

COLLECTIVE AGREEMENT EQUITY AUDIT

for use by National Representatives, Employment Equity
Representatives, Bargaining Committee Members, Human
Rights & Women's Committee Members



Adapted from materials produced for the Ontario Federation of Labour's
Workplace Harassment Seminar, by Susan Ursel & Cindy Wilkey.

As trade unionists, we are required by law and by our CAW Constitution to represent *all* of our members, to negotiate language which is non-discriminatory, and to take positive action on human rights grounds.

The Collective Agreement Equity Audit is a tool to evaluate our agreements before negotiations and to give us direction and suggestions about bargaining priorities. As you work through the Audit, you will notice patterns where your collective agreement is strong, and areas where work is still needed. In the best case scenario, all of our agreements would have a "yes" or check mark beside each point on the audit. What you actually find when you go through your agreement will be a reflection of some of the following factors:

- T the company's past and present willingness or unwillingness to include equity issues in bargaining
- T the union's historic assertiveness in bringing equity issues to the table
- T the power of the union
- T the make-up of the workforce
- T problems and grievances that have brought these issues to the forefront

Negotiating is never easy, and negotiating equity language is hard. By reviewing the human rights language in your Collective Agreement, you will be in a better position to support your Bargaining Committee's commitment to negotiate on behalf of all of our members -- present and future.

Anti-Discrimination Clause

- " Does the agreement have a no-discrimination clause?
- " Does the no-discrimination clause cover all of the following human rights grounds: race/colour, religion/creed, age, sex, marital /family status, disability, national or ethnic origin, sexual orientation, political affiliation, and pardoned conviction.
- " Are there other grounds covered by the no-discrimination clause (union activity, political affiliation, language, criminal record)?

Does the no-discrimination clause cover:
 - ' discrimination by supervisors and managers?
 - ' discrimination by co-workers?
 - ' discrimination by union reps?
 - ' discrimination by clients, patients, customers, delivery persons, other bargaining unit members, or 'outsiders'?
Does the clause cover:
 - ' hiring
 - ' promotions and transfers
 - ' training
- ' Does the collective agreement say that job requirements must be 'bona fide occupational requirements' -- a legal term that means requirements must be 'real' requirements?
- ' Can the union use the grievance and arbitration procedures to enforce the no-discrimination clause (e.g., grievance and arbitration rights of members)?
- ' Does the collective agreement say there must be programs in place to correct systemic discrimination which is the result of entrenched policies and practices in the workplace?

Anti-Harassment

- ' Does your collective agreement have an anti-harassment clause?

If so, does it include:
 - ' harassment by superiors?
 - ' harassment by co-workers?
 - ' harassment by union representatives?
 - ' harassment by clients, patients, customers or others to whom bargaining unit members provide services or goods?
- ' Does the harassment policy cover all of the prohibited grounds --race, sex, gender, colour, creed, religion, age, marital / family status, sexual orientation, disability, pardoned criminal offence?
- ' Does it cover other grounds (union activity, political affiliation, language, criminal record)?
- ' Do you have a joint policy in your workplace to investigate and resolve workplace harassment complaints?
- ' Is the policy written into your collective agreement?
- ' Does the policy say that a harasser may be disciplined or transferred?
- " Does the policy make it clear that the harassment complaint can be inserted into the grievance and arbitration procedure after the joint investigation and resolution process has first been used to try to resolve the issue?
- " Does the collective agreement say that workplace harassment creates an unsafe workplace condition, and that harassment is grounds to use the *right to refuse unsafe work*?
- " Is there a separate clause which says the worker has the right to refuse harassment on prohibited grounds?

