

GENDER EQUALITY : A GUIDE TO COLLECTIVE BARGAINING

# GENDER EQUALITY BARGAINING : AN OVERVIEW



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# Preface

**T**his guide is comprised of six booklets. Booklets 2 to 6 deal with different categories of bargaining issues. There are a number of areas of overlap and the same issue may feature in more than one booklet.

1. Gender equality bargaining:  
An overview
2. Working conditions
3. Maternity and family responsibilities
4. Defending rights of non-permanent and vulnerable workers
5. Dignity at the workplace
6. Giving women a voice

This guide is not intended to be used in any one particular way. It is hoped that the information contained in this guide will be of interest to employers, employers' organizations, individual workers and workers' organizations, and that it will be used in a variety of ways to achieve a range of goals.

The examples and ideas contained in this guide are not intended to determine definitively what should be achieved through collective bargaining, nor do they necessarily represent best practices. In some cases the examples used in this guide are watershed agreements or provide starting-points for negotiation, and as such they are intended as food for thought or to provoke debate. The context in which collective bargaining takes place will vary dramatically from situation to situation, affecting the types of issues that need to be

addressed and the means of addressing them. There is much room for creativity in designing and implementing bargaining strategies. It should be remembered that collective agreements generally evolve from one set of negotiations to another rather than starting anew each time.

This guide may be used for:

- negotiation
- discussion
- motivation
- awareness raising
- training
- education
- interaction between employers and workers
- creating alliances with other interested agencies/networks

This guide is the result of a collaborative effort between the Bureau for Workers' Activities and the Labour Law and Labour Relations Branch of the International Labour Office, with the assistance of an outside expert, and is the work of Shauna Olney (Labour Law and Labour Relations Branch), Elizabeth Goodson (Bureau for Workers' Activities), Kathini Maloba-Caines (Regional Secretary for Africa, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations) and Faith O'Neill (Labour Law and Labour Relations Branch). First published in 1998, the guide has been reprinted, with some updating, by the InFocus Programme on Strengthening Social Dialogue.



# Collective bargaining

**C**ollective bargaining is the term used to describe the process of negotiation between workers and employers and their representatives concerning any issue related to terms and conditions of employment or any other matter of mutual interest to the

workers and employer. A definition of what subjects are to be dealt with in collective bargaining may exist in national legislation. Even where a narrow definition is set out in legislation, this does not normally limit the ability of the parties to agree to bargain on a wider range of issues.

The Convention concerning the Promotion of Collective Bargaining, 1981 (No. 154) defines collective bargaining as follows:

## Article 2

For the purpose of this Convention the term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for:

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organizations and a worker's organization or workers' organizations.

Collective bargaining in many countries is a key means of determining terms and conditions of employment. However, the concerns and interests of women, with perhaps the exception of maternity leave, have in the past often been overlooked in the process of collective bargaining. And since collective agreements tend to be based on past agreements, the situation has been perpetuated. Traditional bargaining agenda items have been

approached without the input of women and issues of particular concern to women have not been addressed. But now that women are making up a greater share of the paid workforce and are an important and often untapped source of potential union membership, women, unions, women's groups and employers are acknowledging the need to deal in collective bargaining with issues of concern to women.

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*Women's issues are union issues  
and union issues are women's issues.*

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# Aims

**T**his guide has been prepared with trade unions in mind, in particular -

- negotiating committees and negotiators
- women's committees/departments
- educators
- union officials and organizers

The primary aims are to -

- ensure the systematic integration of gender issues and concerns in collective bargaining
- promote gender equality in the workplace and in the union
- equip unions with some tools to negotiate effectively on behalf of women
- ensure existing legislation or policies relevant to women are effectively implemented and monitored

Trade unions exist to represent the needs and interests of all their members; they bargain for improved terms and conditions of employment and a safe and healthy working environment for both men and women. As a result there is a need for specific consideration of gender issues in collective bar-

gaining; certain issues may be of more concern to women because of their reproductive role, due to their ascribed role in regard to family and household care, or to the results of past discrimination. At the same time these issues are not limited to women in that men also need certain types of protection in regard to their reproductive function, and measures are needed to provide men with opportunities to share more in family responsibilities, such as paternity and parental leave, flexible working hours and greater access to part-time work.

Collective bargaining is proving to be an important means of promoting equality for women in employment, but to be truly effective the concerns of women must be understood and given credence. This guide raises some of the issues that may be appropriate for collective bargaining and provides some examples. Though the focus is on how these issues primarily affect women, many of these also of course have a positive impact on men's working conditions. The overriding objective of the ILO's work is to encourage the improvement of the employment of all workers.

## **Gender equality bargaining is important because**

- women's issues are union issues
  - women's contributions at work have been undervalued
  - women are making up an increasing proportion of the paid workforce
  - it is important in changing attitudes towards women in employment
  - it can address many of the persisting deep-seated misconceptions about the role of women in employment
  - women's concerns have traditionally been overlooked in collective bargaining
  - legislative coverage may be inadequate
  - where there is legislation, it must be implemented in a practical manner
  - it addresses some non-pay issues that may be easier to bargain in difficult economic times
  - it is a means of attracting women to the union — it shows the union is committed to women
- **collective bargaining can make a difference.**

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*... Because WOMEN COUNT!*

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# Possible issues for gender equality bargaining

**T**

he list of suggested issues for bargaining is not set out in any particular order. Each union will find its own entry point into equality bargaining.

This will depend on the social and legal context, and most importantly, on what the women themselves choose as priorities.

*Remember:  
Any issue can be a subject for bargaining.*

## WORKING CONDITIONS

### Wages and benefits

- equal pay
- overtime
- bonus systems
- job classification
- pension schemes
- housing benefits
- transport benefits
- medical benefits

### Hours of work

- basic hours and overtime
- part-time work
- flexible working time
- job sharing
- night work
- expectant and nursing mothers
- time off for family responsibilities

### Leave

- annual leave
- compassionate leave
- maternity/paternity/parental leave
- medical/sick leave
- paid educational/training leave
- other personal leave (marriage, etc.)

### Health and environment

- health and environmental hazards
- ergonomics
- visual display units
- control measures  
and personal protective equipment
- welfare facilities and services
- disabled workers
- HIV and AIDS information
- reproductive health
- health and safety committees  
and safety representatives





## MATERNITY AND FAMILY RESPONSIBILITIES

### Maternity

- maternity leave and cash benefits
- miscarriage and stillbirth
- adoption
- reproductive health care
- rights of pregnant and nursing mothers
- job security

### Family responsibilities

- paternity leave
- parental leave
- family leave
- child care
- care of the elderly
- reproductive health services
- protection against discrimination or victimization

## DEFENDING RIGHTS OF NON-PERMANENT AND VULNERABLE WORKERS

- categories - casual, temporary, task workers, seasonal, contract, part-time, rural, homeworkers, domestic, migrant, indigenous and tribal
- extend general conditions
- avoid child labour
- avoid non-permanent status for permanent work

## DIGNITY AT THE WORKPLACE

### COMBATING DISCRIMINATION AND VICTIMIZATION

- trade union activities
- sex discrimination
- sexual harassment
- violence at the workplace
- creating an enabling environment

## GIVING WOMEN A VOICE

### At the workplace

- negotiating table
- occupational health, safety and environment committees
- grievance handling
- shop stewards and works committees
- company boards
- training and retraining
- representation at all levels of the establishment

### In the union

- women's committees
- women's department
- women representatives at all levels: local, regional, national, Congress
- education and training committees
- union organization
- negotiation committees/tables
- health, safety and environment committees
- building solidarity

# Preparing for bargaining

**T**he guide sets out a series of issues that should at least be considered in the context of collective bargaining. How to approach them and what level of priority they should be given should be determined by the women themselves. Taking into account that many of these issues will also affect men, joint strategies and action will often be needed.

- Women's committees or equal opportunities committees should play a key role in formulating demands and examining proposed clauses for discrimination.
- Try to determine the views of women who are absent or silent at meetings — perhaps through questionnaires or women shop stewards or representatives who work side by side with the women workers.
- Gather any statistics available regarding women in the workplace and the sector (for example, how many women are in different job categories, what is the differential in pay between men and women).
- Existing rights — determine what your rights are under existing collective agreements, legislation, government policies, work rules.
- Determine how collective bargaining can be used to extend or secure

existing rights — for example, if there is legislative coverage, the collective agreement could repeat the terms of the legislation, but provide for more effective and accessible enforcement. In a number of areas, legislation may provide particular rights, but these may not be applied or enforced in practice so duplicating or extending them through the collective agreement can be an important additional safeguard.

- Identify and prioritize needs of workers — this will usually require determining the cost of a particular benefit. If an employer can be shown that a particular benefit will not cost anything (or not much), or that it can bring tangible benefits in terms of reduced absenteeism and higher productivity, the employer is more likely to agree. In difficult economic times, rather than pay raises, the union might have more success with negotiating for non-pay, low-cost equality benefits, such as flexible working arrangements or paternity leave which affect a small percentage of workers while exhibiting a progressive attitude on the part of both the management and the union. Benefits to employers should be explained, and not merely in monetary terms, but also with regard to such things as staff recruitment, less staff turnover, less absenteeism, etc.



# After bargaining

**P**romoting gender equality in employment does not end once the collective agreement is signed. Following up the collective bargaining process is essential, otherwise the rights may exist on paper only.

- Make sure the negotiated policies, rights and benefits are communicated to all workers on a regular basis (including those with non-permanent status) — the information should be posted at the workplace, but can also be made available in lay language through newsletters, guides to good practice, seminars, role-play or lunch-time meetings.
- Regular gathering of statistics — keep a close eye on the number of women and men hired, promoted

and dismissed as well as the numbers in all job categories, salary levels and training programmes.

- Regularly monitor the implementation and effectiveness of collectively bargained policies, rights and benefits — always think forward to what can be achieved during the next round of collective bargaining.
- Deal with equality issues in educational and training programmes.
- Publicize the work done by the union on behalf of women — as an organizing strategy, it is important for unions to publicize their new bargaining objectives and the strategies they have used or intend to use to achieve them.



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# GENDER EQUALITY BARGAINING : AN OVERVIEW

Shauna Olney Elizabeth Goodson Kathini Maloba-Caines Faith O'Neill

This is one of 6 booklets on Gender Equality Bargaining

1. Gender equality bargaining: An overview
2. Working conditions
3. Maternity and family responsibilities
4. Defending rights of non-permanent and vulnerable workers
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# WORKING CONDITIONS



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# Access to work

**A**ll workers should have equal access to employment opportunities. Recruitment, selection and employment practices may be discriminatory even in situations where applications are welcome from both men and women: word of mouth advertisements and unjustifiable requirements such as mobility, unsocial working hours, length of previous service and age bars are all examples of this.

Women returning to work after having children are likely to have less previous work history, to be older, to be less mobile and less able to work unsociable hours.

These practices are often reinforced by or not targeted in collective agreements. Bargaining can be used to ensure that all vacancies are properly advertised and that only those requirements that are necessary to carry out the job are demanded.

## Wages and benefits

### 1. Equal pay

#### I) Equal pay for equal work

Equal pay for equal work is a very different concept from equal pay for work of equal value. The concept of equal pay for equal work implies that similarly qualified women and men will be paid equally only when they perform the same or virtually the same work in equivalent conditions. In practice, this formulation will usually limit the application of the principle of equal pay to work undertaken by women and men in the same area of activity and in the same enterprise.

There are still instances where women receive less pay than men even though they perform the same or very similar jobs in the same enterprise. Sometimes, though the work is similar, different job titles are used which either identify the gender of the job holder (eg. storeman, policeman), or which appear neutral but cover jobs exclusively or predominantly carried out by one sex (eg. typist, messenger). There may be specific male and female rates, or in some cases classifications such as "A" and "B" rates, which in practice

correspond to men and women. Such forms of discrimination cannot be accepted, and must not be legitimized through their inclusion in collective agreements.

#### II) Equal pay for work of equal value

Equal pay for work of equal value is the more modern and forward-looking concept. The principle of equal pay for work of equal value is intended to cover not only those cases where men and women undertake the same or similar work but also the more usual situation where they carry out different work. The concept thus addresses the undervaluing of the jobs undertaken primarily by women, in particular, by comparing those jobs in terms of their actual requirements with the jobs undertaken mainly by men.

Although this formulation of equal pay has been the minimum international standard since 1951, it has still not been fully implemented in many cases. It is a more complex concept to apply than equal pay for equal work, but it is essential for promoting equality in the workplace.

## The Equal Remuneration Convention, 1951 (No. 100)

### Article 1

For the purpose of this Convention-

- (a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

### Article 2

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and ... ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

*Job evaluation* (also called job appraisal or job assessment) is important to ensure equal pay, particularly in situations where women and men do not normally work alongside each other, to compare jobs with different content. Many employers have some kind of job evaluation process, but often it is carried out in an informal or non-analytical manner, or is based on traditional systems that maintain or import gender discrimination.

*What is job evaluation?* It is a comparison of the relative value of different jobs in terms of the level of demand the work makes on the average worker. The abilities of the individual worker are not measured. Job evaluation-

■ takes into account only those aspects required to perform the work to the expected level of efficiency;

■ can also take into account the conditions under which the work is carried out.

An example of job evaluation is giving particular values or points to the elements of a job, such as the education level required, strength, skill, responsibility, working conditions, etc. The process of evaluation is not effective however if sex stereotypes are used

as this can result in the undervaluation of jobs mainly held by women. Evaluation may be biased against qualities regarded as feminine. For example, traditional schemes tend to measure only the physical and mental aspects of work and do not include factors that adequately measure dexterity, caring functions, organizing or coordinating activities or people. Where market wage rates are used to establish the relative weight of factors, these may simply reflect historical discrimination in the labour market. In these cases job evaluation will perpetuate rather than eliminate discrimination. There is a need to define and value factors in an objective manner, without being influenced by feminine stereotypes or bound by traditional criteria. New approaches to job evaluation conceptualize work as having human relations skills and emotional aspects, as well as mental and physical aspects.<sup>1</sup>

Many countries now have equal pay legislation or support the principle of equal pay in some way. Unions can negotiate for equal pay and job evaluation schemes whether or not such legislation exists.

■ See the Equal Remuneration Convention, 1951 (No. 100), and Recommendation (No. 90).



The **Commission of the European Communities** has issued a Code of Practice on the Implementation of Equal Pay for Work of Equal Value for Men and Women. It states that, as a first step, information needs to be gathered to establish a general picture of gender and pay. The Code sets out a list of key indicators of potential sex bias:

- Women have lower average earnings than men with the same job title.
- Women have lower average earnings than men in the same grade.
- Women in female-dominated unskilled jobs are paid less than the lowest male-dominated unskilled job.
- Jobs predominantly occupied by women are graded or evaluated lower than jobs predominantly occupied by men at similar levels of effort, skill or responsibility.
- Women are paid less than men with equivalent entry qualifications and length of service.
- Where separate bargaining arrangements prevail within one organization, those dominated by men receive higher pay than other bargaining groups dominated by women.
- The majority of men and women are segregated by different grading, classification and evaluation systems.
- Part-time or temporary workers, who are mainly women, have lower average hourly earnings than full-time or permanent employees in the same job or grade.
- Part-time or temporary workers, who are mainly women, have access to fewer pay and other contractual benefits.
- Different bonus arrangements, piece-rate and other "payment by result" systems, apply in different areas of production, affecting disproportionately one gender.
- Different overtime rates apply in different departments, affecting disproportionately one gender.
- Holiday entitlements vary between jobs in the same grade affecting disproportionately one gender.<sup>1</sup>

<sup>1</sup> From the Commission of the European Communities: *A Code of Practice on the Implementation of Equal Pay for Work of Equal Value for Men and Women* (Brussels, 1996), p. 8.

Since 1 January 1988 both public and private employers in Ontario, **Canada** have been legally bound to implement wage scales based on the value of work performed, regardless of the sex of the person doing the work. Pay adjustments must be made if it is found that women are being paid less than men for work of comparable value. The law provides for job evaluation.

The **Amalgamated Clothing and Textile Workers Union** negotiated a new wage scale under this law with the **Arrow Company** which raised the pay of 72 sewing machine operators by US\$ 2.95 per hour because their work had been undervalued in comparison to men's jobs in the company. The following is an excerpt from the Arrow Company Pay Equity Agreement:

Having completed this "job evaluation" study, all of our jobs were ranked by point total, and using these point totals, all jobs were placed into 7 classes. We found that some of our jobs were undervalued, some were correct and some were found to be overvalued.

