

TAMI
E D U C A T O R

Update for Stewards

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Conflicts Over Personal Appearance



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Whether the workplace is a factory, a restaurant, an office or a construction site, at some point someone is likely to object to a worker's personal appearance. These days, "personal appearance" can encompass tattoos, piercings, hair styles and more. Conflicts over personal appearance can be embarrassing, shaming and provocative. They may have an element of racial or gender discrimination. Generational differences play a role, too. The temptation for the person being criticized is often to get angry and defiant. The challenge for the steward is to find factors that can be used to defend the member while keeping the member from actions that will lead to charges of insubordination. This often has to be done quickly.

Concerning personal appearance, the difference between union and non-union workplaces is very clear. An "at will" worker who can be fired for no reason at all has almost no effective recourse if the boss doesn't like the way he looks. In union workplaces, arbitrators tend to rule that any regulation of an employee's appearance that would show outside of work, like shaving off a beard, has to be for a reason that is real and convincing. Canadian arbitrators, interestingly, have written many of these good decisions.

Three ways to fight back

Basically, there are three potential remedy paths. For unionized employees the most important is the contract. Most contract language restricts the manager's discretion to "reasonable" behavior and prohibits illegal discrimination or disparate treatment. Establishing either of these, or both, means that the steward has to do a good investigation of current and past practices.

Many personal appearance codes have words like "no extreme grooming." They

may require conservative jewelry or contain the words, "community standards." Arbitrators recognize that standards of appearance have changed over time and that these words open the door to discriminatory application between men and women, and between national, racial, or religious groups. Obesity, incidentally, is both a gender and an age issue.

The second line of defense is labor law itself. Personal appearance codes are a mandatory subject of bargaining—that is, management may not make unilateral changes without giving the union an opportunity to bargain. If they implement unilaterally, management has committed an unfair labor practice.

Also under labor law, workers, both union and non-union, have the right to "concerted activity for mutual aid and protection." This can range from letters of protest to petitions to other acts specific to the problem at hand, such as wearing false moustaches. Silly, creative and harmless demonstrations of concerted activity can lower the temperature, send a message quickly and wipe away the shaming part of a criticism of someone's appearance.

The third line of defense is the most expensive and slowest. This is to argue that application of the appearance code constitutes unlawful discrimination against a protected group. Many of these arguments would be the same as arguments under nondiscrimination clauses of a union contract. However, under U.S. federal law (see www.eeoc.gov/laws/types/index.cfm) the list of protected groups is shorter than in many union contracts and in some state and local legislation. For instance, there is no federal prohibition against discrimination on the basis of sexual orientation. However, cases have been won arguing that clothing and grooming rules place an undue burden on one gender and

therefore are proxies for sex discrimination.



The Big Picture: We're in a Service Economy

It is important to put conflicts over personal appearance into the big picture. Our economy has shifted from manufacturing to service work, where many workers have a direct relationship with the customer, from serving coffee to providing healthcare. Whereas formerly, issues of personal appearance often revolved around safety or cultural conformity, they are now more likely to revolve around the desire of employers to maintain a certain brand image.

Arbitrators recognize that one or two complaints from a customer do not necessarily legitimize employer behavior. If that were the case, we would still have segregation in public accommodations because the key excuse used by certain white business owners was that if they hired black employees or allowed black customers they would "lose all their white trade." This was found to be unconstitutional.

A Final Caution

Finally, be aware that employer consultants advise employers to show any new appearance policy to individual employees, asking them to write up any problems they might have with compliance. These statements would be held by the employer to preclude later objections based on other reasons (such as disparate treatment). To avoid such manipulation by the employer the union needs to educate members as soon as they're hired and regularly thereafter so that they understand they should always go to the union before putting anything in writing to the employer.

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



Gaining Respect, Winning Results

Question: How does a steward earn respect? Answer: By treating others respectfully.

Think about it. When you look at your relationships with others, both on the job and off, you know which ones enrich your life and which cause you a great deal of frustration. Are you more likely to achieve positive results when you shout and swear, or when you listen and help solve problems? Most likely, the relationships you value most highly are those in which you trust and respect one another.

