



BETTER WORK

4. Freedom of Association and Collective Bargaining

Freedom of association refers to workers' right to create organisations (unions) that represent them. It also applies to employer organizations. Collective bargaining is the process of negotiation between unions and employers, usually on working conditions and terms of employment. Both are fundamental rights and they are linked. Collective bargaining cannot work without freedom of association because workers' views cannot be properly represented. Workers must be free to choose how they are to be represented and employers must not interfere in this process.

4.1 Union Operations

Workers should be able to freely form and join a union, including a minority union, a second union or a worker association other than a union. Union representatives need access to the workplace to talk with workers and to carry out their representative functions. The employer's consent may be required to engage in union activities during work time, but free access should be allowed during breaks and before and after work. Union representatives who are not employed in the workplace but whose union has members working there also should be granted access, so long as this does not impair the efficient operation of the enterprise. Union representatives should be granted permission to enter free trade zones, even if the union has no members working in the zone.

When employers are required to deduct union dues from workers' wages, they should do so. Otherwise, workers' representatives who are authorized to do so by the trade union should be allowed to collect dues regularly on the premises. Unions should be free to join federations and confederations of their choice.

4.2 Interference and Discrimination

Freedom of association includes the right to be free from interference in the exercise of the right. Unions should operate free from employer interference when organizing themselves, making decisions, and conducting their activities. If there is more than one union present, the employer should treat them equally. If national law allows or requires the employer to give privileges to the most representative union, minority union rights to freedom of association still must be respected.

Discrimination against workers based on their union membership or activities is prohibited. Discrimination occurs if unionists are punished through termination, transfer, demotion, denial of overtime, reduction in wages/benefits, or changes to their conditions of work. The employer should not threaten, intimidate or harass workers, for example by threatening to terminate them, conducting illegal or unreasonable searches, using violence or force, resorting to unwarranted involvement by the police or the military, or using the courts to bring illegitimate claims against individual unionists.

4.3 Collective Bargaining

In the absence of unions, worker representatives (elected and authorized by workers in accordance with national law) should be able to bargain collectively on behalf of workers. However, if a union exists the employer should not undermine it by negotiating directly with elected worker representatives or individual workers on matters that are reserved for unions. Negotiations should be carried out in good faith. Both parties should negotiate with the expectation and willingness to discuss, compromise, and reach a mutually agreed solution. All terms and conditions of employment should be subject to negotiation. Collective agreements should only include terms that are at least as good as the terms and conditions required by national law. Both sides must implement the agreement, and workers should have free access to it. In addition to collective bargaining, employers should consult trade unions when required to do so by national law.

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4.4 Strikes

With the exception of essential services, employers should not hire workers to replace those on strike. Employers should not punish workers who participate in strikes, unless the workers engaged in serious misconduct or criminal acts. Deducting more wages than those corresponding to the days lost during a strike, terminating workers, failing to renew workers' contracts, reducing benefits or seniority, and imposing heavier workloads all would be considered punishment. All workers should be reinstated after a strike (absent serious misconduct or criminal acts). Peaceful strikes should not be broken up by security forces or the police.

Types of employer action that can lead to non-compliance

- Preventing union representatives who are employed at the workplace or whose union has members at the workplace from accessing workers.
- Not allowing workers to form or join the union of their choice.
- Getting involved in union decision-making, rule-making, activities, administration, finances or elections; not allowing the union to meet without management present.
- Attempting to manipulate or control the union, e.g., by financing the union in a way not provided for under national law.
- Offering union members bribes to withdraw from the union, or promoting them in an effort to impede their participation in union affairs.
- Taking into account union membership or activities or using blacklists during hiring.
- Terminating (or not renewing) workers' contracts because they are union members or engaged in union activities.
- Threatening, intimidating, harassing or punishing workers for joining a union or engaging in union activities.
- Favouring one union over another (when there is more than one union in the workplace and this is not provided for under national law).
- Refusing to bargain collectively or in good faith, or limiting the issues that can be negotiated.
- Preventing workers from accessing collective agreements or their provisions.
- Failing to implement the collective agreement.
- Not consulting with unions when required to do so.
- Preventing workers from participating in a strike, punishing them, or not reinstating them where eligible.
- Using security guards, police or armed forces to break up a peaceful strike or arrest striking workers.

Key action points for employers

- Allow union representatives to access workers in the workplace.
- Enable workers to form and join unions of their choice, and do not force them to join a particular union.
- Comply with national law regarding financial support for any union/workers' association.
- Allow workers to meet freely without management present.
- Do not interfere with, manipulate or control any unions present in the workplace.
- Do not consider union activities or use blacklists when hiring or terminating workers.
- Consult with unions when required to do so.
- During collective bargaining, do not limit the issues that can be negotiated.
- Comply with national and international standards in relation to strikes and industrial action.

Key references

ILO Convention 87 on Freedom of Association and Protection of the Right to Organise; ILO Convention 98 on the Right to Organise and Collective Bargaining