From April 2, 1990 forward, when general increases are applied, those jobs which are undervalued will receive increases greater than the negotiated amounts. Jobs which were correctly valued will receive the full amount of the negotiated increase. Those jobs found to be overvalued will have a "Maintenance of Earnings" program applied to them. Stated simply this means that we will not reduce any earnings... We will, however, apply only a portion of future general increases to these overvalued jobs to bring them into line with all other jobs in the company.<sup>1</sup>

<sup>1</sup> Excerpt from *Bargaining on women's issues and family concerns: Clauses from ACTWU contracts* (ACTWU, Nov. 1990).



## 2. Overtime

Ensure that all workers can benefit from overtime hours paid at overtime rates, including part-time workers.

See section on hours of work below, page 11.

## 3. Bonus systems

Since bonus systems concentrate on fixed-term and full-time employment, women are often at a disadvantage. Consideration should be given to concentrating on basic pay increases, which may be of greater benefit to women. Alternatively, bonus systems may be enlarged to include all workers regardless of status (including non-permanent workers), or extended to include grades of jobs which have not traditionally attracted bonus payments. It is important, of course, to ensure that bonuses are paid without discrimination, either direct or indirect.

The **Commission of the European Communities** Code of Practice on the Implementation of Equal Pay for Work of Equal Value for Men and Women, lists some practices regarding bonuses that require examination:

- **Female and male manual workers receive the same basic pay but men have access to bonus earnings.**  
Check if the differences in access to bonus can be objectively justified irrespective of sex. Do the differences in earnings reflect real differences in productivity? Investigate how access to overtime, weekend and shift working is provided.
- **Performance pay is only available to senior posts/full-timers/employees covered by the appraisal system.**  
Check if the coverage of the scheme and the exclusions are objectively justified.
- **Women consistently receive lower performance ratings than men.**  
Review the criteria for performance rating to identify direct and indirect sex discrimination.<sup>1</sup>

<sup>1</sup> From the Commission of the European Communities: *A Code of Practice on the Implementation of Equal Pay for Work of Equal Value for Men and Women* (Brussels, 1996), pp. 9-10.

## 4. Job classification

Jobs can be classified by categories or hierarchies. Women are often at the bottom of these categories. The union should work for equal representation of men and women in all professional areas, salary levels, hierarchical levels. Women and men are sometimes physically segregated in the workplace and therefore not always aware of discriminatory treatment. There is a need for the union to look at the distribution of women and men in different grades and uneven differentials within the grading structure. If women are at the bottom and men

at the top, the union should question the neutrality of the job classification system.

There should be a re-evaluation of classifications in the light of changing circumstances and technology.

Consideration should also be given to special training for women to upgrade their qualifications and thus their access to higher graded jobs. Biases in employees' access to training also need to be challenged.

See also booklet 6,  
*Giving women a voice.*



## 5. Pension schemes

There are several aspects of women's employment which often place them at a disadvantage regarding pension schemes.

Most women are in lower-paid employment and pension schemes which reflect salary levels which therefore leave women with lower pensions than men. Equal pay and equal opportunity are employment issues which manifest themselves in pension payments.

More women than men may have interrupted work histories. Women may need to take career breaks or extended periods of leave to meet the demands of their family responsibilities.

Alternatively, women may enter the workforce later having had their families. Most pension schemes, however, assume that a worker will work continuously for a full working life; pension contributions are often

calculated to produce an adequate pension after a full working life of continuous employment. Workers who have had interrupted employment or delayed their entry into the workforce will not have sufficient funds in their pension scheme to receive an adequate pension on retirement.

Many women work on a part-time basis and therefore may not have the same pension rights as full-time employees or they may be excluded completely from employer pension schemes.

The union can negotiate for better pension provisions for women, taking these difficulties into consideration.

Changes of employer are becoming increasingly common. All workers are at risk if pension schemes are not valued at worth for transfer. Unions can negotiate to ensure that pension schemes are fairly valued for transfer from one employer to another.

## 6. Housing benefits

In some countries, married women in particular are denied housing allocations on the basis that such allocations are available for men only. But in many cases, women have the

same, or greater, family responsibilities as their male colleagues.

Housing allocations should be made available to women and men workers on an equal basis.

## 7. Transport benefits

Organizing transport can be stressful for women because of their family responsibilities or because it exposes them to potentially dangerous situations. Depending on the situation, employers could be persuaded to allocate transport for men and women workers to overcome lengthy travel time or in dangerous situations, or when transportation is not reliable,

such as at night. This is particularly important for women who may be subject to harassment and violence.

The provision of transport benefits is also an effective means of ensuring punctuality and regular attendance from workers, as well as an excellent means of creating a stable and motivated workforce. Thus transport benefits can also be of direct benefit to employers and workers alike.

### In negotiating a pension scheme

- Ensure that women receive *equal pay and equal opportunities*.
- Ensure that employer pension schemes are *available to all employees* including part-time workers.
- *Pension credits*. Women can be given pension credits to allow for the fact that they are likely to have periods outside paid employment. Credits are easier to provide for in state schemes than in employer/employee schemes but this should not deter the union from including them in negotiations.
- *Reduction in the working life of women*. The theoretical working life of women can be reduced to allow for likely interruptions. Thus fewer but greater pension payments can be paid for women workers to ensure that women receive the same pension on retirement as their male colleagues.
- Link pension contributions to *maternity leave* to ensure continuity of provision. This is harder with longer periods of absence and is therefore not an ideal solution
- Allow for *voluntary contributions* enabling workers to make up any shortfall in their pension. Again this is not an ideal solution as women are literally forced to pay for any interruptions in their employment histories.

In **Zambia** the **National Union of Commercial and Industrial Workers** has achieved a number of benefits for its members which are embodied in collective agreements.

Agreements have been reached to ensure that all union members are eligible for housing allowances whether they are male, female, married or single.<sup>1</sup>

<sup>1</sup> NUCIW report to the FIET Regional Women's Seminar for English-Speaking Africa, November 1991.

The **South African Commercial, Catering and Allied Workers Union** has highlighted safe transport as a major concern for its female members and has undertaken a campaign to achieve safe and guaranteed transport home for workers. The union has successfully negotiated this issue with some employers but has met with resistance from small enterprise employers.<sup>1</sup>

The **National Union of Commercial and Industrial Workers, Zambia**, has negotiated to ensure that employees are paid a transport allowance if they are not provided with transport by their employer. This should enable such employees to pay for safe transport if necessary.<sup>2</sup>

<sup>1</sup> Report by SACCAWU to the FIET Regional Women's Seminar for English-Speaking Africa, 1991.

<sup>2</sup> Report from NUCIW to the FIET Regional Women's Seminar for English-Speaking Africa, 1991.



## 8. Medical benefits

Medical insurance should be available to all workers, even those in non-permanent positions, most of whom are women. Group insurance might also be negotiated. Wherever possible, health care provisions may be extended to cover workers' children.

Benefits should be negotiated, including provision for a certain number of paid sick days per month, leave for medical check-ups or hospitalization, etc., and should cover all workers including non-permanent workers.

Some employers refuse to pay medical benefits for gynaecological care. Unions must recognize and promote this as part of health care for women, including check-ups and tests against cancer.

Clinics sponsored by the employer may also be subject to negotiation, for example ensuring the employee's right to her choice of doctor, etc. In some countries, women's welfare groups have played an important role in the promotion of health care and medical benefits for women. Unions could work with these groups in setting up health care centres or petitioning for legal reforms.

Attention must also be given to the provision of family planning clinics and advice, HIV and AIDS information and counselling. These services should be given in ways which respect workers' privacy and dignity.

See the sections on HIV and AIDS information, and reproductive health below, pages 26 and 27.

# Hours of work

## 1. Basic hours and overtime

Hours of work for both men and women should be calculated to avoid differentiation and possible gender discrimination.

Collective agreements can be used to ensure that both men and women are compensated for overtime work and have equal access to voluntary overtime. Steps can be taken to make sure that basic hours do not encroach into unpaid overtime at the request of the employer.

In some cases, women's ability to

work overtime is limited due to their family responsibilities or prohibitions on night work for women. The union may negotiate to remove such restrictions or to protect the interests of women members in some other way. See the section on night work below.

One perspective is that women should have access to overtime and be paid for it. On the other hand, it may be more advantageous to workers generally to aim to reduce the need for overtime and better distribute working hours. In this way, men and women can participate equally in employment and at home.

## 2. Part-time work

More and more part-time jobs are being created, and the majority of these jobs are held by women. Part-time work is a necessity for many women due to their domestic responsibilities and the lack of child-care facilities.

Part-time workers may be at a disadvantage due to-

- lower hourly rates of pay (this is contrary to the principle of equal pay for equal work)
- ineligibility for pension and other benefit schemes
- ineligibility for various forms of leave
- limited training and promotion possibilities
- the perception that they are less committed workers, thus affecting career development.

Part-time work should not be treated as second-rate work.

Bargaining can be used to ensure that part-time employees receive the same

benefits and have the same conditions as full-time employees. Agreements should include pro-rata basic and overtime pay.

A number of benefits, such as medical care and access to welfare facilities, are not appropriate for pro-rating — part-time workers should receive full benefits. Transport benefits and some other cash benefits are also unsuitable for systematic pro-rating and are more appropriately awarded to all workers on a needs basis.

Ensuring that part-time workers have rights regarding redundancy is also important. If part-timers are automatically chosen before full-timers for redundancy, women are likely to be disproportionately disadvantaged. This constitutes indirect discrimination and should be avoided through collectively negotiated redundancy schemes. Part-time workers should also have access to redundancy pay.

See also the Part-Time Work Convention, 1994 (No. 175) and Recommendation, 1994 (No. 182).

See also booklet 4, *Defending rights of non-permanent and vulnerable workers.*

## The Part-Time Work Convention, 1994 (No. 175)

### Article 4

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

- (a) the right to organize, the right to bargain collectively and the right to act as workers' representatives;
- (b) occupational safety and health;
- (c) discrimination in employment and occupation

### Article 5

Measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method.

...

### Article 7

Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

- (a) maternity protection;
- (b) termination of employment;
- (c) paid annual leave and paid public holidays; and
- (d) sick leave

It being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

## 3. Flexible working time

Disciplinary action is sometimes taken against women because of family responsibilities. Women may have difficulties keeping to fixed schedules because of family responsibilities. Management could be persuaded to be flexible on working hours, for example, core working hours of six hours per day with flexible working hours on either side, as long as a certain number of hours are covered per week. In other cases, there is an averaging of annual hours. Working only during the school term is also becoming a trend in some countries.

The benefits of flexibility for both management and workers should be identified.

The union can negotiate the terms and methods of monitoring flexi-time.

## 4. Job sharing

In some national situations, job sharing is increasingly a solution for certain kinds of work to allow the combining of work and family responsibilities. It is accepted that workers need to reconcile their working and personal lives for many different reasons which may not be linked to gender. Job sharing is where two people share one job taking joint responsibility for the tasks to be done. Examples can be seen in legal, teaching, medical and clerical professions. Job-sharers may be in the same legal position as employees who work part-time.

Unions can negotiate to ensure that-

- job sharing is available to those who want it and at all levels of employment, not just in low-grade jobs
- that job-sharers have the same conditions and access to pay and benefits as full-time workers.





A 1989 agreement between **British Telecom** and the communications union **NCU** deals with issues relating to job sharing.

The agreement provides that "all reasonable efforts will be made to meet applications" for job sharing from staff in any represented grade, although "it cannot be guaranteed that every request will be met".

The agreement also covers equal treatment of job sharers stating that other than in exceptional circumstances "individual job-sharers will need to work a minimum 16 hours per week." The agreement then states that the "job-sharer's pay and employment conditions are based on those for employees conditioned to work the full-time hours of the grade", although there are some exceptions.

Finally the procedure for ending a job sharing arrangement is clearly set out:

In certain circumstances it may be necessary to revise or terminate a job share arrangement. In that event as much advance warning as practicable (and normally not less than 3 months) should be given that the job sharing arrangements may have to be terminated and that full-time working may have to be reinstated.

Management will take all reasonable steps, bearing in mind individual domestic circumstances, to maintain job sharing by looking at other work or for other partners across the unit. Only when this fails will the job sharing arrangements be terminated and full-time working be reinstated.<sup>1</sup>

<sup>1</sup> Extract from *Part-time workers: A negotiator's guide* (Labour Research Department, UK, 1992).

## 5. Night work

The attitudes of women and society toward night work are influenced by cultural, economic and national contexts, and attitudes are changing. Views on the prohibition of night work for women in the context of the promotion of equality vary. On the one hand, the removal of restrictions on women working at night seems to be a way of reducing discrimination against women in the workplace because it opens up more employment possibilities to them, often at higher rates of pay than day-time

rates. An alternate view is that special protection for women in certain circumstances is necessary to keep them from excessively arduous working conditions and to protect their reproductive role.

It may be the case in some circumstances that women working at night are not as safe as their male colleagues travelling to and from work and that women working at night would have overly long working days as they are likely to also bear the domestic burden during the day, sometimes in conjunction with other paid work.

In 1990 the **International Labour Conference** adopted a protocol to the 1948 Night Work (Women) (Revised) Convention which provides that the prohibition on night work for women can be lifted where employers' organizations and unions reach a suitable agreement in this regard. In the same year, the Conference also adopted the Night Work Convention (No. 171) to protect night workers in general. It provides that women be given an alternative to night work before and after childbirth.

Making available services such as transport, security, child care, etc., will make it easier for women to work at night. Extra time off, special payment or bonuses, transport time, etc., can also be negotiated.

If the national context is unfavourable to night work for women, unions should negotiate to protect women following consultation with and recommendations of women workers.

At its first Congress in 1985, the **Congress of South African Trade Unions** adopted a resolution noting that "due to overtime and night work, women workers are subjected to many dangers while commuting" and calling for "adequate and safe transport for workers doing overtime and night work".<sup>1</sup>

<sup>1</sup> Quoted in Catherine O'Regan and Clive Thompson: *Collective bargaining and the promotion equality: The case of South Africa* (ILO, Geneva, 1993).

In France unions are split in their views on night work for women. The **Confédération Générale du Travail (CGT)**, **Sud-Ouest (SO)**, **CE**, **Confédération Française des Travailleurs Chrétiens (CFTC)** and **Force Ouvrière (FO)** are all opposed to the French Government's denunciation of the Night Work (Women) (Revised) Convention, 1948 (No. 89). The CFTC bases its position on "the special role of women in the family structure and the crucial contribution of motherhood to society". The trade union FO opposes night work generally but accepts that in exceptional cases it is necessary. FO considers that the harmful nature of night work demands that it be compensated and that the definition of such compensation should be the responsibility of the law.

The union **Confédération Française Démocratique du Travail (CFDT)** is the only union not opposed to night work for women but also demands adequate compensation for night workers. CFDT believes that compensation should be determined by branch negotiations.<sup>1</sup>

<sup>1</sup> Annette Jobert: *Négociation collective et promotion de l'égalité en France* (ILO, Geneva, 1993).

See the Night Work (Women) (Revised) Convention, 1948 (No. 89), the Protocol of 1990,

and the Night Work Convention, 1990 (No. 171).

## 6. Expectant and nursing mothers

Unions should negotiate paid time off for pre and postnatal clinical checks for women.

Women should be given paid time off for nursing breaks according to the Maternity Protection (Revised) Convention, 1952 (No. 103) and the Maternity Protection Convention, 2000 (No. 183). Where workers are entitled to nursing breaks the union may negotiate to extend this right if necessary.

Pregnant and nursing women may be allowed more flexible working sche-

dules, such as being permitted to arrive later and leave work earlier to avoid traffic congestion, to work shorter hours and to have additional rest breaks during working time. In addition, pregnant and nursing mothers should be provided with the right to undertake lighter work.

See the Maternity Protection (Revised) Convention, 1952 (No. 103), and Recommendation (No. 95); the Maternity Protection Convention, 2000 (No. 183), and Recommendation (No. 191).

See also booklet 3, *Maternity and family responsibilities*.

The **Ghana Industrial and Commercial Workers' Union** has reported that its members are entitled to two hours of nursing breaks each day until the child is 1 year old.<sup>1</sup>

This is twice the statutory entitlement of two 30-minute breaks each day.

<sup>1</sup> Reported to the FIET Regional Women's Seminar for English-Speaking Africa, 1991.

## 7. Family responsibilities

Unions can negotiate for a flexible approach to working hours that would enable workers to meet the demands arising from family responsibilities such as caring for sick children or other family members. Time off for family responsibilities could be negotiated and could

include taking children or elderly relatives for dental or medical appointments when they cannot be arranged outside work hours; and attendance at school activities or appointments with school teachers or principals. These relatively short periods of time off could also be accommodated through the use of flexi-time systems.



