engage in Health and Safety Activities

The goal of these contract clauses is to discourage an employer from taking retaliatory action against workers involved in health and safety activities in the first place. Secondly, if retaliation occurs, the contract clause should give the union the ability to file a successful grievance that would reverse the adverse action and “make the worker whole”.

An example of such a contract clause would be:

*“No employee or employees shall be discriminated against in any way, or discharged, or disciplined, for activities they may engage in related to health and safety.”*

Affirmative worker rights could be added:

*“No employee or employees shall be discriminated against in any way or discharged, or disciplined for activities they may engage in relating to health and safety. All employees shall have the right and shall actively be encouraged to report symptoms, injuries, illnesses and/or unsafe or unhealthy conditions to a supervisor, company official and/or regulatory agency without reprisal.”*

There could also be contract clauses that are more specific, about a particular situation. For example, contract language could prohibit an employer from having any policy or program that had the effect of discouraging workers from reporting injuries or illnesses:

*“The employer shall have no policy, program or practice that has the effect of discouraging employees from reporting hazards, symptoms, injuries or illnesses.”*

Often employers won’t give health and safety as the reason they took disciplinary action. The union must be able to show that it was indeed because of health and safety activities that the worker was retaliated against, not because of whatever excuse the employer is coming up with.

Worker firings or discipline are often countered by a union’s “just cause” clause. An example of a “just cause” clause is:

*“No employee will be disciplined, reprimanded, reduced in rank or privilege without just cause.”*

This language is useful in many different situations. Regarding health and safety activities and employer retaliation, this language is very useful when:

- workers have suffered retaliation for their health and safety activities,
- the employer denies that the disciplinary action was related to health and safety, and
- the union is unable to prove their case about the health and safety aspects.

“Just Cause” language allows the union to take on the reasons the employer is giving for the discipline and show that the discipline even for those reasons was unjust.

## Rights To Refuse Hazardous Work



Central to the issue of rights to refuse unsafe work is the definition of unsafe work: what constitutes a working condition that is sufficiently unsafe or hazardous to justify a work refusal, and who gets to decide. Since job hazards differ from workplace to workplace and some jobs are inherently more dangerous, unions have developed a wide range of language to deal with this right. Sometimes language speaks of “abnormally dangerous tasks” or “undue hazards”; and sometimes the language focuses on giving workers the clear right to shut down a job until the issue of its safety is decided by some type of interaction or negotiation between union and management.

In most cases, management looks upon work refusals as a serious challenge to their “rights to manage.” Unfortunately, many arbitrators have agreed, viewing work refusals as insubordination and immediate grounds for legitimate discipline or discharge.

There are several different approaches to successful contract language. Having a several-part provision that addresses the following issues is recommended:

- it triggers the right to refuse to work;
- discusses the salary consequences of such action and protects wages;
- gives individual workers the right to shut down jobs; and
- allows for an expedited procedure for resolving disputes.

### **Gives workers the clear right to refuse work.**

Language could include concepts such as “if the worker ‘reasonably believes’ a condition or situation will endanger their health or safety,” or “if a worker determines conditions are unsafe.”

Example:

*“No employee shall be required to perform work which he/she reasonably believes involves a substantial probability that serious physical harm may occur. Employees who exercise this right of refusal shall be assigned to other available work. The employee shall accept such assignment either at the higher rate of the job from which he/she was relieved or the rate of the job to which he/she is assigned, which-*

ever is higher.” (UAW/General Dynamics)

Note that this provision also accomplishes the important goal of guaranteeing workers the right to transfer to another job while the situation is being resolved, with pay at the level of their regular job or the new job, whichever is higher.

**Gives individual workers the right to shut down a job until a union safety representative is brought to the scene and the union can get involved in dealing with management on resolving the issue.**

Examples:

*“In the event that an employee or group of employees determine that a condition of work is sufficiently unsafe or hazardous to stop work, then the appropriate job or process shall be shut down and no one shall be required to work on it until a meeting has been held between representatives of the union and the management to resolve the dispute. In no case shall a stop work dispute be deemed in any way to be a violation of the no strike provision or the arbitration provision or any other provisions of this agreement.”* (Model language from “Workplace Health and Safety: A Guide to Collective Bargaining” by the Labor Occupational Health Program, University of California, Berkeley.)

**Establishes a system for “instant arbitration” of health and safety issues in a work refusal or “stop work” situation.”**

Example:

*“In the event of a dispute involving a worker or group of workers who stop work or refuse to work because of an unsafe or unhealthy condition, the dispute will be discussed immediately between appropriate representatives of the union and the employer in the final step of the grievance procedure provided for in this agreement. If not resolved, the matter will be submitted to arbitration within 24 hours of the occurrence of the dispute and the arbitrator shall be obligated to render an on-the-spot decision resolving the dispute.”* (Model language from “Workplace Health and Safety: A Guide to Collective Bargaining” by the Labor Occupational Health Program, University of California, Berkeley.)

Another approach to work refusals focuses on the employer:

*“Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of an applicable statute or court order, or governmental regulation relating to safety of person or equipment.”* (Teamsters/Handleman Company)

To make this clause more protective, it could add the phrase “reasonably believe,” and add the term “health” to “safety” as follows:

*“Under no circumstances will an employee be required or assigned to engage in any activity involving conditions which the employee reasonably believes to be dangerous to person or property, or which the employee reasonably believes is in violation of applicable statute or court order, or governmental regulation relating to the health or safety of person or safety of equipment.”*

An example of contract language that links many of these themes together would be:

*“Employees shall not be required to work under conditions which they believe to be unsafe or hazardous or to perform tasks which they believe could endanger their health, safety or well-being.*

*No employee shall be discharged or otherwise disciplined or discriminated against for refusal to perform work which the employee believes to be a hazard to his or her health or safety or to that of another employee, or for which the employee believes she or he is inadequately trained, or under conditions which the employee believes to be in violation of any health or safety standard or rule.*

*If the employer disputes the existence of a hazard, the employee shall not be required to perform the work until the dispute has been settled through the Health and Safety Dispute Settlement Procedure found on page \_\_ .*

*Employees who exercise this right of refusal shall be assigned to other available work. The employee shall accept such assignment either at the higher rate of the job from which he/she was relieved or the rate of the job to which he/she is assigned, whichever is higher.”*

A final example provides an expanded definition of “employer retaliation” as well as expands the circumstances surrounding a work refusal:

*“No employee shall be discharged, penalized, coerced, intimidated or disciplined for refusing to work on a job or in any workplace or to operate any equipment where he/she believes that it would be unsafe or unhealthy to himself/herself, a fetus, a workmate or the public, the environment or where he/she believes it would be contrary to applicable federal, state or municipal health and safety or environmental laws, regulations or codes of practice.”*