

# FACT SHEET

## Workers' Rights

### Employer Interference with Workers' Freedom to Form Unions

- The National Labor Relations Act (NLRA) was enacted to guarantee workers the freedom to form unions without employer interference, but today the NLRA provides no such guarantee. Loopholes and weaknesses in U.S. law allow employers to engage with impunity in tactics designed to suppress workers' freedom to organize. Studies show workers who seek to exercise this fundamental right are routinely harassed, threatened, intimidated, retaliated against and even fired.
- According to recent studies, 25 percent of employers whose workers try to organize a union fire at least one worker for union activity. Although discrimination against union supporters is prohibited by the NLRA, the penalties are so weak and ineffective they fail to deter employers from engaging in such conduct. Employers easily drag out legal proceedings until long after union supporters have been fired or intimidated.
- Employers don't have to resort to illegal tactics to suppress their workers' freedom to organize because many forms of employer interference and coercion are perfectly legal under the NLRA. For example, the NLRA's one-sided communication rules allow employers to wage coercive anti-union campaigns in the workplace while unions are severely limited in their ability to communicate with workers.
- A burgeoning industry of consultants trains employers in how to thwart their employees' desire for union representation. Seventy-five percent of employers faced with organizing campaigns hire anti-union consultants that specialize in implementing campaigns to convince employees forming a union would have a negative impact on their lives.
- To avoid the lengthy and bitter anti-union campaign that typically occurs when workers seeking union representation petition for a National Labor Relations Board (NLRB) election, workers and employers increasingly bypass NLRB-sponsored elections and instead seek a less confrontational procedure known as majority sign-up or card-check. Under this process, the employer and the union agree that when a majority of the workers signs union authorization cards or a petition, the employer will voluntarily recognize the union and negotiate a first contract. Employers that enter into a card-check agreement often—though not always—agree to remain neutral through the process, and unions in return often agree to refrain from engaging in picket lines, protests or strikes during the organizing campaign.

### Protecting the 40-Hour Workweek

- After decades of struggle by workers for reasonable working hours, Congress enacted the Fair Labor Standards Act (FLSA), which requires employers to pay workers one-and-a-half times their regular rates of pay for work performed in excess of 40 hours per week. The overtime pay requirement protects workers against excessive work hours, and, in addition, millions of workers depend on cash overtime to make ends meet.
- The Bush administration has proposed changing the FLSA so employers could substitute an 80-hour two-week work period for the traditional 40-hour workweek. For example, workers working 50 hours in one week and 30 hours the next would no longer be entitled to any overtime premium, with median-income workers losing up to \$3,000 per year. The 80-hour two-week work period would make overtime work cheaper for employers, leading to more forced overtime, more irregular work schedules for workers at the whims of their employers and increased child care costs for workers with children.
- The Bush administration has also proposed changing the FLSA to relieve employers of their legal obligations to pay a cash premium for overtime work—if they offer workers compensatory time off (comp time) instead. This proposal would make overtime work cheaper for employers, leading to more forced overtime, and would mean a pay cut for millions of workers who rely on overtime pay to make ends meet. Comp-time legislation would provide no meaningful remedies against employer coercion and would give a competitive advantage to employers that no longer pay cash overtime, making it unlikely for worker participation in the private sector to be truly voluntary.
- Republicans in Congress have offered several other proposals to weaken workers' rights under the FLSA. These include disqualifying from overtime and minimum wage protection roughly 10 million more workers who work for businesses with less than \$1 million in annual revenues; prohibiting states from guaranteeing a minimum cash wage for tipped workers; cutting workers' time-and-a-half pay by excluding commissions and bonuses from the calculation of the regular rate that is used to calculate time-and-a-half; and stripping overtime and minimum wage rights from inside sales workers.

# TALKING POINTS

- **The freedom to form a union and bargain collectively is a fundamental right.** But because of loopholes and weaknesses in the law, workers in fact face enormous obstacles when they seek to exercise this basic right.
- **Penalties against employers that illegally fire or discriminate against workers because of their union activities are too weak** and ineffective to deter employers from engaging in such conduct. Moreover, many forms of employer interference and coercion are actually considered perfectly legal under the National Labor Relations Act (FLSA).
- **Employer anti-union campaigns not only interfere with workers' fundamental right to organize.** They also have tremendous negative consequences for employer–employee relations that can last a long time.
- **Under the FLSA, employers are required to pay workers one-and-a-half times their regular rate of pay for work performed in excess of 40 hours per week.** This is the only protection against excessive hours workers have, and many workers depend on their earnings from overtime to make ends meet.
- **The 40-hour workweek is under attack.** Last year the Bush administration issued new rules making it easier for 6 million workers to be disqualified from overtime protection. This year the administration is proposing to replace the 40-hour workweek with an 80-hour two-week work period and to allow employers to substitute compensatory time off for cash overtime. Meanwhile, Republicans in Congress have offered several other proposals of their own to weaken workers' overtime rights.

Enough is enough. The union movement is opposing any proposals that would take away overtime pay from workers, erode the 40-hour workweek or otherwise undermine overtime protections.

## Action Points

**Tell your members of Congress:**

- **Representatives and senators should co-sponsor the Employee Free Choice Act (H.R. 1696 and S. 842),** which would restore workers' freedom to join unions without employer coercion and interference. The legislation would amend the National Labor Relations Act to provide for majority sign-up (card-check) recognition—the only way to give workers free choice. It also would provide for first-contract mediation and arbitration and create meaningful remedies for employees who have suffered employer interference and intimidation during organizing campaigns, including treble back pay for workers illegally fired for trying to join a union and gain a first contract.
- **Congress should oppose proposals that would allow employers to substitute compensatory time off for overtime pay or replace the 40-hour workweek with an 80-hour work period.** If Congress truly is concerned about giving workers more control over their schedules, it should instead give priority to enacting legislation giving workers the right to refuse excessive overtime.
- **Members of Congress should defend the freedom to form unions and bargain collectively** by showing support for workers in their communities who are attempting to exercise this fundamental right.