Protection against discipline or dismissal for reasons related to family responsibilities should be ensured.

These issues reflect workers' needs to reconcile their work with all aspects of their personal lives.

See the Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation (No. 165).

See booklet 3, *Maternity and family responsibilities*, for more detailed discussion and examples.



# Leave

## 1. Annual leave

Many women with peripheral contracts (i.e. temporary, part-time, piece-workers) are not entitled to any leave, and therefore work throughout the year without rest. Unions should negotiate with employers for annual and other kinds of leave. The basic union demand should be that these

workers have the same pro-rata entitlement as their full-time colleagues.

There are two established methods for the calculation of annual leave in the case of part-time work — workers may either take a reduced number of days with full pay, or a full number of days at reduced pay.

**Hickson and Welsh**, a chemical company in the **United Kingdom**, agreed with the **Transport and General Workers' Union** that: "everyone is entitled to the same holidays, that is, five weeks and one day ... For part-time employees who work an average of 3.25 days a week this is equivalent to 16.9 days' holiday".<sup>1</sup>

<sup>1</sup> *Part-time workers: A negotiator's guide* (Labour Research Department, UK, 1992).

Seniority may determine who has first choice of dates for holidays. Since women are usually not the most senior, they are disadvantaged because of their restricted options and family responsibilities. Seniority should not be the only, or even priority, criterion for choice of holiday

dates; family responsibilities should be given at least equal status.

Women may also have difficulty meeting qualifying periods giving them the right to leave due to career breaks or late entry into the workforce and this can be overcome through collective bargaining.

## 2. Compassionate leave

Unions can negotiate for compassionate leave in the event of the death of a close family member. Unions might consider negotiating time off for common law families and extended family members.

Provision may also be made for compassionate leave in the case of a serious accident or the hospitalization of family members under this clause.

**The Illinois Public Action Fund**, Chicago, Illinois, **US**, has agreed with the employees to include the following provision for bereavement leave: "In the event of death in a staff employee's immediate family (defined as employee's children, parents, spouse, siblings, in-laws, grandparents, grandchildren, and significant other) the employee shall receive up to five days off with pay."<sup>1</sup>

<sup>1</sup> Cited in ACTWU: *Bargaining on women's issues and family concerns: Clauses from ACTWU contracts* (2nd ed.), Nov. 1990.



### 3. Family responsibilities

Unions negotiate leave for workers in general, but since women often bear most of the responsibility for families, special attention must be given to ensuring negotiating time off for the care of sick children, taking family members to the doctor, etc. This is generally a short-term leave and is usually for a certain number of days per year.

The World Health Organization has recommended a minimum period of six months for breast feeding to ensure the continued good health of the child. The period of *maternity leave* (including in the case of miscarriage or stillbirth) required under the Maternity Protection Convention, 2000 (No. 183), is 14 weeks, a period determined with the health of the mother in mind. The Maternity Protection Recommendation, 2000 (No. 191), calls for maternity benefits to be paid at full pay for a period of 18 weeks and these requirements should form the basic target for collective bargaining.

The union should try to ensure that annual leave is not included as part of maternity leave and that women may opt to take annual leave in conjunction with maternity leave.

*Paternity leave* can be negotiated to ensure that the father has time to care for the family and to meet the needs of the mother and new baby. It is also an important provision to promote the sharing of child-care responsibilities.

Negotiations should also cover the case of *adoption* and provide adequate time for the adoptive parents and the child to get used to each other.

*Parental leave* is usually taken by either parent or both either consecutively or simultaneously after the standard maternity leave is exhausted and may be available at any time until the child reaches a certain age.

See the Maternity Protection Convention, 2000 (No. 183), and Recommendation (No. 191).

See also booklet 3, *Maternity and family responsibilities*.

In **Costa Rica**, for example, article 95 of the second collective agreement of the **Civil Service Association (ITCR)** provides

- three days' paternity leave on the birth of a child, five days in the case of multiple births
- three months' leave for the mother and three days for the father on the adoption of a child less than 1 month old. On the adoption of a child less than 7 years old, the mother is entitled to two months' leave and the father to three days.

In 1987 a Parental Rights Agreement was signed in **South Africa** between **Pick'n Pay** and the **Commercial, Catering and Allied Workers Union (SACCAWU)**. This was the first such agreement negotiated by the union and was a major breakthrough in the struggle for the rights of working parents.

The provisions of the agreement cover broad areas ranging from the health needs of pregnant women, caring for adopted children, paid leave for mothers and fathers, paid medical aid and advice on contraception. The agreement also applies to cases of miscarriage and stillbirth.

All female employees are entitled to 11 months' leave, nine of which are paid. Three of the nine months are paid at 75 per cent of the worker's wage and six at 30 per cent. Couples who are both employed by the company can share the leave. Parents are able to save leave for any time until the child's fourth birthday.

Fathers are allowed to take eight days' paid leave at the time of the mother's confinement and are entitled to time off to take their babies to the clinic. Leave is also provided for parents adopting children.<sup>1</sup>

<sup>1</sup> *Sharing the load: The struggle for gender equality, parental rights and child care*, (Johannesburg, 1991).

#### 4. Medical and sick leave

Unions should negotiate for optimum conditions for medical and sick leave, including special provisions relating to work-related illness and accident.

Due to women's special health needs resulting from menstruation, many unions have negotiated for days off each month. This is particularly

important if some women have serious conditions, or if work is particularly heavy. Such leave is referred to as menstrual leave or mother's day leave, etc. This paid leave may be one or two days per month and negotiated by the union as leave days outside of annual leave or normal sick leave which normally must be substantiated by a doctor's certificate.

**The Union of Commercial and Industrial Workers in Zambia** has included a "mother's day" leave entitlement in collective agreements. Every working woman is entitled to stay at home once a month without loss of pay.<sup>1</sup>

<sup>1</sup> Report by the NUCIW to the FIET Regional Women's Seminar for English-Speaking Africa, Nov. 1991.





Labour legislation in **Indonesia** provides for menstruation leave which enables women to take up to two days' leave per month on request.

The original intention of the provision was to protect women working in unsatisfactory work environments. Several employers failed to provide this leave or imposed obligatory medical examinations to verify the claim for leave, causing industrial conflict in a number of instances.

Therefore menstruation leave became an issue around which women were able to organize. It is often the case that organizing around specific issues such as menstruation leave encourages women to become involved in wider trade union issues. In the longer term, unions may choose to pursue a campaign to improve the working environment, which might in turn remove the need for the women concerned to use the menstruation leave. This would be a way of meeting the concerns of employers anxious to avoid absences and to maintain a regular rhythm of production, by compelling them to recognize the value of an improved working environment.<sup>1</sup>

<sup>1</sup> See ILO: *Indonesia: Social adjustment through sound industrial relations and labour protection* (Jakarta, 1995).

## **5. Paid educational leave and training leave**

Under the Paid Educational Leave Convention, 1974 (No. 140), paid educational leave is granted to a worker for educational purposes for a specific period during working hours, with adequate financial entitlements. Unions should negotiate for leave for educational purposes, for training at any level, general, social and civic education and trade union education.

Care must be taken to ensure that women have access to such leave, including those working part time.

Women should also have access to vocational training, and in particular to training related to advanced technological changes. Training should be used as a means to redress bias in employment hierarchies.

See also the section on job classification above, page 6.

## **6. Other personal leave**

Short periods of leave over and above the annual leave allowance may also be negotiated to cover events such as

marriage of the worker or a member of their immediate family, moving house or for important personal appointments such as meetings with a child's school authorities.



# Health and environment

## 1. Health, safety and the environment

Some examples of health hazards in the working environment and their causes are-

- exposure to chemicals and other hazardous substances at the workplace
- carrying of heavy weights
- inadequate management and disposal of hazardous waste
- use of machinery and tools without adequate protective equipment and clothing and without appropriate training on safety procedures.

Violence in the workplace can also be a health and safety issue. Steps should be taken to protect workers where there is a potential for violent incidents to occur.

See also booklet 5,  
*Dignity at the workplace.*

Unions must negotiate with management to have access to information regarding what chemicals or dangerous substances workers are using and to ensure that proper instructions, information, labelling and disposal procedures are provided. Special attention must be given to women workers who are pregnant or nursing.

See the FAO Code of Conduct on safe use of chemicals, the UN list of restricted and banned chemicals and the Chemicals Convention, 1990 (No. 170).

## 2. The physical working environment

Some of the physical factors at work which may cause adverse effects on health include-

- ventilation
- light
- extreme temperatures
- noise
- vibration
- work positions (such as sitting, standing).

Negotiations should ensure that adequate ventilation and lighting are provided; that workers are protected from exposure to extreme temperatures; that noise does not exceed legally admissible levels; and that proper ergonomic principles are adhered to regarding workstation design and working positions, including provisions for work performed seated and/or standing.<sup>2</sup>

Work tools and processes are often designed with little or no consideration given to the health of the worker. A growing number of injuries caused by repetitive and stressful movements are now being recognized in a wide variety of jobs. These are known generally as repetitive strain injuries (RSIs). The incidence of RSIs can be reduced by better designed workstations and tools and by improved work organization. Unions should record cases of RSI among their members.

Pregnant women have special health and safety needs that should be considered in order to protect both the mother and the unborn child. These include not assigning them to heavy manual tasks, night work or arduous tasks; ensuring adequate access and space for movement around machines and equipment; providing sitting facilities; and granting sufficient rest periods. Include the possibility of pregnant and nursing women transferring to other work where necessary.<sup>3</sup>

See Maternity Protection Recommendation, 2000 (No. 191).

The **Retail, Wholesale and Department Store Union (RWDSU)** based in New York, **United States**, recommends that local unions take the following steps to gather information in order to combat occupational injuries:

- Look at the employer's log of occupational injuries and illnesses.
- Survey the workplace to identify jobs which involve excessive physical stress on the worker.
- Keep records of workers with RSIs and details of where they work.
- Send questionnaires concerning RSIs to workers to gather information.

### **3. Impact of new technologies**

#### **Visual display units (VDUs)**

Working with VDUs can have negative effects for the operators. Complaints can be related to eye problems, muscular aches and pains, monotony and accumulation of fatigue. Health-related complaints associated with VDU use can generally be avoided by sufficient attention to the selection, installation and use of equipment, including premises, workplace setting, work organization and environmental factors (lighting, noise, temperature and humidity). Workers

should be provided with adjustable tables and chairs as well as regular rest breaks. Annual eye examinations should be free of charge and work assignments should be varied to prevent monotony, stress, fatigue, repetitive strain injuries and other musculo-skeletal disorders. On the basis of current scientific knowledge there is no evidence of any danger due to radiation for a pregnant woman working with VDUs. Should a pregnant woman nevertheless show concern about working with VDUs, this should be taken seriously and alternative work assigned.

### **4. Control measures and personal protective equipment (PPE)**

There are five general categories of control measures: elimination, substitution, engineering controls, administrative controls and personal protective equipment. A combination of methods usually provides a safer and healthier workplace than relying on only one method.<sup>4</sup>

Personal protective equipment should be the last choice in control measures since it is the least effective method for controlling hazards in the workplace and should be used only when hazards cannot be controlled sufficiently by other methods. PPE can be uncomfortable, decrease work performance, and can create

new health and safety hazards. Hot or humid working conditions decrease the effectiveness of PPE. Under these conditions, workers should take frequent breaks and drink plenty of fluids. The type of PPE required depends on the hazard, the route of entry and the exposure time. If PPE does not fit well it may not protect the worker. This is most important with respirators. All PPE should be checked for leaks. PPE is usually designed for the "average" North American or European worker, which can be a problem for workers above or below their average height or weight. It is possible to negotiate for the purchase of large and small sizes of protective clothing for both men and women. All workers using PPE should be trained in the proper use, maintenance and limitations of the PPE.<sup>5</sup>

The **International Labour Organization** has issued guidelines for its own employees working with VDUs which cover the following:

- *Selection and installation of equipment* – Displays should be safe and easy to read and keyboards should be separate to allow for better positioning.
- *Lighting and vision* – Vision must be properly corrected as prescribed by a competent person. All operators should have their vision checked annually. Office lighting should be low with a lamp to light tasks if necessary. Offices should have blinds or curtains to cut out excessive daylight. Both direct and indirect glare should be avoided by suitable positioning of the VDU and other means. The screen should also be placed lower than eye height and should be between 45 and 60 cm from the operator.
- *Good work posture* – The worker should be able to change position regularly from sitting to standing and between different comfortable sitting positions. Good adjustable seating with the keyboard at around elbow height is essential. The work table should have enough space for putting documents, etc. as needed.
- *Monotony* – Varying tasks from time to time reduces stress. This requires good work organization and cooperation of staff within each unit.
- *Working time* – A combination of VDU and non-VDU work reduces the possible negative effects of VDU work. Short breaks of 15 minutes for every work period of one and a half hours at a VDU are recommended. The total time of work which involves continually looking at a VDU should not exceed four hours per day. If individuals are required to work beyond this limit on a recurrent or frequent basis, this indicates a resource or work organization problem which is management's responsibility to resolve.
- *Medical services* – VDU operators should have regular eye examinations by the ILO's Medical Service. Officials who are unable to work on a VDU for reasons of health shall be transferred to another post without prejudice to their employment. There is no current scientific evidence of danger for pregnant women working with VDUs. However any worry or concern shown by pregnant workers should be taken seriously and decisions for alternate work because of this worry may be advisable.<sup>1</sup>

<sup>1</sup> Taken from ILO Circular, series 6 -- Personnel, No. 250, *Conditions of work for operators of visual display units*, 16 Dec. 1982, and an information note *Use of visual display units*.

## 5. Welfare facilities and services

Welfare facilities and services include sanitary facilities, arrangements for drinking, eating and resting, and access to first aid, health care, transport and recreation. Ensure that good changing, washing and sanitary facilities are provided and maintained with separate facilities available for women workers. Provide for drinking facilities, eating areas and rest-rooms. The provision of clean drinking-water is essential for all types of work.

## 6. Disabled workers

Unions should pay attention to the needs of disabled workers and ensure that facilities and equipment are adapted so that they can do their jobs safely and efficiently, including ensuring they have easy access to work areas, special toilet facilities, transport and other identified conveniences.

Also, in bargaining, do not forget to highlight the disabled worker's *ability*, not just her or his disability.

See the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and Recommendation (No. 168).

## 7. HIV and AIDS information

Unions should negotiate for the provision of appropriate information and health education for the prevention of HIV/AIDS and other sexually transmitted diseases, including counselling for workers and their families exposed to such illnesses.

Workers who may be at an increased risk because of their work include-

- hospital and health-care personnel
- dentists
- police
- fire-fighters
- rescue workers
- custodians
- correctional officers
- grounds-keepers
- mental health institution workers
- laboratory workers
- mortuary attendants.

Exposure to HIV/AIDS can be prevented in those particular occupations where there is a potential risk of exposure. Workers should be provided with education in the methods of prevention. A written policy stating what to do and whom to contact in case of exposure should be developed

in all workplaces where workers may be exposed to blood or other bodily fluids. Workers should be familiar with the policy which should be posted where everyone can see it.

Issues to consider when developing a workplace policy on HIV/AIDS are<sup>6</sup>

- pre-employment screening
- HIV/AIDS screening for employed workers
- confidentiality
- informing the employer
- protection of the employee
- access to services for employees
- benefits
- reasonable changes in working arrangements
- continuation of employment relationship
- first aid.

In areas where there is a known high incidence of HIV/AIDS in the general population, unions can play an active role in providing appropriate health education to workers and their families, even where the risk is not necessarily occupational.

They should also ensure that the privacy of workers is respected and that victimization is prevented.

## 8. Reproductive health

Thousands of hazardous chemicals are produced and used in a wide variety of workplaces worldwide. Some of these substances can have negative effects on the reproductive health of workers who are exposed to them. There are also physical and biological agents (such as radiation and bacteria) as well as a variety of work situations (such as work which is highly stressful, or shift work) which may result in negative reproductive health outcomes when workers are exposed to them.

Little is known about the potential for damage to the reproductive system from exposure to certain substances, agents or work situations. Despite the lack of adequate information, many workers are forced to work with and be exposed to reproductive hazards. Workers and unions need to be as informed as possible about the substances used in their workplaces. Protective measures should be implemented to ensure that pregnant workers and workers (male and female) planning to have a child are not exposed to known or suspected reproductive health hazards.