Accommodation and Disabilities

- “ Does the collective agreement specifically say that the union and management agree to accommodate the needs of workers in cases of adverse effect discrimination, such as in cases of disability and religion, as required by the human rights code?
- ‘ Does your collective agreement make it clear that workers with disabilities have the right to be accommodated?
- ‘ Does your collective agreement define disability broadly (e.g., does it include temporary disabilities, permanent disabilities, and both workplace and non-workplace related disabilities)?
- ‘ Does the collective agreement make it clear that the employer shall modify the worker’s job to accommodate their disability?
- ‘ If the union agrees that it is physically, technically, or financially impossible, or not in the best interest of the worker, to modify the job, does the collective agreement make it clear that the company will offer the worker another job or a modified job within the bargaining unit as agreed to by the union and the worker?

If the union agrees that reduced working hours are best for the worker, does the collective agreement say:

the employer will accommodate the reduced work hours
 - ‘ wage replacements (for the time not worked) will be paid by workers’ compensation or by insurance
 - ‘ in no case will the worker receive less income than they are entitled to under their benefit level.
- ‘ If the collective agreement says that workers with disabilities are entitled to work beyond the bargaining unit, is it clear that the worker maintains their rights under the collective agreement?
- ‘ Does the collective agreement make it clear that seniority provisions -- such as the job posting procedure -- are only changed to accommodate disabled workers if the union agrees and that layoff and recall provisions are never affected?

- ‘ Does the collective agreement make it clear that workers will continue to accrue benefits while they are on workers compensation (i.e., seniority, service, statutory holiday pay, vacations, sick leave days, and other rights that accrue over time)?
- ‘ Does the collective agreement (or any other policy referred to in the collective agreement) outline a procedure for working out workplace accommodation issues?
- ‘ Is this procedure a joint procedure?

Does the procedure:
 - ‘ fully explain the accommodation that is needed?
 - ‘ provide training for accommodated positions?
 - ‘ identify all the positions in which accommodations can be made?
 - ‘ provide severance pay, if it is physically, technically, or financially impossible to modify the job or place the worker in another modified job?
- ‘ Does the accommodation procedure accept that accommodation needs may be permanent?
- ‘ Does the procedure guarantee every member’s right to the grievance and arbitration process?
- ‘ Does the collective agreement refer to and include relevant workplace legislation such as the human rights code, the occupational health and safety act, and the workers’ compensation legislation on the understanding (1) such legislation is the minimum standard only, (2) if the collective agreement provides better protection than the legislation, the collective agreement applies, and (3) if the legislation is changed so that it provides less protection than before, the previous legislation applies
- ‘ Does the collective agreement include a commitment from management to hire people with permanent disabilities as 6% of new hires?

Privacy

- ' Is there a clause in your collective agreement protecting the worker's right to personal privacy?

If surveillance, searches, drug and alcohol testing are issues in your workplace, are there clauses in place to:

- ' forbid the employer's use of these intrusive measures unless required by law?
- ' forbid random testing?
- ' protect workers from unjust discipline for substance use or dependency?
- ' provide access to (confidential) worker assistance and counselling?

- ' Does your collective agreement state that employee health information must be stored separately from other employee information, and that it shall be locked and accessible only to the health care professional?

- ' Does your collective agreement state that a worker has the right to access all of their health information, including the right to ask that corrections be made to their file or have a note which states their objection added to the file?

Whenever a worker is required to undergo a medical examination, does your collective agreement make it clear that:

- ' the worker has the right to choose the doctor?
- ' the company will only be given information which states whether or not the worker is fit for the job?
- ' any limitations must be stated without giving the reasons for the limitations (e.g., "unable to lift loads above 10 kilograms")?
- ' the results of the examinations are not available to the company?
- ' the company must provide a job description to the examining doctor so that s/he is aware of the physical requirements of the job (a copy of that job description must also be given to the worker)?

- ' the worker must be given a copy of the doctor's record of examination?
- ' if the doctor recommends that the worker is not fit for the job, an explanation of the recommendations and reasons must be given to the worker?
- ' the company shall not reveal any health information concerning a present or former employee to a third party, unless required by law, without the written, informed consent of the worker each time that health information is requested?
- ' the company agrees not to ask for workers' claims files from the Workers' Compensation Board without the written, informed consent of the worker concerned?