Consider your relationships as a union steward. While you may not have smooth relations with everyone, adversity should not define your relationships. Your role as a steward involves assisting co-workers experiencing difficulties; take a moment to reflect on how the relationships you have that are built on trust and respect help you accomplish your goals. Now, what about those people you don't have good relationships with? No doubt your first thought is, "I can't do anything about those relationships because the *other person* is the problem." While it's true you cannot change another person, you can create an environment in which people *choose* to change, sometimes without being aware they are doing so.

It's been said that the definition of insanity is doing the same thing over and over again and expecting something different to happen. If you want a different outcome in your interactions with supervisors, co-workers, or anyone else, you need to change your approach. Both parties in a relationship carry some responsibility, but if things are to improve one person has to decide to do things differently, and that person can be you.

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What's in it for You?

The need for trust arises from your interdependence with others. To do their jobs effectively, stewards need other people.

In high-trust, respectful relationships, people tend to be open and honest in their communication, so things get done more easily. A high-trust relationship lends itself to cooperation, and feedback is more readily accepted. With this in place, your level of stress will be reduced. Imagine how much easier it will be to settle member complaints and grievances if you don't have to argue about every little thing.

Take the First Step

Communication is the key to building a trusting relationship, and changing existing workplace dynamics starts with your good intentions. Identify a relationship that you wish was more cooperative and then think about how you can build a

bridge to that person. For starters, you might ask that supervisor or co-worker to meet with you.

Open your conversation with something like, "We seem to be butting heads a lot of the time, which isn't productive for us, the employer or the union. Would you be willing to work with me to improve our interac-

tions?" Be sure that you project sincerity with your tone of voice and posture; insincerity is very recognizable.

Listen to Learn

The next step is to show respect for the other person's perspective by listening to them. When individuals are asked to complete the statement, "I feel respected

when . . ." inevitably they will finish with phrases like "when people listen to me" and "when my efforts are acknowledged." Try to put yourself in that person's shoes and understand their perspective. Listening attentively to someone doesn't mean you agree with them, it simply conveys respect.

Stick to the Facts

Once the other person has offered their views, present your own, using nonjudgmental statements. Replace "Why, you

lying sack of #\$%&!" with the more constructive, "It seems we have a difference of perspective on that matter." Discuss the situation at hand in an open and responsive atmosphere by sticking to facts that affect the outcome without getting into personalities and opinions. Rather than making unhelpful observa-

tions about a supervisor's similarity to a barnyard animal, for example, you might instead suggest that you both explore all the angles that define the situation you're confronted with, staying open to possibilities and opportunities you may not have considered before. Brainstorm creative ways that your needs, and the needs of both the union and the employer, can be met.

Once you agree on an approach it's very important that you follow through with any commitments you've made. This is key to creating a trusting relationship. At first you will be watching each other closely. If you make a mistake, take responsibility for it and let the other person know what you will do to ensure it does not happen in the future.

When you take the lead on building a bridge to another person both parties benefit and, most important, the union gains credibility and strength. You can begin to develop relationships that work if you're willing to share ideas, improve your communication skills and display trust. It's a *win-win* for all concerned.

—Beth Sears, The writer is president of Workplace Communication, Inc., and a retired member of UAW Local 1097.

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Domestic Violence: A Union Concern

The odds are that at some point in your work as a steward you'll be faced with having to deal with the work-related consequences of a co-worker who is victimized by domestic violence.

How does domestic violence come to work? A member has missed work because of repeated injuries. Perhaps she's being texted repeatedly on the job by an ex-partner (who could be a co-worker). Maybe she's met after work on payday and is forced to turn over her check. Domestic violence affects these workers' security, on the job as well as at home. The union may be able to help.

Domestic violence is a serious, recognizable and preventable problem that affects a significant number of union members. Women are much more likely to be victimized: 85 percent of domestic violence acts and 78 percent of stalking actions are against women.

It Involves Complex Issues

How can someone else's situation at home become an issue at work? What can you do about it? Here's an example.

A member comes to you, her steward, because she has been repeatedly warned about afternoon tardiness. She confides in you that she has "personal business" at a set time every week that she doesn't want to discuss any further. She wants you to protect her from what might be a disciplinary action.

Coincidentally, you have heard through the grapevine that this member has been seen in heated arguments with her ex-partner, who works in a different department. And another member recently confided in you that he'd been asked to walk with this person to the bus stop; during the walk she seemed "very nervous."