Because most chemicals, biological and physical agents, and work situations have not been adequately studied for their possible effects on human health and reproduction, it is difficult to know exactly which ones will have negative effects on a worker's health. However, there are several important factors, which determine whether exposure to a substance or work situation will have negative effects on a worker's health. These factors are: the length of exposure; the dose; synergism (the effects of exposure to a combination of substances at the same time); and individual variation. As a general rule, a worker should assume that regular exposure to any chemical, physical or biological agent is potentially hazardous to his or her health. Workers and unions should work together with employers to eliminate hazardous exposures altogether or at least to reduce them to the levels permitted in nationally or internationally recognized standards. Employers should provide workers with adequate education about any potential hazards with which they work.

To protect the reproductive health of all workers, exposure to chemicals, radiation, biological agents and stressful working conditions should be eliminated or at least reduced as much as possible. Substances which can cause changes in genetic material (mutagens), or which can cause cancer (carcinogens), or which can prevent the normal development of a foetus (teratogens) should be completely eliminated or isolated from workers and their work environment.

Many industries have adopted exclusionary policies whereby fertile women are refused work where there are known or suspected reproductive health hazards. Such policies often require workers to transfer to a different job during pregnancy. Although excluding fertile women from certain jobs may be an attempt to protect them, such policies do not extend the same protection to fertile men, and thus result in discrimination against women and unreasonable health risks to men.

Policies which allow workers to transfer to a different job while pregnant or while planning to become pregnant can be a sound option until the workplace can be made safe for reproductive health. Such policies should be accompanied by guarantees that terms and conditions of employment and seniority will not be affected. Transfer policies should ensure that certain groups of workers will not be discriminated against in hiring or job transfer practices. A pregnant or fertile worker should never have to stay in a job where she or her unborn child will be exposed to hazards because no other work is available to her. Such a choice is no choice at all for any worker.

Unions can also play an active role in ensuring that workers have access to information by qualified medical personnel on reproductive health and family planning issues. Agreements can also provide for free medical services and check-ups for employees and for counselling and follow-up of any illness. Areas of specific concern might include-

- breast and cervical cancer screening
- sterility and/or impotence
- contraceptive advice.



## **9. Using health and safety committees at work**

Trade unions must organize, educate and take action to solve health and safety problems. One of the most effective means is to establish health and safety committees at national policy level and at the workplace.

The structures, powers, operating procedures and number of committees will vary from workplace to workplace. It is the responsibility of the union to ensure that some structure is incorporated into agreements with the employer.

In some countries, national legislation exists requiring joint labour-management health and safety committees. The joint committee must raise various issues with manage-

ment. They have the most potential to improve working conditions because they involve management and workers in the process of identifying, eliminating and controlling hazards.

The local union committee plays a vital role in resolving health and safety concerns in the workplace. It is the job of the local union committee to represent rank-and-file workers in health and safety issues. A local committee is especially necessary if a joint committee does not exist.

Women workers should have active representation and participation in such bodies at all levels.

## **10. Role of the safety representative**

The safety representative can play an important role in helping to ensure that work does not jeopardize the health and safety of any worker – male or female. The efforts made in the areas of workers' education, workplace policy development and implementation, monitoring of substances and working conditions and record-keeping will help to achieve this objective.

For example, the representative should encourage workers to keep a record of their working conditions, names of chemicals they work with and potentially hazardous situations in which they may work. Workers should note any irregularities or abnormalities which occur in their sexual functioning, in their menstrual cycle, in their ability to conceive, or in their children's development. Many other areas of safety and health can be assigned to the safety representative whose independent role is ensured through collective agreements.

See ILO: *Your health and safety at work* (Geneva, 1996).



# Job security

**R**edundancy is always a difficult issue for employers, unions and employees and no redundancy scheme can ever be perfect. Some schemes can, however, be more discriminatory than others.

Making part-time workers redundant or a "last in – first out" policy can be

discriminatory where most workers in these categories are women. Selection for redeployment or retraining made on this basis can also be discriminatory for the same reason.

Bargaining can be used to negotiate the least discriminatory scheme for redundancy.

**Siemens Electric Limited Automotive Systems** (North American Motor Operations Division), London and **National Automobile, Aerospace, Transportation and General Workers' Union of Canada, Local 27**, negotiated a collective agreement effective from July 1995 containing a new job security clause providing the following:

- **Partial or total plant closure** – Employer will advise the union as soon as possible of any contemplated shutdown of operations that will affect employees. Both sides will meet with a view to providing a solution to the problem or jobs for the employees involved.
- **Guaranteed employment for members of union plant committee** – Such members to be retained by the employer during their term in office, notwithstanding their position on the seniority list, so long as the employer has work that the member in question is able to perform.
- **Recall rights** – If laid off, employee will be retained on the seniority list for a maximum of one year. All employees to receive a minimum of one year recall rights and time for service to a maximum of two years.
- **Outside job placement** – In the event that seniority employees are laid off for a period greater than 13 weeks, employer and union will work with the Ministry of Labour concerning the statutory provision of such lay-offs and jointly work towards the successful placement of affected employees with other industries.<sup>1</sup>

<sup>1</sup> Agreement cited in *Collective Bargaining Review*, Human Resources Development Canada, Sep. 1995.

See the Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166).



# Termination of Employment Recommendation (No. 166)

Paragraph 23 of the Termination of Employment Recommendation (No. 166) provides that "the selection by the employer of workers whose employment is to be terminated for reasons of economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers".

The General Survey on the Termination of Employment Convention and Recommendation states:

When measures to avert and minimize terminations of employment are not sufficient to solve the difficulties and the employer is forced to terminate certain contracts, it is important for the choice of workers to be affected by this measure to be made as objectively as possible in order to avoid any risk of reaching arbitrary decisions. If these criteria are established in advance, as advocated in the Recommendation, the risk of arbitrary measures is reduced...

The criteria most often applied relate to occupational skills, length of service, family circumstances, with preference sometimes being given to a particular criterion. Other criteria may be included, such as the difficulty of finding alternative employment ... In other countries, the focus is more on the protection of more vulnerable categories of workers.<sup>1</sup>

<sup>1</sup> *Protection against unjustified dismissal*, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, Report III (Part 4B) (ILO, Geneva, 1995), paras. 334-337.

# Notes

- <sup>1</sup> See Christine Elstob: *Equal Remuneration* (unpublished), 1996. See also ILO: *Job evaluation* (Geneva, 1986).
- <sup>2</sup> See ILO: *Ergonomic checkpoints: Practical and easy-to-implement solutions for improving safety, health and working conditions* (Geneva, 1996).
- <sup>3</sup> Ibid. checkpoint No. 125.
- <sup>4</sup> See ILO: *Controlling hazards* (Geneva, 1996).
- <sup>5</sup> Ibid.
- <sup>6</sup> See ILO: *An ILO code of practice on HIV/AIDS and the world of work* (Geneva, 2001); WHO: *Policy, principles and components: World Health Organization global programme on AIDS report of the consultation on AIDS and the workplace*, June 1988; Roskam, E.: "AIDS and the workplace", in *Your health and safety at work* (ILO, Geneva, 1996).



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GENDER EQUALITY : A GUIDE TO COLLECTIVE BARGAINING

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# WORKING CONDITIONS

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Shauna Olney Elizabeth Goodson Kathini Maloba-Caines Faith O'Neill

This is one of 6 booklets on Gender Equality Bargaining

1. Gender equality bargaining: An overview
2. Working conditions
3. Maternity and family responsibilities
4. Defending rights of non-permanent and vulnerable workers
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# MATERNITY AND FAMILY RESPONSIBILITIES



# Maternity protection and benefits

**W**hile many of the issues raised for gender equality bargaining are new to the bargaining agenda, maternity protection and benefits have generally had a more established history: they have featured in legislation and in collective agreements in many countries for many years. The degree of these rights, however, differs from country to country.

Collective agreements sometimes refer to statutory rights or the text of the law is reproduced in the agreement. Although most countries provide for a minimum level of maternity protection under the law, there are

still some countries where there is no legal protection, making collective agreements often the only source of rights. Usually, collective agreements are used to improve upon the protection and benefits provided by law.<sup>1</sup>

Maternity protection and benefits should be viewed as a package including-

- non-discrimination
- job security
- maternity leave
- cash benefits
- health protection measures
- nursing breaks.

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*The importance of maternity protection and benefits is underscored in international instruments such as ILO Conventions on maternity protection: the Maternity Protection Convention, 2000 (No. 183); the Maternity Protection (Revised) Convention, 1952 (No. 103); the Maternity Protection Convention, 1919 (No. 3). The issue of maternity protection was on the agenda of the first International Labour Conference of the International Labour Organization in 1919.*

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<sup>1</sup> See ILO: *Conditions of Work Digest*, Vol. 13 (Geneva, 1994), pp. 417-437.



## 1. Maternity leave

Adequate maternity leave is important to ensure that women have sufficient time off work to let the body recover, to adapt emotionally to the changes resulting from childbirth and to properly nurture their children. Rest before the birth is key to ensuring that the foetus can fully develop and be born mature. Babies with low birth weight or premature babies have a high mortality rate and tend to get sick more often.

Breast-feeding is important for the growth of the child and the development of an adequate immune system and is another reason for maternity leave. The World Health Organization (WHO) recommends six months' exclusive breast-feeding for all newly born babies, before introducing any other form of food. Ideally this would be enabled through a six month period of postnatal maternity leave. A minimum of 14 weeks' maternity leave is required under the Maternity Protection Convention, 2000 (No. 183). The Maternity Protection Recommendation, 2000 (No. 191) suggests extending the period to 18 weeks.

Maternity leave prior to birth allows the mother to rest during the latter stages of pregnancy when she might otherwise be too uncomfortable to work, though this will vary from woman to woman; as a result, Conventions Nos. 103 and 183 advo-

cate a flexible approach to the duration of maternity leave prior to the birth.

Legislation in some countries provides for inadequate maternity leave. For example, in Kenya, a woman employee is entitled to two months' maternity leave provided she forfeits her annual leave for the same year. Collective agreements have been an important means of improving this situation. Collective agreements can also contribute to enforcing the payment of benefits when they are required to be provided by the employer.

Mothers returning to work too early are likely to become ill themselves; their children also run a higher risk of becoming ill. This costs the employer in terms of time off work and in reduced productivity. If not checked, it can cost the individual worker, the enterprise or the country spending in curative health care. If, on the other hand, precautions are taken to ensure that all children have ample time to develop their natural immune systems, then individuals, companies and nations would save on health care, and workers would be healthier and more productive.

Legislation must be followed concerning maternity leave, but unions can negotiate for extended periods of maternity leave to ensure that the needs of mother and child are met.

During a strike in 1983, the **South African Commercial, Catering and Allied Workers Union (SACCAWU)** negotiated with **OK Bazaars** for protection of women workers in the form of a maternity agreement. The union used this agreement as a model for agreements with other employers such as CNA and Woolworths. These agreements protected women from losing their jobs when they became pregnant. Women were guaranteed their jobs back when they returned from 12 months' maternity leave.<sup>1</sup>

<sup>1</sup> Extracted from: *Sharing the load. The struggle for gender equality, parental rights and child care* (Johannesburg, 1991).



Maternity is not an illness and therefore maternity leave should be clearly distinguished from sick leave. Generally more favourable conditions apply to maternity leave such as cash benefits and benefits in kind.

Any illness related to maternity warrants additional leave, as well as in the case of multiple births and exceptional deliveries such as caesarean delivery, etc.

Unions can also bargain to ensure that maternity leave is available to all categories of female employees. The legislation in some countries, for example, provides that women must work a certain number of hours per week in order to be entitled to maternity leave under law. Many women

working part time are not eligible as a result. Collective bargaining then becomes an essential vehicle for ensuring that these women benefit from maternity leave.

Where it is not practical or possible to agree to a period of maternity leave of six months after the birth, the provision of day-care centres, crèches, nursing rooms, etc. on or near the workplace, or community based, could assist mothers to breast-feed for the recommended six-month period. These facilities are of equal benefit to all employees in need of child-care services during the working day.

See also the section on leave in booklet 2, *Working conditions*.

## 2. Maternity cash benefits

In most countries where social security systems are developed, maternity cash benefits are paid by the State. In others, the employer pays for maternity leave or supplements state-provided maternity benefits. Unions need to address this issue in consultation with their women representatives.

Unions can negotiate to ensure that maternity cash benefits are at a high enough level to sustain the mother's income during her leave. Where state payments are less than a woman's salary, unions can persuade employers to supplement them.

**The National Union of Shop and Distributive Employees in Nigeria** has negotiated agreements with employers to ensure that its members have three months' maternity leave on full pay and one hour's leave every day for the three months after returning to work from maternity leave.<sup>1</sup>

This is a significant improvement on the statutory provision of 12 weeks on half pay.<sup>2</sup>

<sup>1</sup> Report to the FIET Regional Women's Seminar for English-Speaking Africa, Nov. 1991.

<sup>2</sup> Labour Decree 1974, Decree No. 21, cited in the ILO *Conditions of Work Digest*, Vol. 13, 1994, *Maternity and Work*.

Maternity benefits or reproduction responsibilities need to be considered a social responsibility in any country. Every society has the responsibility of ensuring the care of children once they are born because they are the

resources of the country for future development. Both the needs of the mother and the child must be taken into consideration by the union at all stages of bargaining.



### 3. Miscarriage and stillbirth

Stillbirth is the term used for a foetal death in late pregnancy; miscarriage is the term used for foetal death in earlier pregnancy. The point in pregnancy at which a miscarriage becomes a stillbirth is determined by the laws and policies of each State. There are no World Health Organization definitions for these terms.

In a number of countries stillbirth is considered as birth, therefore, entitling the woman to the same benefits as a live birth. This is not the case for miscarriage.

Unions should ensure that appropriate leave and health care is available for both miscarriage and stillbirth, especially considering the emotional stress suffered by the woman and the family members in such circumstances.

### 4. Adoption

A period of leave should be negotiated by the union to ensure that the adopted child and family have an adequate opportunity to adapt to each other. The period could be similar to that provided by law for postnatal maternity leave. Of course all the

benefits negotiated regarding family responsibilities should be available to parents of adopted children. The Maternity Protection Recommendation, 2000 (No. 191) refers specifically to leave and benefits for adoptive parents.

### 5. Reproductive health care

This can include routine examinations as well as advice concerning reproductive health and contraception. Specific measures may include breast screening, pap smears and testing for sexually transmitted diseases, including HIV and AIDS.

There should also be an assessment made of any workplace risks related to the safety and health of pregnant or nursing women.

Unions can negotiate for appropriate prenatal and postnatal care to ensure the well-being and health of the mother and child.

Paid time off should be negotiated for these check-ups and any treatments.

Workers should be able to use reproductive health-care services *voluntarily* and should be able to have *confidentiality* ensured.

## 6. Rights of pregnant and nursing women

Unions can use collective bargaining to ensure that pregnant and nursing women are able to continue to work and to cope with their pregnancy and meet their family responsibilities.

In particular, unions can bargain to ensure and maximize employees' rights to-

- flexible working hours to avoid travelling during peak hours – this protects pregnant women from the fatigue and physical stress associated with rush hour traffic, particularly when public transport is inadequate
- shorter working hours
- additional rest breaks
- lighter work – pregnant women and nursing mothers should be permitted to avoid heavy physical work which may endanger the pregnancy, and to choose alternative positions such as being able to sit comfortably rather than standing all day, or alternate between sitting and standing
- move from night work to day work
- safe work – working with toxic materials and chemicals can be harmful and may damage an unborn child; lifting heavy weights and working with vibrating machines should also be avoided
- nursing breaks – nursing breaks should be frequent enough and long enough to enable mothers to continue to breast-feed their children. Provision can be made for the mother to have the option of combining the breaks so that a longer break can be taken at the beginning or end of the day. Breaks should be treated as paid working time. Provision of crèche facilities or a room for breast-feeding on or near the workplace reduces the time needed for nursing breaks. A room for expressing breast milk could be provided, with breast pumps made available.

## 7. Job security

Bargaining can be used to ensure that maternity does not result in reduced job security. In particular unions can negotiate for-

- the right to return to the same or a similar job after maternity leave – this should include cases of negotiated parental leave and extended leave
- no interruption in seniority during leave
- no loss of annual or sick leave
- option to return to part-time work at woman's request
- right to return to full-time work after a period of part-time work
- no victimization or loss of job due to pregnancy
- reassignment to non-hazardous tasks
- special protection for pregnant women working on a fixed-term contract. Non-renewal of contract for a job of a continuous nature should be considered as dismissal and hence be prohibited
- prohibition of pregnancy testing for recruitment or while on the job.

It is important that there is a clear policy on non-discrimination for reasons related to pregnancy and that measures are in place to protect pregnant women.