- ' Does the collective agreement say that the union shall receive copies of all employer report forms (usually called Form 7's) to the workers' compensation board (or equivalent board), and functional abilities forms, so that the union can challenge information that the company might have reported incorrectly.

NOTE: If the company reports information which is false, this information might result in the worker not receiving all the benefits they are entitled to or it might also delay a claim

- ' Does the collective agreement provide a confidential Employee Assistance Program (EAP)?

Age Discrimination and Mandatory Retirement

- ' Does your collective agreement forbid age discrimination?
- ' Does your collective agreement include mandatory retirement?
- ' If the mandatory retirement age is less than 65, are you satisfied that the earlier retirement age is a bona fide occupational requirement?

Deemed Termination Clause

- ' Have you removed from your collective agreement, any 'deemed termination clauses' for absences from work due to disability?

Note: "Deemed terminated clauses" are now generally considered illegal. This doesn't mean that a worker is necessarily entitled to a job if s/he is disabled. We have to fight for the accommodation necessary to enable the worker to return to work and continue working productively. All this means is that the employer is not allowed to pick an arbitrary date of 24 months, or 36 months and say that after that length of time, the worker is automatically terminated.

Pay Equity

- ' Do men and women in your workplaces tend to be grouped into different job classifications?
- ' If yes, are wages & benefits for the predominantly female jobs equal to the wages & benefits of the predominantly male jobs?
- ' Have you ever evaluated the skills, efforts & responsibilities, and work conditions required for each job classification?
- ' Based on these findings have you negotiated pay equity with the employer -- equal pay for work of equal value?
- ' If yes, when you re-negotiate your collective agreement, do you then ensure that the gaps between predominantly female and predominantly male jobs do not reappear, and that pay equity is maintained?

NOTE: If you negotiate wage increases in terms of percentages of the different wage rates, the gaps between them will widen.

- ' Do the bargaining demands include other wage solidarity strategies such as:
 - ' COLA, a cost-of-living formula which protects wages from erosion by inflation and which pays the same adjustment to every wage classification
 - ' across the board wage improvements which are the same for everyone with due regard to a legitimate skilled trades differential
 - ' catch-ups for lower wage classifications
 - ' merging two or more wage rates into the higher or highest rate

Leaves of Absence

Does your collective agreement provide for:

- ' sickness or accident leave
 - ' maternity leave
 - ' paternity leave
 - ' parental leave
 - ' adoption leave
 - ' child care leave
 - ' bereavement leave
 - ' change of residence leave
 - ' family responsibility leave
 - ' marriage or commitment ceremony leave
 - ' spousal relocation leave
 - ' personal leave
- ' Does the collective agreement specifically recognize the need for accommodation of workplace and family issues?
- ' Are these leaves equally available to gay and lesbian workers and their families?
- ' Does the collective agreement provide sickness, accident, and parental leave benefits which are better than minimum standards and Unemployment Insurance?

Human Rights Training & Personnel

Does the collective agreement (or any other provision) include anti-harassment and/or human rights training:

- ' for all members of the bargaining unit
 - ' for union representatives
 - ' for all management personnel
- ' Does the collective agreement provide for a Women's Advocate (a negotiated union representative who deals with women's issues)?
- ' Does the collective agreement provide opportunities for a woman to be trained as a Women's Advocate (whether or not a paid position exists)?
- ' Does the collective agreement provide for an Employment Equity Representative (a negotiated union representative who deals with human rights and equity issues)?
- ' Are the people who deliver Employee Assistance Programmes provided with anti-harassment and human rights training?

Seniority

- ' Does the collective agreement make it clear that seniority is the fundamental principle underlying benefits and provisions of the agreement?
- ' Is seniority applied across the bargaining unit to allow for transfer and promotion and to prevent 'job ghettos' ?

