

MODULE 10

Temporary and Day Laborers

Module Overview

Time: 130-145 minutes plus Introductions

- Objectives:**
- to share work problems faced by temporary and day laborers
 - to examine what determines employment status, as either an employee or independent contractor
 - to practice determining one's current employment status
 - to review workplace rights for temporary and day laborers
 - to consider and evaluate options for solving workplace problem
 - to practice responding to some of participants' problems

- Preparation:**
- prepare flipcharts
 - read and copy handouts

- Materials:**
- flipcharts, markers, masking tape, Post-its

Module Outline

Module Detail

Welcome and Introduction

Time: 5 minutes

Materials: flipcharts:
Objectives and Agenda

Welcome and Introduction

Welcome participants, introduce yourself and review workshop objectives and agenda. It is helpful to put the Objectives and Agenda on flipcharts to post.

Icebreaker: Who is Here?

Time: 10 minutes

Icebreaker: Who is Here?

Ask participants to introduce themselves, giving their name, union and/or organizational affiliation, if any, and where they are working now or their last work experience.

Workplace Issues or Problems

Time: 20 minutes

Flipchart: *What's Wrong?*

Employee or an Independent Contractor?

Time: 20 minutes

Handouts: *Who's The Boss?; Employee or Independent Contractor?*

Flipcharts: *Employee; Independent Contractor*

Activity 1: Workplace Issues or Problems

Break participants into small groups to describe what problems they have experienced as temp agency workers or day laborers. You can name some possible issue areas such as: wages, wait time, assignments, health and safety, favoritism, discrimination, or transportation. After they talk about their concerns they are to write one issue or problem per person in the form of a brief phrase or question on sticky notes – one issue/problem per sticky.

Ask each group to send one person up to post the stickies on flipchart: *What's Wrong?* and name the issues or problems.

Tell participants that we will look at what legal rights they have and how those rights relate to the problems they have listed.

Activity 2: Employee or an Independent Contractor?

Explain that the first step in determining what to do about these problems is to figure out your employment status – are you an employee or your own boss – sometimes called an independent contractor?

Using the worksheet *Who's The Boss*, ask participants to check-off their answers to the questions regarding their own work. Using two flipcharts, one labeled *Employee* and the other *Independent Contractor*, ask participants to use the checklist and decide which statement they think describes which status. For example: Where does the first statement, "I am paid by the hour" belong – under *Independent Contractor* or *Employee*?

Pass out handout *Employee or Independent Contractor*?

Compare handout to flipcharts and make any additions or changes. Make sure everyone understands the following concepts: salaried, supervision, control and usual course of work. Emphasize the following:

BEWARE: Your status is not determined by:

- what your boss or you label yourself
- whether your boss gives you a 1099 form instead of a W-2 form

The main issue is whether the employer has control over your work life.

Example: A plumber who sells his/her services to homeowners or businesses to fix a leaky toilet or unclog a clogged pipe is an independent contractor. But a plumber who works for a single business installing water pipes is an employee.

For temp agency workers: note that for certain legal protections you may have two employers – the temp agency and the “client” or “user” employer. More on this later.

Ask: How many of you think you are an employee? How many think you are an independent contractor? Why? If you think you are an employee, are you being treated as an independent contractor?

Note to facilitator:

*This may be the time to point out that many workers – such as day laborers – are treated as independent contractors, but they are really employees and are getting screwed! Under these standards almost all temp agency workers and day laborers hired on the street corner are employees and not independent contractors. Under recently enacted Massachusetts law it is difficult to be an independent contractor **because the standard requires that you perform work outside the usual course of work of the hiring employer’s business.***

This means that if you are hired by a small company or a contractor to do construction work, landscaping or some other work that the contractor does for someone else, you are more likely to be an employee than an independent contractor no matter what kind of arrangement the person who hires you wants to make with you.

What Rights Do You Have?

Time: 30 minutes

Handouts: *Your Rights*

Flipcharts: *Employees are entitled to . . . ; Independent Contractors . . .*

Activity 3: What Rights Do You Have?

Ask participants: Why should you care about your employment status?

Answer: Because it makes a difference as to what legal rights you have – which laws cover you.

Explain and post the following rights on the flipcharts from Activity 2, first for *Employee*, then for *Independent Contractor*.

Note to facilitator:

*As you name each right explain BRIEFLY what it means: e.g. minimum wage: the minimum hourly rate you must be paid which in Massachusetts is \$6.75/hour. See handout: **Your Rights**. The **T** and **C** designations will be added later on in this activity .*

Employees are entitled to:

Wages and Hours:

- minimum wage protection (T and C)
- overtime pay (T & C)
- right to be paid all that you’re owed and paid promptly (T)

- breaks, including bathroom breaks (T and C)

Health and Safety:

- a safe workplace (T and C)
- worker's compensation for on-the-job injury (T)

Unemployment and Leave:

- unemployment compensation (T)
- eligibility for FMLA, Massachusetts Maternity Law or other job protected leaves.

Organizing:

- Have the right to work together to correct workplace problems (T & C)

Discrimination:

- Protection against workplace discrimination based on race, ethnicity, age (over 40), gender, sexual orientation and disability (T and C)
- Exercise these rights free from employer retaliation (T & C)

Independent Contractors:

Wages and Hours:

- are not covered by minimum wage laws
- are not entitled to time and a half for overtime
- terms of work and terms of payment are governed by a contract with the employer who hires them
- but are contractually entitled to be paid all that they are owed and paid promptly

Health and Safety:

- are protected by OSHA laws, but usually not protected against being fired for reporting violations
- are not covered by worker's compensation for workplace injury

Unemployment and Leave:

- not entitled to unemployment benefits
 - not covered by FMLA or Massachusetts Maternity Law
- Discrimination
- have limited protection against workplace discrimination

Taxes: If you are an independent contractor and declare your income you:

- pay twice as much in taxes
- pay all social security and unemployment insurance taxes – almost twice as much as an employee pays

For Temp Agency Workers: Who is Your Employer?