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*See the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111); the Termination of Employment Convention, 1982 (No. 158) and Recommendation (No. 166); the Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191); and the Maternity Protection (Revised) Convention, 1952 (No. 103) and Recommendation (No. 95).*

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**Checklist:** In negotiating for their members, unions should ensure that-

- all women employees receive **sufficient maternity leave** to ensure the recovery of the mother and development of the child
- any **illness** related to maternity will warrant extra leave as well as in the case of multiple births such as twins, or other exceptional deliveries such as caesarean delivery
- either the employer or the State provides or assists with **day-care centres or crèche facilities** at or near the workplace or in the community
- mothers should have the right to **nursing breaks** without reduction in pay
- if the **public transport system** poses problems for the mother to be with her child, special conditions are negotiated for the transport of the mother
- **pre and postnatal care** as well as reproductive health care is arranged by the establishment. Where the cost of setting up a clinic is too high or inappropriate, collaboration with public health services or other arrangements should be encouraged. A doctor could visit the workplace on certain days on a regular basis for the sole purpose of checking women workers and their children, at the request of the worker. Paid time off should be negotiated for these check-ups
- **flexible working hours** are negotiated, especially for nursing and expectant mothers to avoid congestion and possible injury during travel time
- expectant or nursing mothers have **the right to lighter and non-hazardous work**, especially where chemicals are used or heavy weight lifted by workers manually
- while being reassigned to light duties, particularly for expectant mothers, great care must be taken to avoid exposing them to chemical or ultraviolet radiation which might be harmful to the foetus
- **job security** especially after maternity leave should be ensured
- there is **no discrimination** against women on grounds of pregnancy or reasons related to pregnancy.



# Family responsibilities

**C**hanging demographic and economic patterns in the world have created new situations in the labour market and in family life.

Increasingly women are working in paid employment which can result in conflict between the demands of family and work.

In many cases women entering formal employment are not relieved of their traditional role of assuming total or major responsibility for the care of children and other family members, domestic chores, and sometimes working in family undertakings. They assume employment responsibilities in addition to their domestic responsibilities. This dual burden is acutely felt in many countries where domestic roles are perceived as entirely feminine yet the need for cash income is forcing more and more women to seek paid employment.

Women are often the heads of households due to labour migration and other economic and social factors. In this situation women bear the sole responsibility for running the home and for income-generation.

The migration of young families to the cities to earn a livelihood has resulted in their separation from members of the extended family. Whereas in traditional communities care of young children was left to the older or retired women, this is seldom possible in the current nuclear family arrangement. In this reorganization of family responsibilities, it is obvious that the

male parent has, or should have, much more to do to ensure the health and well-being of the family.

The integration of domestic responsibilities and working life can be a problem for both sexes. Workers' needs at the workplace, therefore, include arrangements to enable these family responsibilities to be combined more harmoniously with their responsibilities at the workplace.

The ILO has incorporated these needs and issues which affect employment in the Workers with Family Responsibilities Convention, 1981 (No. 156) and its accompanying Recommendation (No. 165).

Trade unions through representation of their members have come to realize that more women are joining the labour market. To fulfil the realization of women's potential in development, the balance between work and household responsibilities needs to be addressed as a key issue that goes beyond the boundaries of the workplace and is broader than women's issues.

The union can address these issues through collective bargaining, particularly by negotiating clauses on-

- paternity leave
- parental leave
- family leave
- family care services
- protection against discrimination and victimization.

See also booklet 2,  
*Working conditions.*

## 1. Paternity leave

A male worker whose spouse/partner has a baby requires time off from work to attend to the pressing family needs surrounding birth. This might entail taking the woman to and from the hospital, attending to other children during her absence, organizing payment of hospital bills and giving emotional support to the new mother. The working father needs leave to deal with all these issues. The union can negotiate for paternity leave (perhaps one to two weeks).

Paternity leave can be negotiated not just in the event of birth but also to

cover the adoption of a child. Leave might also be given in the case of miscarriage or a stillbirth.

It is important that the rate of pay for such leave is considered. Rather than calculating paid leave on the basis of basic pay, average earnings (including average overtime pay) could be used.

Paternity leave is particularly important because of arrangements which must be made by the father and in relation to the needs of the mother and new baby.

The **National Union of Plantation and Agricultural Workers** (Uganda) and the **Uganda Tea Association** reached a collective agreement in May 1993 which provided for paid paternity leave of four working days for a male employee to assist his wife during and after delivery.<sup>1</sup>

<sup>1</sup> Information contained in a Memorandum of Agreement between the Uganda Tea Association and the National Union of Plantation and Agricultural Workers (Uganda).

### Legislation

### Collective agreement

No paternity leave	→ Paternity leave
Short paternity leave	→ Longer paternity leave
Unpaid paternity leave	→ Paid paternity leave
Basic wage paid during paternity leave	→ Average wage paid during paternity leave



## 2. Parental leave

Following the period of maternity leave when the mother is to return to work, the baby still needs special care. The woman worker also has responsibilities relating to her job and career. Although there may be a day-care centre, parental attention is vital, particularly for the child's emotional development.

Most parent-child emotional attachments are developed in the early stages of human life. For this reason, trade unions assist families of workers by negotiating parental leave once the standard maternity leave has come to an end. The Maternity Protection Recommendation, 2000 (No. 191) foresees a period of parental leave.

The union can negotiate parental leave which can be taken by either parent after the standard maternity leave has expired, and is available until the child reaches a certain age. The union can negotiate to ensure that the parent will return to work in the same or an equivalent post without loss of seniority or benefits. This should also be negotiated in the case of adoption of a child.

Parental leave could be granted with or without pay, with partial pay or a combination of these depending on the duration of leave sought by the parent.

**British Columbia Buildings Corporation, and British Columbia Government and Service Employees' Union (NUPGE)** negotiated a collective agreement effective from November 1994 to April 1997 containing the following new provision for **extended child-care leave**:

An employee may request a maternity, adoption and/or parental leave extension without pay to care for a child, providing the combined length of leave does not exceed 18 months. Upon return to work, the employee will be placed in their former position or in a position of equal rank and pay.<sup>1</sup>

<sup>1</sup> Agreement cited in *Collective Bargaining Review*, Human Resources Development Canada, Sep. 1995.



### 3. Family leave

The extended family is no longer the rule in many cultures. As a result, the worker may need to take time off to stay at home with a sick child, take a family member to the doctor, hospital, dentist, for other special treatment or reasons. This is particularly

important for small children, elderly persons or those infirmed or disabled who depend on the worker for their care. The union should negotiate for paid time off and ensure that taking such leave in no way hinders upward mobility.

**The Canadian Union of Public Employees, Local 500** (5,500 inside and outside employees) negotiated an agreement with the **City of Winnipeg** effective from 25 December 1994 which contains the following new provision for leave in the case of illness in the family

Employees will be allowed to utilize a maximum of 3 days per year of accumulated sick leave credits for providing care for a spouse or a dependent child who is ill. This clause is also applicable for providing care for parents, parents-in-law, and children of a registered common law spouse.<sup>1</sup>

<sup>1</sup> Agreement cited in the *Collective Bargaining Review*, Human Resources Development Canada, May 1995.





#### 4. Family care services

Unions should survey their members to determine what their needs are and what community services are available to meet those needs before embarking on negotiations. This will help to ensure that the real needs are identified and met. The union should consider which needs might best be met through collective agreements with the employer and which might be met by negotiation with the local authority or the State.

##### I) Child care

Child care is a major concern to many workers: there may be no facilities available, existing facilities may be too expensive or the day-care centre hours may be inflexible. Difficulties arise not only for those parents of young children, but also with school-age children, since school timetables and holidays are often difficult to coordinate with the average work schedule.

The union can negotiate for various options to solve these child-care problems:

- day care
- crèche
- after-school care
- child-care allowances
- holiday play scheme
- child-care information services.

Allocations or facilities may be provided by the employer, State or in some cases co-sponsored by unions and employers. The employer might provide the place and facilities, the State might provide attendants or teachers, the union might provide attendants and/or advisory services, and the user might be charged reasonable fees. Unions should insist that they have an advisory role to ensure that such facilities meet the needs of their members and the necessary quality of care.

Community services such as child care, care for the elderly or reproductive health care are often expensive and inaccessible to workers, even when absolutely necessary to guarantee their productive work. Even where services such as child care are affordable, there may be an inadequate number of places. Easy access to such services would ease the burdens on workers and improve their efficiency at the workplace as well as in their private lives.

##### II) Care of the elderly

More and more workers are having to deal with caring for the elderly since most adult members have jobs and work responsibilities and people in general are living longer. This issue must be recognized and provided for in family leave provisions and in some cases in more extensive programmes negotiated by the union.

The benefits negotiated might include:

- flexible working hours for carers
- paid leave to care for the elderly
- respite care services
- life insurance
- long-term care insurance
- medical expenses
- group insurance
- work/family stress management services.

Service programmes might be provided directly under union auspices or through employer-facilitated arrangements (visiting older relatives, providing assistance with personal care, handling legal problems and decisions, giving assistance with shopping and errands, transport, services).



### The United Nations' Vienna International Plan of Action on Ageing states:

The family, regardless of form or organization, is recognized as a fundamental unit of society. With increasing longevity, four- and five-generation families are becoming common throughout the world. The changes in the status of women, however, have reduced their traditional role as caretakers of older family members; it is necessary to enable the family as a whole, including its male members, to take over and share the burden of help in and by the family. Women are entering and remaining in the labour force for longer periods of time. Many who have completed their child-rearing roles become caught between the desire and need to work and earn income and the responsibility of caring for elderly parents or grandparents.<sup>1</sup>

In 1992, the General Assembly adopted a set of **Global Targets on Ageing** for the Year 2001. The guide for implementation,<sup>2</sup> underlines regarding the goals for "family targets", the need to

Promote, enhance and support family care-giving: this will include, among others, information and training on care-giving, housing and rental subsidies for multi-generational families, provision for respite care, remuneration for unpaid long-term care-giving and consideration of time spent on care-giving for pension-scheme calculations.

<sup>1</sup> Recommendation No. 24, adopted in 1982 by the World Assembly of Ageing.

<sup>2</sup> UN Document A/47/339.

### III) Reproductive health services

Reproductive health concerns are of immediate priority to the worker and his or her family. The union can negotiate-

- access to family planning
- check-ups on a regular basis, particularly for the mother and child

- access to information on HIV and AIDS, including appropriate protective measures.

See also booklet 2,  
*Working conditions.*



## 5 **Protection against discrimination or victimization due to family responsibilities**

It is important that employees who take family-based leave or receive family-related benefits are not penalized. Unions need to ensure that these employees are not restricted in promotion or access to further

training and that they are eligible for the same wages and other benefits as their fellow employees.

It is vital to ensure job security for employees with family responsibilities.

The Termination of Employment Convention, 1982 (No. 158) advocates protection against dismissal on the grounds of family responsibilities (Article 5(d)) and it is supported by Recommendation No. 166.

See the Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165). See also the Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191).

See also booklet 5, *Dignity at the workplace*.



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# DEFENDING RIGHTS OF NON-PERMANENT AND VULNERABLE WORKERS



# Categories of non-permanent and vulnerable workers



any categories of workers may be non-permanent and vulnerable. Some are at risk due to the nature of their employment contract, such as:

- casual
- temporary
- task
- seasonal
- contract
- part-time.

Other categories of workers have special characteristics that render them more vulnerable than others:

- rural workers
- homeworkers
- domestic workers
- migrant workers
- indigenous and tribal peoples.

The two lists above are by no means mutually exclusive. In fact, many workers will come under both sets of categories at the same time. For example, migrant workers are often employed under seasonal contracts.

Many of these categories are considered low status and precarious; workers in these categories are vulnerable to abuses of employment rights. The majority of workers in these vulnerable groups are female. They may not be unionized due to national legislation or practice, or the

unions may not know how (or may not yet have attempted) to organize them effectively, or to service them once they are organized.

There is a growing number of workers joining the informal or unorganized sectors due to various factors such as down-sizing, technological changes and recession. The trend towards globalization has pushed many workers out of formal employment as companies shift to other countries in search of low cost labour and more lenient legislation. Structural adjustment policies have reduced government and parastatal establishments, and resulted in cuts in personnel and overall social programmes: in the long term this has devastating effects on the workforce in areas of health, education and welfare, all of which impact strongly on women and their families.

Unions therefore have a number of reasons to try and defend the rights of these workers, some of whom were their members when they had more permanent jobs. It is also to the union's advantage to improve their conditions so that union members with secure permanent employment do not find their conditions of work under threat or eroded due to competition from non-organized workers.



# Issues for bargaining

**T**he following issues should be considered during the bargaining process, and included in collective agreements where appropriate

## 1. Extension of general conditions

The application of general conditions negotiated for permanent workers needs to be extended to non-permanent workers as much as possible. This might be done on a pro-rata basis, or for certain categories. Any negotiated improvements create a better working environment for all.

The definition of "employee" within the collective agreement must be carefully considered to ensure that non-permanent workers benefit from the agreement.

Also, where the concept of "bargaining units" is used in collective agreements, it should not be assumed automatically that there is no "community of interest" between the core workforce and the non-permanent workers, since often they are doing similar work, though perhaps at a different location or within a different time frame.

It should be ensured that training opportunities are open to these workers so that they are able to improve their employment status and enrich their jobs.

## 2. Child labour

Child labour may exist in several contexts: the first where children are employed directly by the employer and receive payment for their work. Another, less apparent form, occurs when the employer relies on task work, subcontracting or home work often supplied by women. In order to complete the daily quota or to collect daily bonuses, workers may bring other family members, including their spouses and children, to assist in the work.

These family members may not be paid directly, receive benefits nor be calculated in the national statistics as workers. This situation is most likely to occur when the family is female-headed and poverty makes the worker totally dependent on the daily pay. Small children sometimes assist, or simply accompany the mother, in a dangerous work environment such as in the agricultural sector. Other forms

involve children working as family workers of the self-employed, or children, often young girls, working as domestic workers.

Unions can negotiate to avoid task work or set task targets at reasonable levels to avoid the use of children.

Unions should also ensure through their negotiating and monitoring capacity that young workers are not being employed in inappropriate or hazardous work.

Such monitoring and negotiation can take place at the national, regional and international level. Unions can also raise the awareness of workers and the community at large through information campaigns. Unions can play an important role in programmes to eliminate the worst forms of child labour.

An agreement of the **International Federation of Commercial, Clerical, Professional and Technical Employees (FIET)** and the **International Textile, Garment and Leather Workers' Federation (ITGLWF)** undertakes to-

- promote awareness of the problem of child labour
- continue negotiations with the European commerce employers' association, Euro Commerce, about joint efforts to combat child labour
- secure a code of conduct from leading manufacturers so that directly or indirectly, children will not be used in the production process
- hold negotiations with employers' organizations in the textile, clothing, shoe and leather sectors to secure agreements to eliminate child labour in those sectors
- conduct a campaign for the removal from European markets and other industrialized countries, of hand knitted carpets which are not labelled with the Rugmark label (indicating production without the use of child labour).<sup>1</sup>

<sup>1</sup> FIET: *Campaign against child labour* (Geneva, 1995). For other examples, see A. Fyfe and M. Jankanish: *Trade unions and child labour: A guide to action* (ILO, Geneva, 1997).

The issue of young people working is not limited to the employing of under-age children. Children under a certain age should not be employed at all, while specific measures for those over that age, yet still youths,

should be considered: apprenticeship programmes, on-the-job and other training, medical examinations, adapted welfare services, additional rest and annual leave, bans on overtime, dangerous and night work, etc.

### **Minimum Age Convention, 1973 (No. 138)** **Minimum age for admission to employment**

#### **General**

- 15 years
- light work: 13 years
- dangerous work: 18 years  
(16 years with consultation  
and adequate protection)

#### **Developing countries**

- 14 years
- light work: 12 years
- dangerous work: 18 years  
(16 years with consultation  
and adequate protection)

See the Minimum Age Convention, 1973 (No. 138) and Recommendation (No. 146); the Worst Forms of Child Labour Convention, 1999 (No. 182) and Recommendation (No. 190); the resolution on child labour of the 83rd International Labour Conference; the United Nations

Convention on the Rights of the Child; the Home Work Convention, 1996 (No. 177) and Recommendation, 1996 (No. 184); the Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation (No. 192).



### 3. Avoid non-permanent status for work that is permanent

Many women work on non-permanent status, even in cases where they are employed 12 months a year. Unions should negotiate so that such terms are not applied to workers who are hired on a continuous basis or in a job that is not temporary in nature.

If the union cannot negotiate for status as permanent workers, then the union can try to negotiate for basic pay of non-permanent workers to be considerably more than that of permanent workers to compensate for the precarious status and to discourage abuse of this status.