Does your collective agreement make it clear that seniority continues to accrue under the following circumstances?
 - ' illness or injury
 - ' maternity leave
 - ' paternity leave
 - ' parental leave
 - ' adoption leave
 - ' child care leave
 - ' bereavement leave
 - ' change of residence leave
 - ' family responsibility leave
 - ' marriage or commitment ceremony leave
 - ' spousal relocation leave
 - ' personal leave
- ' Have words which unnecessarily restrict worker's seniority rights, words like "aptitude" and "suitability", been taken out of the collective agreement?
- ' Are the qualifications required in each job true "bona fide occupational requirements"? A "bona fide occupational requirement" is a legal term which means a job requirement which is reasonably necessary and not a phony requirement which raises a barrier for a certain group or groups?

NOTE: From the union point of view, a good job posting clause is one that says that the job shall be awarded to the most senior applicant who is able to do the job with training and that training shall be provided by the company.

Benefits, Pensions, Wages & Hours

- ' Are workers' same sex spouses and their families entitled to the benefits package under the collective agreement?
- ' Is this clearly stated in either the benefits entitlement language or in the definition of 'spouse'?
- ' Has the pension plan been amended to cover same sex spouses, following the 1998 landmark ruling (Rosenberg v. Attorney General) that prohibits discrimination based on sexual orientation?
- ' Are other benefits which are extended to the spouses of workers available to gay and lesbian workers (e.g., prepaid legal services, child care)?
- ' Is the collective agreement clear that benefits will accrue to workers who are absent due to sickness, accident, or other disability (e.g., vacation days, further accumulation of sick days, payment for statutory holidays)?
- ' Does the collective agreement outline the employer's duty to accommodate workers who are members of religious minority groups?

If there are part-time workers in your bargaining unit
 - ' do they have access to full-time opportunities?
 - ' are they eligible for the same or equivalent benefits as full-time workers?
 - ' can they transfer seniority if they gain a full-time position?
- ' Does the collective agreement provide flexible work practices (such as flex time, modified work weeks, shift trading and job sharing) so that work, family, and religious needs can be balanced?

Preparing for Negotiations

- ' Complete the CAW **equity audit** of your Collective Agreement. If there are areas where you want to make improvements, review the CAW model language on the issue.

- ' Do a **grievance audit**. Review grievances filed since the last round of negotiations. Are there any grievances with explicit human rights complaints in them? What provisions of the collective agreement do they refer to? Do they point to any particular problems? Can the language in the collective agreement address these issues? Do the members involved in these grievances understand of the problem? If you're not sure, ask them.

Are there any grievances that don't explicitly refer to human rights problems, but show that there are repeated instances of problems, such as treatment of members while on sick leave, problems with return to work after maternity leave, difficulties in getting time off for family illnesses, etc.?

- ' Do an **arbitration audit**. Of the cases arbitrated under the agreement since the last set of negotiations, did any have explicit human rights issues in them? Did the arbitrator provide redress for these issues? If the redress was based on general human rights law, can you include this language in the collective agreement?

- ' Examine **workplace equity**. Is your workplace representative of the community at large (in terms of gender, race, age, disability, religion, sexual orientation, etc.)? Are opportunities within the workplace fairly distributed? If there is high turnover, who is leaving and why? Have members identified any barriers in the workplace? Have any groups in the community identified barriers in or to the workplace?

Are there any supportive measures that could be put in place to improve recruitment and participation of all groups, and to effectively prevent and /or handle discrimination and harassment?

Areas to consider: hiring; orientation and job placement; performance review practice and procedure; training and development (job training and anti-discrimination training); promotion and transfer; accommodation issues; working environment and working conditions; discipline and termination; non-discriminatory management policies, practices, and procedures.

- ' **Bargain for equity**. Bargain in the concepts and the tools to create a more equitable workplace, by either improving existing language, or negotiating new language:
 - T a commitment to equity in the workplace
 - T a review of policies and practices in the workplaces (through existing committees or new committees)
 - T a consultation and feedback process from members
 - T an implementation plan
 - T a system for reviewing progress on the plan