

VIII: IT'S THE LAW

Several federal laws and Supreme Court decisions have a direct impact on the work of the union steward. Here is an overview of the most important ones in four areas. In addition, Section XI Resources (Pages 54-56), contains information on publications about these four subjects.

The Americans with Disabilities Act (ADA)

Passed into law in 1990, the ADA prohibits employment discrimination against a *qualified individual* who, with or without a *reasonable accommodation*, can perform the essential functions of a job he or she holds or wants. An employer does not have to provide accommodation if doing so would impose an undue hardship on the employer's operation.

Reasonable accommodation means making modifications or adjustments to a job application process or work environment that makes it readily accessible and usable to people with disabilities. Examples would be modifying schedules, buying new equipment, altering a worksite, etc.

Undue hardship means a significant difficulty or expense that would be unduly disruptive to the employer. Considerations include the nature and cost of the accommodation, the size and financial resources of the employer, etc.

A person with a disability is anyone who:

- Has a physical or mental impairment that substantially limits at least one major life activity (e.g., walking, seeing, hearing, performing manual tasks, etc.);
- Has a history of or has recovered from such an impairment (such as cancer); and/or
- Is perceived as having an impairment (such as the mistaken belief that a person is HIV-positive or has AIDS).

Users of illegal drugs are not protected. However, individuals who are enrolled in or who have completed drug or alcohol rehabilitation programs are protected.

When AFSCME schedules any type of event, it qualifies as a public accommodation situation. Therefore, the ADA requires that all AFSCME services, programs and activities are accessible to members with disabilities.

What stewards can do:

1. Protect the rights of AFSCME members who have disabilities;
2. Provide representation for a member who is seeking a reasonable accommodation from management;
3. Educate bargaining unit members and management about the rights of workers with disabilities;
4. Assist members if they wish to file a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) or similar state agency; and
5. Make sure all AFSCME events and meetings are accessible to members with disabilities.

For more information: Contact AFSCME's Department of Research and Collective Bargaining Services at (202) 429-1215.

The Family and Medical Leave Act (FMLA)

Enacted in 1993, the FMLA sets a minimum standard for providing job-protected leave for those employees who need time off to care for their families or themselves. (***Note:*** State laws or negotiated contracts may provide additional or superior benefits.)

The FMLA provides eligible employees with up to 12 weeks of unpaid leave per year for any of the following:

- Caring for a spouse, parent or child with a serious health condition;
- Caring for a newborn, adopted or foster child; or
- The employee's own serious health condition.

Eligible employees are those who: 1) have worked for the employer for 12 months (not necessarily consecutive); 2) have worked at least 1,250 hours (an average of 25 hours per week) for the past 12 months; and 3) whose employer has at least 50 employees in a 75-mile radius (each state, county, city and school district is considered an employer under FMLA guidelines).

The FMLA also:

- Requires the employer to maintain health benefits during FMLA leave;
- Guarantees employees can return to the same or equivalent position following FMLA leave;
- Allows employers to require employees to use vacation or sick leave for all or part of the 12-week FMLA entitlement; and
- Is enforced by the U.S. Department of Labor, Wage and Hour Division.

What stewards can do:

1. Educate bargaining unit members about their rights under FMLA;
2. Discuss the issue at labor/management meetings to ensure that management knows its obligations under FMLA;
3. Represent members — in the formal grievance procedure or in informal efforts — to gain FMLA leave they are entitled to; and
4. Assist members in filing complaints with the Wage and Hour Division of the Department of Labor if they are denied a valid leave request.

For more information: Contact AFSCME's Women's Rights Department at (202) 429-5090 or the Department of Research and Collective Bargaining Services at (202) 429-1215; or access the Department of Labor's Web page on the Internet at www.dol.gov. This site has links to Wage and Hour Division offices and phone numbers around the country, and more information on the FMLA.

The Occupational Safety and Health Administration (OSHA)

In 1971, OSHA was created by the passage of the Occupational Safety and Health Act. OSHA provides workplace health and safety protections to private-sector workers. At present, AFSCME members in 23 states are covered by federally approved OSHA laws. Several states without OSHA coverage have state safety and health laws. In other instances, AFSCME has negotiated contract language requiring employers to comply with federal OSHA standards.

While protections may vary from state to state, federal OSHA regulations and state programs have several common elements:

- Standards for protection against safety hazards, noise, chemicals and radiation;
- Enforcement of those standards by state health and safety inspectors;
- Employees' right to request an inspection if they think health or safety hazards are present at the workplace;
- The right to have a union representative accompany the inspector and be informed of the results of an inspection;
- Protection against discrimination for exercising these rights under OSHA; and
- Access to information for unions and individual workers on injuries, chemicals in the workplace, and medical exam reports.

What stewards can do:

1. When a health or safety hazard is discovered or reported, immediately inform management and request that the problem be corrected;
2. Report any health or safety issues to the local's health and safety committee;
3. Educate workers about health or safety hazards; and
4. File any appropriate grievances or complaints to correct health and safety problems and hold management accountable to its commitments.

For more information: Contact AFSCME's Department of Research and Collective Bargaining Services at (202) 429-1215 or access the health and safety section of AFSCME's Web page on the Internet (www.afscme.org), which has a wide variety of publications and fact sheets that can be downloaded and printed.

Court Rulings on Sexual Harassment

The U.S. Supreme Court has ruled that sexual harassment is illegal sex discrimination covered by Title VII of the Civil Rights Act. Sexual harassment subjects an employee to adverse working conditions that have nothing to do with job performance. Management is legally responsible for the actions of its employees if it knew or should have known of the problem and did nothing to stop it. The victim, as well as the harasser, may be a man or woman; the victim and harasser do not have to be of the opposite sex.

Sexual harassment is any unwelcome sexual advance, request for sexual favors or other conduct of a sexual nature when:

- Submission to the conduct is either an explicit or implicit term of employment;
- Submission to or rejection of the conduct becomes the basis for employment decisions; or
- The conduct interferes with an employee's work performance or creates a work environment that is intimidating, hostile or offensive.

What the steward can do:

1. Educate co-workers about sexual harassment;
2. Take necessary actions to ensure that sexual harassment will not be tolerated;
3. Discuss the issue at labor/management meetings;
4. When sexual harassment does occur, act to protect members by offering support and investigating and processing appropriate grievances; and
5. Assist members if they wish to file a complaint with the Equal Employment Opportunities Commission (EEOC).

For more information: Contact AFSCME's Women's Rights Department at (202) 429-5090.