In 1990, the Kenyan **National Union of Sugar Plantation Workers** negotiated one and a half times more pay for temporary workers. As a result, the employers gave these workers permanent status.

### 4. Casual, temporary, seasonal and task workers

A worker may be hired in one or more of these categories, but the unifying thread is the lack of access to permanent status. Although some of these workers may work only for limited periods, a large percentage are hired on a more or less permanent basis, but never receive bonuses, leave, benefits or increases in wages.

The union must determine what are the priority areas, and make a clear

attempt to cover the needs of these workers, a significant proportion of whom are women.

Task workers in particular are faced with very difficult work, since they are often assigned work which they are unable to perform in the required time; thus possibly leading to serious abuse and child labour.

Regarding part-time workers, see booklet 2, *Working conditions*.

### 5. Rural workers

Rural workers encompass a large group of women and men world wide, often working for part of the year for wages and unemployed or self-employed for the rest of the year. Agricultural wage labourers are among the occupational group with the highest incidence of poverty, often over 60 per cent in many countries. The precarious nature of their labour leads to seasonal and low-level wages.

The first priority should be to bring agricultural wage workers, whether casual or permanent, within the scope of a collective agreement. This should aim to include all conditions of work, from wage levels to occupational health, safety and environment, working time, training and social security.



Special attention should be given to women who occupy the lowest level and vulnerable jobs. Piece-rate or task work will also need to be monitored and addressed, since it often leads to children assisting or accompanying the family to the field. In addition, the particular vulnerability of female rural workers to sexual harassment must be addressed. It has

been found in Africa, as well as in many other regions, that sexual harassment is "very pronounced in the plantation economy where women are rendered economically vulnerable and through desperation give special sexual favours to get work in order to feed their families",<sup>1</sup> with resulting health, personal and family problems.

The **General Agricultural Workers Union of Ghana** have promoted policies to enhance the participation of the rural self-employed and wage-earners in the plantation sector.

In order to meet the needs of members, a women's desk was created within the Rural Workers' Organization Division of GAWU. Through the ILO IFPAW Norway project, they were able to develop women's activities under the programme through a national women's coordinator and ten regional coordinators who work in each geographic region. Activities include awareness raising through educational activities, through participatory education techniques such as role plays and group discussions and income-generation ventures such as group farming, bakery, soap making, fish smoking, fire-wood development. Social services have been promoted such as day-care centres, cultural groups and adult literacy classes.<sup>1</sup>

<sup>1</sup> ILO workshop on the advancement of women in rural workers' organizations in Africa (Geneva, 1992), p. 4.

Other services can be negotiated with the authorities to increase employment in the off-season such as through government-funded rural workers' employment schemes or through the development of other special services to assist members of rural workers' organizations.

Rural workers' organizations may provide a range of services for their members in addition to their negotiating role, such as technical and vocational services, health services, agricultural production services, employment and income-generation and savings and credit schemes.<sup>2</sup>

*See the Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation (No. 192); the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) and Recommendation No. 89; the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Recommendation (No. 133); the Plantations Convention, 1958 (No. 110) (and Protocol of 1982) and Recommendation (No. 110). Also the Rural Workers' Organizations Convention, 1975 (No. 141) and Recommendation (No. 149) give guidelines for the formation and operation of rural workers' organizations.*

## 6. Homeworkers

Millions of women throughout the world are homeworkers. They may work for an employer or intermediary or they may produce goods which they sell themselves or through an agent. Many of these workers are "invisible" or unknown to authorities. They are often excluded from legislation and organizing efforts.

Homeworkers are often at a disadvantage for a number of reasons: their pay and conditions are generally inferior to those of their counterparts in factories or other workplaces and the employment relationship is often precarious. Homeworkers tend to have few employment rights and very little social security protection. Where homeworkers are paid at a piece-rate, their pay may be significantly less than that of a worker paid at an hourly rate to perform the same work. Health and safety conditions may be poor in the home.

An additional concern regarding

home work is the potential involvement of children. Homeworkers may be compelled to call upon their children for help, thus contributing to the spread of child labour.

Unions should ensure that homeworkers are adequately represented within the union movement. Existing unions may include homeworkers in their membership or assist homeworkers in organizing their own effective unions.

It is vital that unions protect the rights of homeworkers and ensure that they are included within the terms of collective agreements. Conventional recruitment approaches will not be effective when aiming to organize homeworkers, since these workers are not found at the traditional workplace where union representatives make their visits. Creative organizing efforts aimed at reaching these workers are needed, such as visiting them at home, organizing events specifically for them, etc.

**In India, the Self-Employed Women's Association (SEWA) was set up in the 1970s to organize women working in the informal sector. Their members include thousands of home-based workers: bidi-rollers; garment-workers; incense makers and others. SEWA has adopted a dual strategy of organizing home-based workers to negotiate for better pay and conditions while at the same time developing cooperatives as a way to offer alternative employment.<sup>1</sup>**

Our union struggles for the right to work, fair wages, better working conditions, legal protection, social security and welfare measures. In rural areas, we emphasize creating additional employment opportunities, thereby strengthening our bargaining capacity.<sup>2</sup>

<sup>1</sup> Reported in "HomeNet" Bulletin No. 1, Summer 1995.

<sup>2</sup> SEWA General-Secretary Ela Bhatt, quoted in IUF newsletter *Women at Work*, Winter 1994-95.

Steps have now been taken to establish links between homeworkers' organizations around the world. In 1994 **Home Net** was set up to link homeworkers' organizations in different countries and continents; to exchange information and ideas; and to coordinate a campaign for better pay and conditions and alternative employment for home-based workers.

Similarly, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) Executive Committee recently recommended that SEWA act as an international clearing house for information on home-based workers.

The formulation of international labour standards for the protection of homeworkers was discussed at the International Labour Conference in 1996 and a Convention (No. 177) and

Recommendation (No. 184) were adopted. Among other things, the Home Work Convention promotes equality of treatment between homeworkers and other wage-earners.

Article 4(2) of the **Home Work Convention, 1996 (No. 177)** states:

Equality of treatment shall be promoted, in particular, in relation to:

- (a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations
- (b) protection against discrimination in employment and occupation
- (c) protection in the field of occupational safety and health
- (d) remuneration
- (e) statutory social security protection
- (f) access to training
- (g) minimum age for admission to employment or work and
- (h) maternity protection.

Collective agreements are foreseen as one possible means of implementing such policies.<sup>1</sup>

<sup>1</sup> Article 5.

## 7. Migrant workers

The World Bank estimates that worldwide the value of remittances from migrant workers amounted to more than US\$65 billion in 1989, making the value of remittances second only to trade in crude oil. None the less, migrant workers suffer exploitation because they are far from home, often not covered by relevant labour legislation and vulnerable due to their status, lack of knowledge of the local language and culture, and separation from their families, etc. Migrant workers are often offered "the 3 D jobs: dirty, dangerous and difficult".<sup>3</sup> Women migrant workers are faced with even greater problems

due to societal attitudes towards women.<sup>4</sup>

Special terms of recruitment and employment often exist for these workers. At the international level, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) states that ratifying countries shall respect the basic human rights of all migrant workers, and encourages them to pursue national policies to promote equality of opportunity and treatment. A number of other international labour standards also seek to protect and enhance the rights of migrant workers.

### Conventions and Recommendations concerning migrant workers

C. 97	Convention concerning Migration for Employment (Revised)	1949
R. 86	Recommendation concerning Migration for Employment (Revised)	1949
R. 100	Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories	1955
C. 143	Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	1975
R. 151	Recommendation concerning Migrant Workers	1975
C. 118	Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security	1962
C. 157	Convention concerning the Establishment of an International System for the Maintenance of Rights in Social Security	1982
R. 167	Recommendation concerning the Establishment of an International System for the Maintenance of Rights in Social Security	1983

Female migrant workers are often employed in domestic service, one of the most vulnerable occupations. Due to the "invisibility" of immigrant female domestic workers, employers can often evade labour legislation. The women are often required to work long hours for low wages. A common complaint of women in

domestic service is sexual harassment.<sup>5</sup> In some cases, unions have set up support services for abused women migrants.

■ Regarding sexual harassment, see booklet 5, *Dignity at the workplace*.

Female migrants are more likely to be unemployed than male migrants, making job placement an important issue. Migrant women also suffer from discrimination, particularly regarding pay and promotion, and they fail to take full advantage of their rights in this respect due to lack of information, training and motivation.<sup>6</sup>

Migrant workers in agriculture are covered by the Plantations Convention, 1958 (No. 110) which aims to improve the situation of plantation workers by ensuring that certain provisions of other Conventions are applied to them. It specifically states that its provisions apply equally to all plantation workers, irrespective of sex.

See also the Protocol to the Plantations Convention (1982) which introduces flexibility for countries considering ratification.



## Migrant workers

### Union issues

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#### Migrant-sending countries

- maintaining statistics on the number of women migrants who are members of the union
- establishing a welfare fund for migrant workers and their families
- promoting the education of children and other family members
- encouraging the regular flow of remittances
- improving access to national legislation on migrant workers
- maintaining close liaison with government
- maintaining close liaison with other bodies dealing with migrant workers
- negotiating for internationally acceptable employment contracts for migrant workers
- representing migrant workers at all fora at the national level
- assisting returnee migrants
- linking trade unions of migrant-supplying and migrant-receiving countries.

#### Migrant-receiving countries

- arranging for the reception of new entrants
- promoting equal opportunities and elimination of discrimination at the workplace
- promoting training and education services
- ensuring desirable living conditions
- promoting cultural identity
- educating national workers about the contribution of migrant workers to the economic development of the host country
- improving access to national regulations on migrant workers
- maintaining close liaison with government
- ensuring that the legal rights of migrant workers are accepted and providing legal advice where necessary
- developing a network with other organizations concerned with migrant workers
- promoting ratification of ILO Conventions
- promoting racial harmony and peaceful coexistence between nationals and migrants
- representing migrant workers on all relevant platforms in the host country (not permitting language to be a bar)
- ensuring equality of treatment and avoidance of discrimination at the national level.<sup>1</sup>

<sup>1</sup> See S.D. Barwa and Ali Ibrahim: *Protecting the least protected: Rights of migrant workers and the role of trade unions* (Geneva, ILO, 1996), pp. 34-42.



In April 1991, the **International Confederation of Free Trade Unions (ICFTU)**, the **European Trade Union Confederation (ETUC)** and the **Union of Arab Maghreb Workers (USTMA)** held a conference on migrant workers from the Maghreb in the European Union. The conference aims included redressing the imbalances in rights between EU workers and Maghreb migrants, and formulating a common trade union policy on Maghreb migration. The common policy is to be used as the basis for common representation to EU member governments and to the EU itself.

The position of the unions is outlined in the background document to the conference: ICFTU, ETUC and USTMA Conference on Migrant Workers from the Maghreb in the European Community (background document), Tunis, 18-20 April 1991.<sup>1</sup>

<sup>1</sup> Extracted from the *Social and Labour Bulletin* 2/91 (ILO, Geneva).

Sri Lanka being a migrant-supplying country, the **All Ceylon Federation of Free Trade Unions** provides individual counselling to women migrants and orientation courses. The **Pakistan Labour Federation**, working in collaboration with the **All Women Employees' Association**, and the **All Pakistan Federation of Trade Unions**, provides education and training programmes as well as distributing publications to educate migrant workers. The **Union Nationale des Syndicats Autonomes du Sénégal (UNSAS)** organizes educational courses in collaboration with the unions of countries where women from Senegal are based.<sup>1</sup>

<sup>1</sup> S.D. Barwa and Ali Ibrahim: *Protecting the least protected: Rights of migrant workers and the role of trade unions* (Geneva, ILO, 1996), p. 15.



## 8. Indigenous and tribal peoples

It is estimated that there are approximately 300 million indigenous and tribal peoples throughout the world, representing the largest identifiable disadvantaged group. Although the situations will differ, this group is

perhaps the most vulnerable, informal and excluded group of workers. Their earnings are much lower than other workers, and their female members are often the most exploited and socially ignored group in society.

**Public Services International (PSI)** has recently published a report and modules on Indigenous/Tribal Peoples and Trade Unions. The report begins with a working definition of indigenous peoples:

First, an indigenous people is a unique, identifiable group of individual human beings who share a common ethnic background, history, culture, tradition, cosmology, language, sense of community, and connection to the earth (the land certainly, and perhaps the sea, as well).

And second, an indigenous people is a unique, identifiable group of individual human beings contending with external forces (political, economic, cultural) which threaten its very collective survival, including its use of traditional lands and territories.<sup>1</sup>

<sup>1</sup> *Indigenous/ tribal peoples and trade unions: A PSI report, 1996, p. 7.*

Although some of the concerns of these peoples may not fall within trade unions' usual coverage, there are grounds for joint ventures between the indigenous and labour

movements, particularly in the current context of labour market deregulation and growing concern for the degradation of the environment.

### PSI Composite Resolution No. 31/32 on Indigenous Peoples:

The World Congress of the Public Services International, meeting in Helsinki, Finland, from 2 to 6 August 1993,

... Calls on PSI to:

- encourage affiliates to take measures in their own countries which directly assist indigenous people. These measures will vary in accordance with the circumstances of each affiliate but may include setting up dialogue with representatives of indigenous people, providing information to union members on issues of concern to indigenous people, providing particular avenues of representation to indigenous people as members of the union, and where affiliates' members are the providers of government services to indigenous people to educate and assist members to provide services in ways acceptable to indigenous people;
- through its regional committees, set up information and other exchanges on matters related to the struggles of indigenous people;
- represent at appropriate international fora, such as the ILO, the concerns of indigenous people;
- prepare for the consideration of the 1997 PSI Congress a model statement encompassing recommendations for the implementation of the United Nations draft declaration on rights of indigenous peoples in countries which include indigenous peoples, for actions by affiliates in those countries.

Article 3 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).<sup>7</sup> states that these peoples must enjoy fully human rights and fundamental freedoms without hindrance or discrimination and the benefits of the Convention without discrimination between males and females. Among

the measures that ratifying governments are to take to eliminate discrimination, the Convention states that workers belonging to these peoples must have equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

**The CLC seeks to reconcile support to aboriginal rights  
with the safeguarding  
of non-aboriginal labour interests.**

The Canadian Labour Congress (CLC) represents 60 per cent of the total membership of trade unions in Canada. It is estimated that aboriginal people account for 2.1 per cent of the labour force and 1 per cent of unionized workers.

In June 1992, the CLC adopted the Aboriginal Rights Policy Statement which proclaimed the Congress' obligation to help redress the injustices which still affect aboriginal peoples.

This was followed by nationwide consultation to determine practical strategies for the labour movement to support the aboriginal cause.

After six months of consultation with unionized workers, government, social movements and aboriginal organizations, the CLC decided to pursue a twofold approach:

- (i) promoting social justice and collective and individual rights of aboriginal peoples; and
- (ii) minimizing the adverse effects of the assertion of aboriginal rights on union members and non-aboriginal workers.<sup>1</sup>

<sup>1</sup> M. Tomei: "Indigenous and Tribal Peoples and Trade Unions: Recent Initiatives", in *Labour Education Bulletin*, 98-1995/1, p. 14.

## Notes

<sup>1</sup> *ILO workshop on advancement of women in rural workers' organizations in Africa* (Geneva, 1992), p. 8.

<sup>2</sup> See *Structure and functions of rural workers' organizations: A workers' education manual* (2nd ed.) (Geneva, ILO, 1990); and *Special services of rural workers' organizations: A workers' education manual* (ILO, Geneva, 1994) for further details.

<sup>3</sup> S.D. Barwa and Ali Ibrahim: *Protecting the least protected: Rights of migrant workers and the role of trade unions* (Geneva, ILO, 1996), p. 4.

<sup>4</sup> Jane Hodges and Patricia Morgenstern: *Problems of discrimination against female migrant workers and possible solutions* (ILO, Geneva) INTERDEP/MIG Working Paper, 1994-95.

<sup>5</sup> S.D. Barwa and Ali Ibrahim: *Protecting the least protected: Rights of migrant workers and the role of trade unions* (Geneva, ILO, 1996), pp. 16-17.

<sup>6</sup> *Ibid.*, p. 17.

<sup>7</sup> Ratified by fourteen countries as at November 2001.

