

The Importance of Protecting Worker Voice and Concerted Activity

Fact Sheet, April 2024

Both union and non-union employees have these rights under federal law:

- to engage in discussions with their colleagues about their terms and conditions of employment, including wages, hours, and working conditions; and
- to join together to improve these conditions through actions such as striking or picketing, as long as these actions are conducted in a peaceful and lawful manner.ⁱ

Some violations are obvious, like when an employer fires an outspoken union supporter. But violations in non-union workplaces, such as forbidding workers from discussing their pay, are also quite prevalent and harder for workers to identify as illegal.

Important For Enforcing Workers' Rights. The ability of co-workers to share information related to their working conditions without fear of retaliation is critical to enforcing a range of workplace protections.

- For example, the #MeToo reckoning revealed that because workers were bound by nondisclosure agreements and managers too often protected, other workers were never warned about serial sexual harassers, allowing violations to continue.
- Workers' lack of information about pay is another prime example. Recent pay secrecy research suggests that as much as half of the U.S. workforce have been "discouraged or prohibited" from discussing pay by their managers.ⁱⁱ Without free discussion of wages and working conditions, systemic pay and promotional gaps can go undiscovered for years. Systemic pay discrimination at one financial services firm was only discovered after a woman found out that her male colleague made 50% more than her despite bringing in less revenue.ⁱⁱⁱ
- Protected concerted activity also offers a viable channel for workers with relatively more socio-economic power to stand up for colleagues when they witness discrimination or harassment. The onus of reporting, complaining, and untangling systematic harassment does not have to fall on the victims of unfair treatment.

Important to Job Satisfaction. A sense of power at work is strongly correlated not only to job satisfaction, but also with life happiness overall, and a more productive workplace.^{iv}

- After pay satisfaction, workers' assessment of the power they had to change working conditions was the strongest job-related predictor of overall job satisfaction.^v

Important to Building Worker Power and Union Organizing. Peer-to-peer discussion of working conditions is an essential pre-requisite to mobilizing the labor movement and building worker power across the country.^{vi}

- Most Americans support unions and would join one if it became available, but “unions are running too few elections and the resources required to win them are [too] high” to rely on union efforts alone to advance worker rights.^{vii}
- Discrete labor campaigns offer another way to build power and organizational capacity. After all, “any group of workers organizing together to improve working conditions is acting like a union.” and “conversations among coworkers are [still] the foundation to everything.”^{viii} The formation of an organizing committee – the collective element of collective action – is a major “bottleneck” in campaigns.
- Even failed unionization campaigns can yield dramatic benefits for workers. A unionization drive at Home Depot, for example, started from a demand for extra pay for translation services provided by store associates. The pressure from the organizing effort forced the company to improve wages for workers in the store, and the experience was eye-opening for workers who previously felt powerless. The organizer reflected that “the real goal after going through this stuff, and what I realize is the powers, the connection. The connection and doing something with the connection that you have between yourself and your coworkers.”^{ix}

Important to Democracy. Worker campaigns, even on discrete issues, serve an inspirational purpose: showing workers the power of collective action, the possibility of organizing for change. This is important not just for union organizing but for democracy itself.

- The decline of unions is part of the broader decline of associational life and social capital in the United States – like a decline in churches and bowling leagues – that researchers have linked to challenges for American democracy.^x
- Research in sociology develops the idea of “conditional solidarity” and suggests that any individual is much more likely to initiate cooperative action if they believe that others will reciprocate.^{xi}

But Low-Income Workers of Color Are Particularly Worried About Retaliation. Most workers, and especially low-income workers, are uninformed or misinformed about their legal rights at work.^{xii}

- Nearly two-thirds of American workers report feeling comfortable discussing workplace conditions with their colleagues, but low income, non-white, and less-educated workers are least likely to feel comfortable engaging in these kinds of conversations for fear of retaliation.^{xiii}

Evidence from the union context suggests that empowering workers with information about their rights and viable paths to enforce those rights makes a difference in willingness to engage in collective action.

- i. “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . .” 29 U.S.C. § 157.
- ii. Alexander Hertel-Fernandez, *American Workers’ Experiences with Power, Information, and Rights on the Job: A Roadmap for Reform*, Roosevelt Institute, Apr. 2020, https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_WorkplaceVoice_Report_202004.pdf.
- iii. Dune Lawrence & Max Abelson, “To Sue Goldman Sachs, You Have to be Willing to Hang On – for a Long, Long, Time,” *Bloomberg*, May 3, 2018, <https://www.bloomberg.com/news/features/2018-05-03/wall-street-s-biggest-gender-lawsuit-is-13-years-in-the-making>; Courtney Comstock, “My Colleague Groped Me After a Goldman-Sponsored Strip Club Outing,” *Business Insider*, Sept. 15, 2010, <https://www.businessinsider.com/christina-chen-oster-2010-9>.
- iv. Hertel-Fernandez at 11.
- v. *Id.* at 8-9.
- vi. See, e.g., “Live Show: We Need You – Yes, You – to Join the Labor Movement,” *Working People*, Mar. 8, 2023 (panel discussion of worker organizers repeatedly referencing the importance of conversations with co-workers for improving working conditions); Steven Greenhouse, “Worker-to-Worker Organizing May Finally Have Its Moment,” The Century Foundation, Apr. 7, 2022, *Worker-to-Worker Organizing May Finally Have Its Moment* (tcf.org); *Notification of Employee Rights Under the National Labor Relations Act*, 76 Fed. Reg. 54005, Nov. 14, 2011.
- vii. “Call it the union paradox: near-record-high popularity, but record-low participation.” Greg Rosalsky, *You may have heard of the union boom. The numbers tell a different story*, Planet Money, NPR, Feb. 28, 2023, <https://www.npr.org/sections/money/2023/02/28/1159663461/you-may-have-heard-of-the-union-boom-the-numbers-tell-a-different-story>.
- viii. Eric Dirnbach, *How Machinists and Trade Unionists Built a New Labor Organizing Model During the Pandemic*, Jacobin, Feb. 12, 2022, <https://jacobin.com/2022/02/ue-dsa-ewoc-covid-19-new-organizing-labor>.
- ix. Maximillian Alvarez, “He tried to organize Home Depot’s first union. Now he’s unemployed.” *Real News Network*, Mar. 6, 2023, <https://therealnews.com/he-tried-to-organize-home-depots-first-union-now-hes-unemployed>.
- x. Dan Clawson, “Union Density & Bowling Leagues: Declining Together? Review of Robert Putnam’s ‘Bowling Alone.’” *New Labor Forum*, no. 9, 2001, 73–77, JSTOR, <http://www.jstor.org/stable/40342315>.
- xi. Tula Connell, *Unions Across the Globe Develop, Defend Democracy*, *Solidarity Center AFL-CIO*, Oct. 9, 2022, <https://www.solidaritycenter.org/unions-across-the-globe-develop-defend-democracy/>.
- xii. Gabriel Nahmias, *Beyond the NLRA: Organizing Workers of the Future*, MIT Work of the Future Task Force White Paper, 23-24.
- xiii. Hertel-Fernandez at 5, 28.
- xiv. *Id.* at 28.
- xv. *Id.* at 28.