You are concerned for this member, but all she tells you is that she is being

warned about tardiness. You tell her that unexcused, unexplained tardiness is subject to discipline and that the union is there to help. She finally reveals that her ex-partner is abusive.

Your role as steward is to focus on the job-related consequences and what the union can do to help the member keep her job. It is essential that you remain non-judgmental and keep confidential any information about the member's situation. If you need to share information with other union reps, do so only on a need-to-know basis and with the permission of the member.

Given the traumatic personal nature of abuse, be aware that the member may not readily reveal all pertinent information to you. Do not assume this means the member is not credible.

If you are the first person to whom the member has disclosed her abusive situation, consider referring her to a counselor or advocate, such as an Employee Assistance Program worker. Or, consider getting guidance yourself on how to help the member. To take advantage of workplace protections, where there are relevant laws, it is likely the member will have to disclose the abuse to the employer. However, because of shame, fear, or other reasons this may be difficult for her. Help her locate a local service provider/advocate in your area by contacting the National Domestic Violence Hotline (www.ncadv.org).

Laws that provide victims of domestic violence, sexual assault and stalking with employment rights vary across the U.S. (<http://www.legalmomentum.org/employment-and-victims-violence>) and Canada (www.makeitourbusiness.com).

In any case where you are trying to help a worker affected by domestic violence, determine in what ways her employment is being negatively affected and whether she needs changes at work to stay safe.

Figure out your member's options.

- Is she being harassed by her abuser at work? What kind of safety plan should be put into place?
- Does she think the abuse has affected her work performance; is she worried about losing her job?
- Is she suffering from health-related problems as a result of the violence?
- Has she told her boss about the abuse? If so, what was the reaction? Did she get the help that she needs?

Figure out what options your member may have under her employer's policies.

- Does she have accrued personal leave, sick leave, or vacation time?
- Are there accommodations that can be made at the workplace (such as a new phone extension, varied hours, alerting security, time off to attend court dates or relocate)?
- Does her employer have a workplace violence or domestic violence policy? A sexual harassment policy? (This is especially important if the abuser is a co-worker).

- What does the contract say about domestic violence or complaints of harassment?
- Is there an employee/member assistance program or community resource to refer the worker to?
- If the member is ready to disclose the abuse to her employer, she should be prepared to offer documentation. If she has sought assistance from a community-based service provider, a letter from the service provider can be very helpful.

You might also take a proactive approach to addressing the issue by suggesting that the union coordinate educational awareness programs with local community service providers at union meetings or conferences.

Remember: it is your job to help union members avoid discipline, retain their jobs, remain safe, and be productive members of the workforce. By doing so, you can greatly assist members who are experiencing job-related consequences when domestic violence comes to work.

—KC Wagner: The writer is co-chair of Equity at Work, a program of the Worker Institute at Cornell University's School of Industrial and Labor Relations.

When the Job Affects a Member's Health

When you look up the definition of *multitasking* in your dictionary, you *should* see a picture of a union steward: protect the contract; get members involved; participate in community and political actions; know how to deal with the boss; manage your time; help members who get injured or sick on the job.

That last one, helping members who get sick or injured on the job, can be critically important. Not only is the member worried about his or her health, income and potential long-term personal and family struggles that may follow, there's also this: Dealing with workers' compensation can be a real headache. This is where a thoughtful union steward can be of real help.

To truly be of help, you have to know your state or province's workers' compensation law—who is covered, how to file, time limits, recent changes by court decision or by legislation. Just as you need to know every clause of your union contract, you need to keep up with workers' comp because changes are common.

Know the Law

In the United States you'll find some states, like Texas, are basically still in the nineteenth century as employers can opt out of offering workers' comp coverage—meaning an injured worker has to sue the employer. In Florida last year, a state court declared that the state's workers' compensation system was unconstitutional and an "inadequate alternative" to suing the employer. States with strong unions tend to have better protections. In Pennsylvania, for example, most workers, including part-time and seasonal, are covered even if there's only one employee on payroll.