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GENDER EQUALITY : A GUIDE TO COLLECTIVE BARGAINING

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# DEFENDING RIGHTS OF NON-PERMANENT AND VULNERABLE WORKERS

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Shauna Olney Elizabeth Goodson Kathini Maloba-Caines Faith O'Neill

This is one of 6 booklets on Gender Equality Bargaining

1. Gender equality bargaining: An overview
2. Working conditions
3. Maternity and family responsibilities
4. Defending rights of non-permanent and vulnerable workers
5. Dignity at the workplace
6. Giving women a voice

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GENDER EQUALITY : A GUIDE TO COLLECTIVE BARGAINING

# DIGNITY AT THE WORKPLACE



## Combating discrimination and victimization

**A**lthough there are international and national standards on freedom from sex discrimination and protecting the right of workers to organize and take part in trade union activities, people are still discriminated against and victimized on these grounds. Proving such discrimination or victimization has presented a difficult challenge to unions, since there are seldom clear statements or written proof of discriminatory motives. In many instances, overt discrimination has been replaced by more subtle forms of discrimination and victimization.

It is important for unions to negotiate with a view to protecting workers who are active in trade unions, as well as workers who may be discriminated against on the basis of sex, race, colour, religion, political opinion, national extraction or social origin, disability, family responsibilities or sexual orientation.

## 1. Trade union activities

For women to be able to promote and protect their rights and interests, they must be able, like all workers, to take part in trade union activities without suffering disciplinary measures or dismissal or otherwise being prejudiced.

Trade union activists often face obstacles with respect to recruitment, advancement, promotion, training opportunities, dismissal or lay-offs, all related to their attitudes towards or participation in trade unions.

While it may be difficult for unions to prove victimization or harassment against trade unionists, it is possible

and necessary to find ways and means of protecting these workers. Unions can place conditions in collective agreements or influence national legislation to ensure that the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) are respected.

Since proof of anti-union discrimination is so difficult to establish, consideration could be given to lobbying for a reversal of the onus of proof in legislation. Such a reversal can also be placed in the collective agreement.

### **The Right to Organize and Collective Bargaining Convention (No. 98)**

#### *Article 1*

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to-
  - (a) make the employment of a worker subject to the condition that he [or she] shall not join a union or shall relinquish trade union membership;
  - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

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*See the Termination of Employment Convention, 1982 (No. 158) and Recommendation (No. 166).*

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### Reversal of the onus of proof

Where a worker claims to have been dismissed for trade union activities and wishes to make a complaint that the dismissal was unfair, he or she often bears the burden of proof, that is to say, the worker must be able to prove that this was the employer's reason. When the onus of proof is reversed, once the fact of dismissal is proved by the worker, it rests with the employer to prove that the dismissal was for a valid reason and unconnected with the worker's trade union activities.

The **Committee of Experts** on the Application of Conventions and Recommendations has addressed this point:

In cases of termination of employment, the application of the general rule applicable in contract law, whereby the burden of proof rests on the complainant, could make it practically impossible for the worker to show that the termination was unjustified, particularly since proof of the real reasons is generally in the possession of the employer. This is all the more true if there is no clear statement of the reasons by the employer, which may well be the case when the employer is not required to provide written reasons for the termination of employment. In an employment relationship, it is the employer who has the upper hand, particularly because he [or she] controls the sources of information.<sup>1</sup>

<sup>1</sup> ILO: *Protection against unjustified dismissal, General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982* (Geneva, 1995), p. 77.

## 2. Sex discrimination

Just as trade unionists may be discriminated against merely for being trade unionists, some women face discrimination merely because they are women or because of their marital status or family responsibilities.

Like discrimination against workers on the basis of trade union activities, women workers are also faced with areas of discrimination which are difficult to prove with respect to recruitment, advancement, promotion, training opportunities, dismissal and lay-offs.

Sex discrimination can be overt, such as limiting applications for certain jobs to only men or only women (direct discrimination) or more subtle, indirect discrimination.

The Committee of Experts on the Application of Conventions and

Recommendations defines "indirect discrimination" as "apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job."<sup>1</sup> So where a requirement or condition is gender-neutral on its face, but in reality is more difficult for women than men to meet, indirect discrimination may be found.

Unions can negotiate for provisions in collective agreements to protect women against discriminatory practices.



**A policy and agreement on equal opportunities was negotiated between ASDA plc. and the General Municipal Boilermakers and Allied Trade Unions :**

All employees of the Company and all applicants for employment with the Company will be given equal opportunity in employment irrespective of their sex, marital status, colour, race, nationality, ethnic or national origins, or religion.

The Company is committed not only to the letter of the law but also to the promotion of equality of opportunity in all aspects of employment ...

Job requirements that affect certain employees more than others or that restrict the opportunities open to certain groups more than others will be only those that are necessary for the effective performance of the job.

All employees of the Company and all applicants for employment with the Company will be made aware of the provisions of this policy by all appropriate means.

*Possible preconceptions*

It is expected that all employees of the Company responsible for the application of this policy will guard against discrimination on the basis of possible preconceptions that individuals, on any grounds, possess characteristics which would make them unsuitable for employment. Such preconceptions might include:

- (i) Lack of commitment to work
- (ii) Have outside commitments that would interfere with work
- (iii) Possess poor mental/physical ability
- (iv) Produce an anticipated unfavourable reaction from other employees and members of the public
- (v) Be unsuitable for the job due to a feeling that certain types of work are only suitable for a member of some other group
- (vi) Be unable to supervise
- (vii) Possess limited career intentions
- (viii) Be unwilling to undertake training
- (ix) Have poor standards of behaviour/conduct
- (x) Have limitations imposed by so-called traditional interests and experience attributed to any group
- (xi) Require higher academic qualifications than individuals of another group in order to do the same job.

The Company emphasises that discrimination as a consequence of any such preconception is unacceptable ...<sup>1</sup>

<sup>1</sup> From: *ASDA management policy manual*, internal document, July 1989.

The burden of proof is an important issue in the context of sex discrimination and should be discussed in negotiations (see section 1 above).

In **Italy** a law promoting equality between the sexes and abolishing all forms of discrimination between men and women at the workplace was unanimously approved by Parliament in April 1991.

A significant feature of the law is that where there is an allegation of discrimination, the onus is on the alleged discriminator to prove his or her innocence. Charges may be brought against an employer, or other organization, without having to prove a specific instance of discrimination. All that is necessary is to provide coherent factual or statistical evidence in such areas as recruitment, pay rates, task and job assignments, transfers, promotions or dismissal showing that one sex is, directly or indirectly, more favoured by the policy than the other. The organization will then have the burden of disproving the evidence.<sup>1</sup>

<sup>1</sup> Reported in the *Social and Labour Bulletin*, Vol. 2/91 (ILO, Geneva).

**Checklist** for bargaining to avoid sex discrimination:

- general equal opportunities clause, expressing the commitment of the union and the employer to promoting equal opportunities for women and men
- opportunities for women, including those with non-permanent contracts, to apply for all positions and to benefit from training programmes
- no discrimination against workers with family responsibilities, in particular with respect to promotion and advancement
- avoid informal systems of recruitment that often prejudice women
- carefully determine what training, education or past experience is actually needed for a position, as well as whether age limits or mobility requirements are absolutely essential
- job application forms should include only those questions relevant to the job
- if the candidate is successful, then questions such as marital status and number of children can be asked if linked to particular benefits
- neutral job descriptions – if they are gender-specific, stereotypes are enforced. Women may also feel excluded
- gender-inclusive language in the collective agreement – if possible, avoid saying “the worker, *he* shall ...”. Gender-inclusive language shows a commitment to equality
- equality officer or women’s committee to implement objectives and review progress
- training in equal opportunities issues for all those involved in recruitment and negotiations
- reversal of burden of proof – once a worker can show she was disadvantaged, it is for the employer to prove that it was not on the basis of sex.

See the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111).

See also booklet 2, *Working conditions*, regarding equal pay which is a specific discrimination issue, and booklet 6, *Giving women a voice*.

### 3. Sexual harassment

A serious, and often misunderstood, form of sex discrimination is sexual harassment. It can also be considered a safety and health issue. It is an issue of dignity and integrity and cannot be ignored.

#### What is sexual harassment?

Although legal definitions vary from country to country, sexual harassment is essentially unwanted conduct of a sexual nature. Two types of sexual harassment have been distinguished at the international and national levels:

- *quid pro quo* harassment (also known as "sexual blackmail"<sup>2</sup> in Europe or "lay down or lay off" in

Asia). Generally, it is a demand by a supervisor, usually a man, directed to a subordinate, usually a woman, for sexual favours in order to keep or obtain certain employment benefits or privileges

- *hostile environment* (also known as abusive, offensive or poisoned working environment). In this situation, the complainant does not need to show the loss or threat of loss of specific employment benefits. It is a more subtle form of harassment and creates a stressful or intimidating environment (for example, inappropriate sexual comments, touching, the display of obscene pictures, etc.).

#### Some different definitions of sexual harassment

European Union	<i>Unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct.</i>
Commonwealth TUC	<i>Any unwanted sexual attention. That means any unwanted verbal or physical advance or insulting statements. These actions cause the victim discomfort or humiliation and can affect job performance.</i>
Philippines	Republic Act 7877 known as the "Anti-Sexual Harassment Act 1995" makes all forms of sexual harassment in the employment, education or training environment unlawful. The rules and regulations implementing the Act state that sexual harassment may be committed in any of the following forms: (a) <i>overt sexual advances;</i> (b) <i>unwelcome or improper gestures of affection;</i> (c) <i>request or demand for sexual favours including but not limited to going out on dates, outings or the like for the same purpose;</i> (d) <i>any other act or conduct of a sexual nature or for purposes of sexual gratification which is generally annoying, disgusting or offensive to the victim.</i>
Government of British Columbia, Canada	<i>Any unwelcome comment or conduct of a sexual nature that may lead to adverse job-related consequences for the victim of the harassment. Sexual harassment includes, but is not limited to, unwanted physical contact, sexual advances, requests for sexual favours, suggestive or offensive comments or gestures emphasizing sexuality, sexual identity or sexual orientation.</i>



**A**lthough men may be victims of sexual harassment, the victims are most often women, and they may suffer more because of societal attitudes and their often precarious employment position. Frequently targeted are young women, widowed or divorced women, women of racial minorities and disabled women. Women in low-paying, low-status jobs may also be particularly vulnerable. Many women, particularly those in low-status jobs or with precarious employment contracts, find it difficult to complain or seek support for fear of jeopardizing their job.

Sexual harassment can result in

biased job evaluations, poor personal recommendations, demotion, resignations, dismissal or transfer. It may create an intimidating and thus unproductive working environment. It can also result in stress-related illness.

Sexual harassment may also occur in the union, at union meetings, or between union members. In dealing with sexual harassment, as much is expected of unions as employers. Internal union policies and procedures need to be developed in line with those recommended for employers. The union should commit itself to maintaining a harassment-free environment.

#### **Role of trade unions in combating sexual harassment:**

- develop a policy for their own members
- include sexual harassment on the collective bargaining agenda
- educate members to change attitudes, especially in male-dominated unions
- set up procedures for handling complaints
- provide training for those handling complaints
- set up a service for counselling of victims
- keep a record of complaints
- take consequent action against members involved in harassment.<sup>1</sup>

<sup>1</sup> ILO: *Promotion of equality of opportunity and treatment for women workers: An ILO manual for Asia and the Pacific* (Thailand, 1994), Module 7.

Provisions in collective agreements should include measures to *prevent sexual harassment* such as-

- the issuing and publicizing of strong policies against sexual harassment
- information and education campaigns drawing attention to the various forms of sexual harassment and the fact that it will not be tolerated.

The collective agreement should also include measures to *deal appropri-*

*ately with sexual harassment complaints* such as-

- establishing a complaints procedure that enables and encourages women to take action against their harassers. Procedures should be discreet and sensitive to the emotions of the women. The use of female counsellors or complaints officers should be considered. It should be ensured that where the harasser is a supervisor, the complainant can submit a complaint to a higher level of management

- all complaints must be taken seriously and dealt with promptly
- often the process begins with an informal procedure, moving on to a formal procedure if necessary. The formal procedure may be part of the regular grievance procedure, or a special sexual harassment procedure may be established
- union representation should be permitted at all stages
- where harassment is proven, the harasser must be dealt with seriously and the person who was harassed should not be prejudiced in any way in an attempt to separate the two workers from the same working environment (i.e. transfer the harasser, not the complainant).

**Public Services International (PSI)** has prepared a guide for women workers and their unions entitled "Stop Sexual Harassment". With respect to clauses in collective agreements, it states:

Negotiate clauses in collective agreements to deal with sexual harassment. As minimum protection, the collective agreement should specify that:

- sexual harassment will not be tolerated or condoned and is a disciplinary offence
- management is responsible to ensure the workplace is free from sexual harassment and must take prompt corrective action to stop sexual harassment when it occurs
- a worker who is being sexually harassed can seek redress and remedy through the grievance procedure or a special procedure for sexual harassment complaints
- complaints will be dealt with promptly and in confidentiality
- a complainant may request not to have to work with an alleged harasser. If this involves a temporary transfer, it is the harasser, not the complainant, who should be moved.

A more comprehensive contract clause might provide for a jointly negotiated sexual harassment policy and complaint procedure. Additional management responsibilities, such as publicizing the policy, providing workplace education and training, could also be clearly identified.<sup>1</sup>

<sup>1</sup> PSI: *Stop sexual harassment: A guide for women workers and their unions*, 1995, pp. 33-34.

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*Specific reference to protection against sexual harassment is made in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Article 20(3)(d). Sexual harassment is also considered to be discrimination under the Discrimination (Employment and Occupation) Convention 1958 (No. 111).<sup>3</sup> See also Recommendation No. 111.*

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#### 4. Violence at the workplace

Violence at the workplace may occur between co-workers; workers may also be at risk of violence from others such as customers or clients.

Violence between co-workers should be treated as a serious disciplinary (or even criminal) offence and perpetrators disciplined accordingly. Criminal charges should be laid where appropriate.

Violence can be psychological or physical to different degrees. A variety of behaviour constitutes violence, including abuse, assault and threats:

- Abuse is all behaviour which departs from reasonable conduct and involves the misuse of physical or psychological strength
- Assault generally includes any attempt at physical injury or attack including actual physical harm

- Threats include the menace of death or the announcement of an intention to harm a person, or damage his or her property.

*Harassment, bullying and mobbing* are particular forms of workplace violence. "Bullying" has been defined as "offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine an individual or groups of employees. These persistently negative attacks on their personal and professional performance are typically unpredictable, irrational and unfair."<sup>4</sup> Recently, "mobbing" has been recognized as a form of workplace violence, involving ganging up on an employee and subjecting him or her to psychological harassment. It may consist of subjecting the person to constant criticism or ridicule, or spreading false information about that person.<sup>5</sup>

A new clause on **dignity at work** was included in the 1996 England and Wales printing industry national agreement between the **British Industries Federation** and the **Graphical, Paper and Media Union** providing redress for various forms of harassment and intimidation, including bullying:

The parties to this agreement recognise the right of every employee to be treated with respect and dignity. The parties are committed to providing a working environment that offers equal treatment and equal opportunities for all ...

These guidelines have been drawn up with the objective of preventing sexual and racial harassment and bullying at the workplace and are applicable to all companies and employees at every level ...

Bullying is persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power, or unfair penal sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which may cause them to suffer stress. Employers have a general duty to protect employees' health and safety at work ...<sup>1</sup>

<sup>1</sup> Reproduced in *IRS Employment Review*, *IRS Employment Trends*, No. 608, June 1996, p. 16.



Some workers are more at risk than others because of the nature of their work (e.g. handling money or valuables) or because they work alone or with people in distress. Some are more likely to be exposed to violence, in particular women, because they are in a vulnerable position, such as workers belonging to ethnic minorities and rural workers.

Preventive strategies are needed, as well as policies and procedures to deal quickly and effectively with viol-

ence when it occurs. A risk assessment can be undertaken to identify where there are risks of violence. Policies and procedures for reporting, investigating and dealing with violence need to be drawn up and put into practice. Workers need to be informed of the policies and procedures and the workplace risks. Finally, provision should be made for the evaluation and monitoring of the policies and procedures. All these steps should be taken with the full involvement of the union.





The Canadian Union of Public Employees has prepared model collective agreement provisions on violence at work:

1. *Definition of violence* – Violence shall be defined as any incident in which an employee is abused, threatened or assaulted during the course of his/her employment. This includes the application of force, threats with or without weapons, severe verbal abuse and persistent sexual and racial harassment.
2. *Violence policies and procedures* – The Employer agrees to develop explicit policies and procedures to deal with violence. The policy will address the prevention of violence, the management of violent situations and the provision of legal counsel and support to employees who have faced violence. The policies and procedures shall be part of the Employer's health and safety policy and written copies shall be provided to each employee ...
3. *Measures and procedures to prevent violence to employees* – The Employer agrees that, in all cases where employees or the Union identify a risk of violence to staff, the Employer shall establish and maintain measures and procedures to reduce the likelihood of incidents to the lowest possible level. It is understood that the measures and procedures are in addition to and not a replacement for a training programme about dealing with violence.