Go back to the flipcharts and indicate – using a *T* or *C* - which protections are the responsibility of the Temp Agency as employer (T), which that of the Client or User (C), and where there may be

dual responsibility (T and C). See pages 3 and 4 for (T) and (C) designations.

Sum up by using handout *Your Rights*, and asking: “What questions do you have about which rights apply to you?”

Which Problems Are Against the Law?

Time: 20-30 minutes

Handouts: *Your Rights*;

Flipcharts: work with flipcharts from Activity 2

Note to facilitator:

Activity 4: Which Problems Are Against the Law?

Break participants into small groups and give them one or two of the issues or problems identified in the first activity. Ask them to review the issues, and decide what, if any, violation of the worker’s rights is happening and what right is being violated. If possible, give them one issue that is NOT a violation of any right, and in the report back discuss concept of employee-at-will (see below). They will report out by groups. For problems that are not violations, list them separately.

*If there are temp agency workers be familiar with the issues listed on the handout, **Special Problems for Temp Agency Workers**. If you have not already addressed these issues, use the handout to do so. If there are day laborers in the group, be familiar with the issues listed on the handout, **Special Problems for Day Laborers Hired on the Street Corner**. Review them with the group.*

*For problems that are not illegal point out the difficulty with **At-Will Employment**: If you are not in a union and do not have a written contract with your employer, you are an “at-will” employee. This means that your employer can fire you for no reason or any reason as long as the employer does not violate the rights we are discussing in this class. This means that many unfair or arbitrary decisions by the employer are not illegal.*

Where to Go With Your Problems

Time: 15 - 20 minutes

Handouts: *Your Rights*; *Government Agencies*; *A Partial List of Advocacy Groups*

Flipcharts: *Where to Go With Your Problems*

Activity 5: Where to Go With Your Problems

Ask participants to listen to the following mini-rap on where to go with your problems.

Mini-rap:

There are several different ways you can approach solving your workplace problems:

- Go to the employer by yourself and complain about the problem
- Consult with co-workers to see if others have the same problem
- Get a group of workers together to challenge the employer’s practice

- Consult a lawyer
- Go to a government agency whose job it is to enforce the law.
- Work with an advocacy group or a community organizing group that deals with workplace issues

Ask participants: What do you think are the pros and cons of each of these approaches?

Complaining to your employer by yourself:

- Often not safe
- Little power by yourself

Consulting with co-workers:

- Can identify whether others share the same problem
- Can think together about how to change the situation

Acting with other workers:

- You have the right to act with others to correct workplace problems BUT it is not always safe to do so.

Consulting with a lawyer:

- You do not always need a lawyer to exercise your workplace rights: Most agencies will take your complaint even without a lawyer. However, free legal services for some workplace issues are available:
- Start with Legal Services –if you qualify for their service –they help with wage and hour issues, unemployment and sometimes discrimination or firing for union organizing.
- If it is worker’s compensation or health and safety, contact a COSH group (Mass COSH and Western Mass COSH.)

Contacting a government agency: (See handout: *Government Agencies*)

- For ALMOST every right we have as workers there is a government agency that handles enforcement.
- But, government agencies are often short staffed and take a long time to resolve problems.
- Government agencies need names and contact information to file a complaint, so not always safe for the worker.
- Not always safe if you are an immigrant, with or without proper documents. You may jeopardize your chances of ever getting work again.

Advocacy Groups and Organizing Groups

(See handout: *A Partial List of Advocacy Groups*)

- Advocacy groups can help you understand where else to go for help, so are good first places to go.
- Advocacy groups can help you understand where else to go for help, so are good first places to go.
- Community organizing groups help build power for workers.

Special NOTE re: immigrant workers: Immigrant workers, whether documented or undocumented, are covered by most laws. It is not always safe, however, for undocumented workers to go to state and federal agencies with complaints, as those agencies might notify Immigration and Customs Enforcement (ICE).

Undocumented workers should check first with an advocacy organization. The handout *Safe and Unsafe Agencies for Immigrant Workers* is only a guideline. Policies change. To be safe, always go to an advocacy organization first.

Sum up pros and cons. Highlight the risks and stress the importance of collective action.

**Practice Reporting
Violations or Getting
Assistance (Optional)**

Time: 15 minutes

Activity 6: Practice Reporting Violations or Getting Assistance (Optional: can do this as a whole group activity - or not at all.)

Send participants back into their groups to use the issues they worked on to determine where they would go to report any violations of rights they have identified or seek assistance in solving the problem. Have groups report back, one scenario per group, and have discussion.

Sum-up by reminding them that they have a number of handouts to refer to later.

Summary and Remedies

Time: 10 minutes

Summary and Remedies

Point out that other workshops or the *Nutshells* will explain the various laws and identify specific remedies available. We can't do all that now.

Look at any issues, identified at the beginning of the workshop, which have not yet been talked about. Look at the issues we have left that have no legal remedy. Ask: How might we address these issues – e.g. new legislation, organizing in community or workplace, etc.

Remind them:

- about the areas where the law is either unclear or offers no protection
- that there is some “whistleblower” protection

Close with:

- need to act with others to protect themselves
- focus on organizing – either with a union or a community organizing group - as a means of addressing most, if not all of these problems