



USING PROTECTED UNION ACTION TO STAY SAFE FROM COVID-19 ON THE JOB

ILWU

FREQUENTLY ASKED QUESTIONS

What is protected concerted activity?

The National Labor Relations Act empowers workers who act together to solve problems at work, including safety and health. By acting together, we are covered by federal labor laws that recognize something called “protected, concerted activity.” This is in addition to rights we have in a union contract. It’s always a good idea to review any action plans with your elected leaders.

Examples of protected, concerted activities include: talking with one or more co-workers about working conditions, circulating a petition asking for health and safety provisions, participating in a group refusal to work in unsafe conditions, openly calling for paid sick leave, and joining with co-workers to talk directly with your employer or a government agency about problems in your workplace.

Does the NLRA (National Labor Relations Act) protect workers at my workplace?

There’s a good chance. Most frontline, non-management private sector employees are covered by the National Labor Relations Act. There are exceptions, including public-sector employees (employees of state, federal and local governments), agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, and employees of airlines and rail carriers who are not covered by the NLRA. Many public workers in West Coast states also have protection, but check first to with a union official or attorney.

What is the National Labor Relations Board?

The [National Labor Relations Board \(NLRB\)](#) is an independent federal agency that protects employees, employers and unions from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year. The NLRB enforces the National Labor Relations Act.

Can I act alone and still be protected?

Concerted activity is when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action.

What are examples of Protected Concerted Activity?

Two or more employees discussing work-related issues beyond pay, such as safety concerns with each other is protected concerted activity. An employee speaking to an employer on behalf of one or more co-workers about improving Coronavirus protections or other workplace conditions, is protected concerted activity.

Can we get in trouble for speaking out about our safety at work?

Your employer cannot lawfully discharge, discipline, or threaten you for, or coercively question you about your “protected concerted activity”. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action. However, you can lose protection by saying or doing something that’s egregiously offensive, or knowingly and maliciously false, or publicly disparaging your employer’s products or services without relating your complaints to a legitimate labor controversy.

My employer refuses to close down even though a coworker tested positive for COVID-19. We don’t feel safe. Can we walk out if the company isn’t listening to us?

In some circumstances, yes! Workers covered by the NLRA have the legally protected right to walk out in protest of critically unsafe working conditions. [In Detroit, bus drivers refused to drive until the buses were properly cleaned.](#) Their refusal of working in unsafe conditions was protected concerted activity. They are now back to work.

In an example prior to the Coronavirus, a group of employees in Omaha, Nebraska, walked off the production line to protest the speed of the line and other working conditions, and thereafter met with the plant manager. An NLRB administrative law judge found that the Employer had unlawfully discharged the employees in retaliation for engaging in concerted protected activity and ordered the Employer to reinstate the employees with full back pay and benefits.

Can we demand that our employer expand paid time off during this crisis?

Yes. If the demand is done as a group (two or more people), this is protected activity too.

Am I protected if I’m already in a union?

If you already have a union, you have other rights and obligations under your contract. Read your contract and contact your elected union leaders to discuss the details.

Do I have to be in a union to be protected by the NLRA?

No. Employees at union and non-union workplaces have the right to help each other by sharing information, signing petitions, and seeking to improve wages and working conditions in a variety of ways. For more information on this aspect of the law, including a description of recent cases, [see the NLRB Protected Concerted Activity page.](#)

The National Labor Relations Act gives most private-sector front-line employees the right to act together to try to improve their pay and working conditions, with or without a union. If employees are fired, suspended, or otherwise penalized for taking part in protected group activity, the National Labor Relations Board is supposed to fight and restore what was unlawfully taken away.

I believe that my rights have been violated. How do I file a charge with the NLRB?

Charges must be filed in a Regional Office, usually with the help of an NLRB Information Officer or union volunteer within six months of the occurrence. The Regional Office will investigate the charge and, if they find it has merit, will issue a complaint. For forms and more information, [see the NLRB Investigate Charges page.](#)

I want to form a union with my co-workers to address COVID-19 and other workplace issues. Is that also protected?

Yes. Under the National Labor Relations Act, workers have the right to form a union without retaliation. Forming a union is an effective way to collectively address workplace issues from COVID safety to wages, benefits and working conditions. If you want help forming a union or learning about worker rights, contact the ILWU.

An injury to one is an injury to all