In developing measures and procedures to prevent violence, priority will be given to options such as job redesign, adequate staffing levels and improving the working environment, before considering the need for personal protection or alarms.

4. *Function of workplace Union-Employer Health and Safety Committee* – All incidents involving aggression or violence shall be brought to the attention of the Health and Safety Committee. The Employer agrees that the Health and Safety Committee shall concern itself with all matters relating to violence to staff, including but not limited to:
  - (i) developing violence policies;
  - (ii) developing measures and procedures to prevent violence to staff;
  - (iii) receiving and reviewing reports of violent incidents; and
  - (iv) developing and implementing violence training programmes.

Where no Union-Employer Health and Safety Committee has been established, the Employer agrees to consult with the Union.

5. *Staffing levels to deal with potential violence* – The Employer agrees that, where there is a risk of violence, an adequate level of trained employees must be present. The Employer recognizes that workloads can lead to fatigue and a diminished ability both to identify and to subsequently deal with potentially violent situations ...<sup>1</sup>

<sup>1</sup> CUPE Health and Safety Department: *Violence at Work Campaign*, 1994.

**MSF, UK, (the Manufacturing, Science and Finance Trade Union) prepared a detailed policy on working alone, which has specific provisions on women working alone:**

Many women do work alone and they may face increased risks of violent, including sexual, attack. These risks should be carefully assessed by employers and steps must be taken to minimize the likelihood of attack. These may include special training and/or the provision of special equipment. The need for regular contact with those working alone is especially important in such cases.

Where women travel alone in the course of their work, employers should ensure that they have been trained in the precautions to take when using public transport, when parking vehicles and when returning to parked vehicles. In some cases the fitting of a car telephone or emergency device may be necessary.

Women should be instructed by their employers that they can use freely their judgement on when to use a taxi/hire a car, etc. and know that the cost will be reimbursed by their employer. Women should not be forced to take risks during the course of their employment.<sup>1</sup>

<sup>1</sup> MSF Health and Safety Office: *Guidance for MSF members and safety representatives*.



## 5. Creating an enabling environment

To deal with the problems of victimization noted above, there should be an open and enabling environment to allow for dialogue and discussion. Information should be made available about the rights of workers, and women workers in particular, so that all management, colleagues, workers and workers' representatives are familiar with the issues.

One approach is to provide trained confidential advisers comprising at least a trade union woman represen-

tative and a woman representative from management who could as a preliminary measure advise and deal with any complaint in an objective and sensitive way and then be able to continue along a negotiated procedure to ensure discretion and confidentiality.

Unions should negotiate for more widely disseminated information on the issues of discrimination, sexual harassment and violence to ensure dignity at the workplace.

## Notes

- <sup>1</sup> See ILO: *Special Survey on equality in employment and occupation in respect of Convention No. 111*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), 1996, p. 13.
- <sup>2</sup> See "European Parliament Resolution on Violence Against Women", in *Official Journal of the European Communities*, Vol. 29, No. C.176, 14 July 1986.
- <sup>3</sup> See ILO: *Special Survey on equality in employment and occupation in respect of Convention No. 111*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), 1996, pp. 15-16.
- <sup>4</sup> See D. Chappell and V. Di Martino: *Violence at Work* (Geneva, ILO, 1998), p. 11.
- <sup>5</sup> *Ibid.*, p. 11.



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GENDER EQUALITY : A GUIDE TO COLLECTIVE BARGAINING

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# DIGNITY AT THE WORKPLACE

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Shauna Olney Elizabeth Goodson Kathini Maloba-Caines Faith O'Neill

This is one of 6 booklets on Gender Equality Bargaining

1. Gender equality bargaining: An overview
2. Working conditions
3. Maternity and family responsibilities
4. Defending rights of non-permanent and vulnerable workers
5. Dignity at the workplace
6. Giving women a voice

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# GIVING WOMEN A VOICE



## Giving women a voice at work



**C**ollective bargaining is a key means of determining terms and conditions of employment in many countries. But often the particular interests and concerns of women are either overlooked in the various stages of collective bargaining or, apart from maternity provisions, are treated the same as those of men. This so-called "gender-neutral" approach may reinforce existing discrimination or import new forms of discriminatory treatment. Since collective bargaining is usually based on past agreements, the absence of women's issues or the minimal inclusion of these issues is often perpetuated.

*The number of women joining the workforce is rapidly increasing. Their particular needs and interests at the workplace are becoming more apparent and it is imperative that their concerns and priorities be addressed.*

*Employers, unions and women all need to take steps to ensure that women are properly represented in the workplace and that their views are taken into account in the decision-making processes.*

## 1. Defending and improving rights

In order to articulate the issues of concern to women, the women should be involved in all of the various processes which deal with improving and defending workers' conditions and rights, including-

- at the negotiating table
- on occupational health, safety and environment committees
- in grievance-handling procedures
- as shop stewards
- as works council/joint committee members
- on company boards where there is employee representation.

Regarding grievances, those concerning women at the workplace often go unnoticed or unaddressed because there are few or no women representatives. Special attention should be given to dealing with issues such as discrimination and harassment. Proper and sensitive complaints procedures are needed to ensure that women who are discriminated against can make formal complaints without fear of victimization. Employers and unions should take steps to monitor the working environment to prevent such incidents from occurring.

See booklet 5.

*Dignity at the workplace.*

## 2. More and better jobs

Training and retraining is an important aspect in ensuring that women have a voice at work. In some cases women are denied access to positions because they lack seniority or because they are perceived as more likely to leave employment due to family responsibilities. This kind of attitude keeps women in lower pay/lower status jobs and limits their scope for career development. Stereotyped assumptions are often overcome (or at least rendered ineffective) where there is a gender balance at all levels of the workforce.

The union should press for greater training and richer task-assignment opportunities for women, including those in non-permanent and vulnerable positions, ensuring that this skill upgrading and job-enrichment are duly recognized in individual regrading procedures and for career progression. All selection and

promotion procedures and machinery should therefore be rendered more transparent and subject to union participation.

Employers should be encouraged to employ women without discrimination on the basis of sex and persuaded to promote women at all levels of the establishment or enterprise.

The lack of women in senior positions in both management and in the ranks is often the result of societal attitudes as well as the lack of continuous employment which keep women from gaining sufficient seniority. Unions should negotiate for upward mobility of women to ensure that women are represented at all ranks of the establishment, which in turn would create an environment sensitive to women-related work issues.

Regarding **seniority**, which often influences job security, promotion and training, it should be ensured that women receive credit for work-related experience and that they do not lose their seniority due to career breaks. In some cases, women are deterred from moving into non-traditional jobs because this would mean moving into another bargaining unit or classification, resulting in the loss of seniority. In some countries, women lose seniority if they take career breaks for family reasons, while men receive credit for time taken to undertake military service. Such discrimination can be tackled through collective bargaining.

Positive measures may be needed to address existing discrimination, but also to overcome the effects of past discrimination. A proactive approach requires:

- an analysis to identify the employment practices that discriminate against women
- the formulation of a policy and measures to address deficiencies that are found
- a monitoring and evaluation of the measures taken.<sup>1</sup>

Monitoring may be done through a joint ad hoc committee or as a function of a permanent equal opportunities/employment equity committee.

<sup>1</sup> See J. Faundez: *Affirmative action: International perspectives* (ILO, Geneva, 1994), pp. 41-46.





*The objectives of positive measures are to-*

- diversify the jobs and posts held by women in the company
- balance the distribution of men and women in a maximum number of posts
- create conditions in which women, who have previously been held back, are able to demonstrate their skills, talents and potential abilities
- promote women to higher grades
- increase the number of women working in the company by introducing a recruitment policy that favours women at the levels where they are under-represented
- raise the awareness and increase the qualification level of women, mainly through training
- ensure that women are fully involved in technological progress
- institute a wage policy which does not disadvantage women
- improve the working conditions of women.<sup>1</sup>

<sup>1</sup> See E. Sullerot: *How to create and run positive action programmes for women only, how to create and run positive action programmes to promote women inside companies: A practical manual* (Commission of the European Communities, 1991), pp. 40-41.

The union should ensure that the employer keeps statistics segregated by sex regarding pay levels (including overtime), recruitment, promotion, training and dismissal. These statistics should be made available to the union, as they can be useful in spotting problem areas.

Some measures that can be adopted to assist in overcoming the constraints faced by women are to provide reserved places for women in training and retraining opportunities, and to set targets or quotas, with clear timetables, for recruitment or promotion. Unions must also be very vigilant in reviewing dismissals and their causes when women are laid off.

The **International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations** (IUF), Asia-Pacific, has prepared a charter of clauses relating to women workers' issues, including the following on "equality of employment opportunity for women employees through affirmative action":

Management agrees to establish a programme jointly with the union within 3 months of the signing of this agreement to undertake a review of the company's employment practices in order to remove discriminatory practices and to introduce positive measures to assist the disadvantaged group, i.e. female employees, to overcome past and current discrimination and to provide a written report of the de facto situation in the company with respect to gender equality as well as the remedial measures adopted.<sup>1</sup>

An **employment equity** clause is found in the agreement between the **Communications and Electrical Workers of Canada** and **Bell Canada** for the craft and service employees:

To give effect to the principle that equal opportunity in employment for women ... means more than treating persons in the same way but also requires special measures and the accommodation of differences, the parties agree that ... the Company may, in each twelve (12) month period ... fill up to two (2) job openings in each district of the Company, for the purpose of Employment Equity.

<sup>1</sup> IUF: *Women's education manual* (Sydney, 1995), pp. 51-52.

See also booklet 2, *Working conditions*, and booklet 4, *Defending rights of non-permanent and vulnerable workers*.





# Giving women a voice in the union

**A**s increasing numbers of women join the formal workforce, more and more women are joining trade unions or are potential members.

Women are approximately 33 per cent of the global trade union membership yet they represent a mere one per cent of the governing bodies of unions. Clearly women have not achieved equal status with men within the trade union movement. If trade unions are to be credible to women regarding their commitment to promoting equality through collective bargaining, they must be able to show that equality is an integral part of their own policies and structures.

The lack of women's participation in trade unions is due to a number of fundamental barriers:

- stereotyped ideas about women's abilities, preferences and roles
- discouragement or hostile reactions from (male) colleagues or family members
- informal procedures for nomination/appointment relying on established male networks
- entrenched organizational rules and bureaucratic structures which hamper women's involvement and advancement
- the burden of family responsibilities borne by many women workers
- the high proportion of women who work part-time
- women's lack of confidence in their own abilities.

In some developing countries, high rates of illiteracy amongst women in particular further hamper their involvement in union activities.

The high cost of child care often makes attendance at union meetings particularly difficult for women.

Women are often concentrated in unskilled and semi-skilled jobs and as such are less likely to be appointed to union leadership positions.

Unions must take steps to overcome these barriers and to promote women's involvement in both union structures and business.

Lack of adequate union representation carries with it the inherent risk that little or no attention is given to women's concerns in the trade unions. Without significant female involvement it is likely that unions will lack much of the information necessary or the motivation to persuade the employers to provide fair working conditions for women and for workers with family responsibilities.

It is vital that unions take action to strengthen women's participation in trade union activities. Union discussions increase awareness of matters of importance to women and also reveal areas in which resistance may be encountered from employers and other union members. A policy statement on women's participation should be formulated and serve as a benchmark for future union action.

Unions should consider the following measures to encourage women to participate in trade union activities:

- the union should adopt a policy statement or pledge to improve the status of women workers and to encourage women to seek leadership posts within the union
- self analysis by the union will help to identify factors affecting the participation of women in union activities at all levels
- the establishment of women's units and equality and/or women's committees
- the reservation of seats for women on the executive body and the inclusion of women on candidate lists for union elections
- the reservation of places for women at union congresses
- education programmes to assist women in the development of their leadership skills
- information campaigns to sensitize all workers to women's issues.



Many unions are already taking steps to promote the participation of women at all levels of the union structure.

Some unions appoint women or support the election of women at local, regional, national and congress levels. Others have also elected or appointed women to the education and training divisions, organization, negotiation and occupational health, safety and environment committees

and have seen the impact women are able to make on a wide range of work issues.

**Social justice** is an essential part of the union's mandate. This is vitally important to the many women entering the workforce who face numerous obstacles due to discrimination and other factors. The unions have a role to ensure that women and their interests are represented both within the union system and at the workplace.

Unions should consider the following steps to assist women in overcoming obstacles to their involvement in union activities and to ensure their proportional representation in the union structure:

- the union should keep careful statistics, segregated by sex, of the number of people at each level of the union structure and of participation in union activities
- women officers should be elected/appointed to all levels of the union including the national executive
- membership of the union executive should reflect the ratio of male to female members with guarantees of proportional representation
- reserved seats should be provided on executive bodies
- ensure that women are elected/appointed to jobs with negotiating responsibilities
- annual conferences should be held to discuss women's issues with workshops and seminars to allow better debate
- women's committees or equality committees should be strengthened and given adequate resources
- women's departments or posts of equality officers should be established
- new approaches to conducting union business should be adopted where necessary
- child-care facilities should be provided to assist women members to attend meetings
- non-sexist and gender-neutral language should be used in all union literature, speeches and presentations
- appropriate trade union training and workers' education should be provided for women
- paid time off work should be negotiated to ensure participation in union activities.



# Women's committees and women's departments

**U**nions all over the world are appreciating the need to set up women's committees and departments in order to give women effective representation within the union and to create awareness of their special needs at work. Women's committees and departments also promote issues of interest to women, awareness-raising, open discussions and the training of women members.

Women's committees and women's departments in unions are complementary to each other. **Women's committees** are usually elected within the union and deal with women's affairs and equal opportunity issues such as:

- problem identification
- advocacy on women's issues
- training needs assessment
- representation of women members in all trade union activities and at work.

In order to be effective, the committee must have adequate funding and be closely linked to the decision-making structures of the union. Women's committees provide a forum for women's issues and serve as a vehicle for future developments, but care must be taken to ensure that they remain in direct contact with core decision-making bodies at all levels and do not become marginalized.

The existence of a committee in and of itself is not enough – women's issues must not be relegated to the committee so women can discuss them among themselves, and then the rest of the union structure can forget about them.

The **women's department** or an equal opportunities department is equally important in a union. In order for the women's committee's ideas and aspirations to be realized, the union should consider setting up a department which will act as a clearing-house for women's interests at the workplace and in the union.

The head of department will automatically be an ex officio of the women's committee. She may keep all records on the activities of the women's committee, coordinate women's meetings and educational activities, manage the women's newsletter and any other activities which may be approved by the women's committee.

Women's departments are often most necessary in trade union movements which are male-dominated and in which women's interests and perspectives would otherwise be overlooked. In other instances their role can be performed equally successfully by equal opportunities departments which reflect the ideal that both men and women members have a stake in bettering the lot of women workers.

# Building solidarity

**T**o effectively give women a voice, efforts to exchange information, provide technical cooperation between North and South as well as South-South are important forms of solidarity. Unions do not always recognize equality issues as priority areas, and such exchanges are important at national, regional and international levels to promote such awareness.

Such networks are provided through national, regional and international

women's committees which provide a forum for women workers' representation on issues affecting them. The women's committees at the international level may be linked to the international confederations or international trade secretariats.

These organizations often meet together, particularly on important issues and can give support to projects which strengthen equality issues at the national level.

## **The International Confederation of Free Trade Unions (ICFTU) Women's Committee**

On equality issues, the ICFTU Women's Committee, composed of 39 members, is the driving force behind the trade union response. Charged with nominating the five women (one per region) who sit on the ICFTU Executive Board, the Women's Committee prepares all policy decisions relating to women and draws up new strategies. Recently, the Women's Committee organized an international campaign on women's rights and an action programme on violence against women. It is also closely monitoring the implementation of a Positive Action Programme for the integration of women into trade union organizations. Finally, an important part of its work consists of lobbying the ILO to obtain Recommendations and Conventions on matters such as part-time or home work.

To ensure its representativeness and effectiveness in the field, the Women's Committee works closely with the ICFTU's regional Women's Committees. The ICFTU Equality and Youth Department ensures the preparation and follow-up of the Women's Committee decisions.<sup>1</sup>

<sup>1</sup> N. David: *Worlds apart: Women and the global economy* (ICFTU, Brussels, Mar. 1996), p. 46.



GENDER EQUALITY: A GUIDE TO COLLECTIVE BARGAINING

# GIVING WOMEN A VOICE

Shauna Olney Elizabeth Goodson Kathini Maloba-Caines Faith O'Neill

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5. Dignity at the workplace
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