As a steward, you should always bring new knowledge into your workplace. Knowledge about workers' comp law is important: if you don't know your coverage, look it up. A partnership between two U.S. entities, the National Economic and Social Rights Initiative and

the National Council for Occupational Safety and Health, provides an outstanding website, *Workers' Comp Hub* (www.WorkersCompHub.org), that catalogs the laws of every state and also offers terrific up-to-date information and resources about compensation systems for job-related injuries and illnesses.

In Canada, the website of the Association of Workers' Compensation Boards of Canada, <http://awcbc.org/>, provides links to each province's regulations as well as statistical information and research findings related to the subject.

Rights and Responsibilities

Stewards should ensure that members understand both their rights and their responsibilities. Every injury or illness should be reported so the employer can't duck their coverage responsibility. Take care to inform those members for whom English may not be their first language, as well as your part-timers and members for whom immigration or employee status may make them fearful.

Stress to your members that the union will protect them if they file a workers' comp claim. Many workers coming from non-union workplaces are afraid of "creating a problem" that might get them fired. Unfortunately, this fear may prevent them from reporting incidents, so make sure that any potential problem is reported and proper medical attention is immediately given. Even a scratch can cause blood poisoning, so ignore nothing.

A supervisor, whose bonuses may depend upon a low accident rate, may discourage a worker from filing. Don't let your members be pressured. When they do file, the union should keep copies of all the paperwork in case the boss challenges the claim.

Members shouldn't use accrued leave instead of filing a claim. The injury may recur—like a back injury—and documentation of its work-relatedness will allow



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the member to get medical attention and, if needed, paid time off.

Check In with Your Members

If members go out on comp claims, keep in touch with them. The employer might try to pressure a worker to come back early, or set up difficult legal challenges, so your help may be needed. Exchange contact information and encourage members to check in regularly. Not only will you support this worker, but you will alert the boss that the union is watching out for its members.

If you're in an open shop "right-to-work" state, pay attention to the nonmember who gets hurt at work. A steward who shows a concern for all co-workers—members or not—will prove the value of union representation and membership.

And Finally. . .

Reviewing the coverage available to others may provoke another aspect of a steward's responsibilities—political action. Let your members know that strong workers' compensation laws are needed.

Don't forget that the most important aspect to workers' compensation is to make it unnecessary, so be sure your job site is safe and healthy. While preventing physical injuries in a manufacturing plant or health care facility is more obvious, protecting against "unseen" injuries in an office—by doing indoor air quality checks, for example—is just as important, especially because the effects of "invisible" hazards can be more complicated to prove under workers' comp.

—Bill Barry. The writer is the former director of labor studies at the Community College of Baltimore County.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Shop Steward,

We are almost a third of the way into a new year and we hope you and your family are doing well. The rest of 2015 is going to be a busy year for our members in the United States and Canada.

In the U.S., working families will continue to feel the aftershocks of the 2014 midterm elections. There have already been proposals in Congress to weaken Social Security and I'm sure we'll be seeing more attempts to slash Medicare, cut back workplace safety rules and deny even more workers unemployment benefits.

At the state level, with so many state legislatures and local governments in unfriendly hands, look for more efforts to pass right-to-work (for less) laws. Those efforts will likely help sway public opinion in a push for a union-weakening national right-to-work (for less) law. These laws are devastating for working families.

On trade, our members in both the U.S. and Canada need to mobilize to stop another misguided trade deal, the Trans-Pacific Partnership (TPP).

The TPP is being negotiated behind closed doors between the United States and Canada and 10 Pacific-Rim countries, including notorious human and labor rights violators Vietnam, Brunei and Mexico. It dramatically expands corporate control in the U.S. and Canada and reduces both governments' ability to promote health, safety and environmental regulations with our trading partners.

Like the North American Free Trade Agreement, or NAFTA, the TPP threatens to offshore hundreds of thousands of U.S. manufacturing jobs to countries with lower wages.

In Canada, we have the chance to replace the very anti-worker government of Prime Minister Stephen Harper in upcoming federal elections in October 2015. Our Canadian brothers and sisters already started preparations for a strong grassroots effort with a Canadian Political Action Symposium at the IAM William W. Winpisinger Education Center in 2014.

We have a lot to do in 2015, and with your help we can stop some of the worst anti-worker attacks in decades.

Thank you for all you do as Shop Stewards,

In Solidarity,

R. Thomas Buffenbarger
International President

