

# **YOU HAVE THE RIGHT TO BE HEARD**

**(& TO REMAIN SILENT  
WHEN YOU WANT TO)**

**A know-your-rights guide for workers who are  
organizing, speaking out and demonstrating  
in the workplace and public places**

**LABOR & EMPLOYMENT COMMITTEE  
NATIONAL LAWYERS GUILD**

## WHAT RIGHTS DO I HAVE?

All of us—citizens and non-citizens, documented and undocumented—have rights under the Constitution. The First Amendment gives you the right to speak freely and to advocate for social change and economic justice. The Fourth Amendment restricts the government's power to arrest you without probable cause. The Fifth Amendment gives you the right to remain silent when questioned by the police about matters that might incriminate you. And all persons in this country, including undocumented immigrants, have the right under the Fourteenth Amendment to due process (hearing or trial, proper rules followed, right to an attorney, etc.) before they can be deported, convicted of a crime or stripped of their property.

You also have the right to join with your coworkers, whether as part of a union or some other type of organization, to support each other and protect your rights. You have the right to organize around and speak out about your common interests without retaliation, either from your employer or the government.

But having these rights is not enough—you have to use them to make them meaningful. This booklet offers some guidance for workers who want to get the most out of these rights, both in the workplace and outside it.

This booklet is not a substitute, however, for legal advice. You should consult an attorney if you expect to be questioned by the police or retaliated against by your boss and obtain legal representation if you are arrested. Please

**2** see the last page for resources you can use.

## RIGHTS INSIDE THE WORKPLACE

All workers have the right to organize for mutual support and protection around workplace issues. As an example, you have the right to

- make a delegation to the boss about workplace conditions,
- talk to your coworkers about workplace issues, or
- help organize a union

without suffering retaliation by the employer.

It is illegal for the employer to discipline you for engaging in these activities, or to cut your hours or give you a worse job assignment for that reason, or to threaten to call immigration on “troublemakers.” Standing together with other workers not only makes you stronger but gives you greater legal protections, too.

You may also have the right to walk off the job to demand better conditions. That right will depend on a number of questions: Are you acting alone or with others? Are you covered by a union contract that may prohibit strikes? Are there serious safety risks if you keep working? Can your boss replace you before you return to work? This booklet does not try to answer these questions—there are too many complexities involved. You should check with your union before walking out; if you do not have a union, think about organizing one so that your walkout has a greater chance of success.

## RIGHTS OUTSIDE THE WORKPLACE

You have these same rights to band together with other workers to improve your situation outside the workplace too. This includes

- filing a wage and hour claim or a health and safety complaint that affects more than just yourself,
- supporting or testifying in support of another worker's claim,
- speaking out to the press or at a public hearing about bad conditions at the workplace, or
- picketing or distributing handbills in front of your workplace.

Your boss has no right to interrogate you about your “concerted activities”—group activities seeking to improve your and your coworkers’ wages and working conditions—either in the workplace or outside it or to engage in surveillance of your union activities away from work.

## THE RIGHT TO PICKET

### Public spaces

There are some areas, such as publicly owned sidewalks and city parks, where free speech activities, such as picketing and handbilling, have historically been allowed. While the police or a property owner may be able to impose reasonable restrictions on what we do in those areas, such as requiring that we do not block entrances or

**4** exits, they cannot prevent us from using those areas.

### **Private property**

Different rules apply when you step onto private property, such as the privately owned sidewalks and parking lot in front of a business. While the employer may claim that you have no right to be there, that rule is subject to some important exceptions:

- If the employer is only a tenant and does not own the underlying property, then it may not have the right to eject you from an area it does not own. Demand that it supply you with a copy of the lease it claims gives it that right, and to the police before it tries to eject you.
- And even if it owns the land outright, the NLRB has held that some private areas, such as the sidewalks around a casino, should be treated as if they were public property.

There are other areas that are historically open to the public, such as the cafeterias in a hospital. The employer may be able to impose limits on what you can say or do there, but it cannot exclude you entirely.

- And there are some times that the law requires you to go onto private property. If you are picketing a business located on a particular floor in a high-rise building then you should try to picket as close to that business as possible. Similarly, if you are picketing a scab truckdriver then you should go onto the property where the driver is making a delivery and picket “headlight to headlight.” If the property owner tells you to leave, relocate your picket line to the nearest public sidewalk or street and picket there for as long as the business you are picketing is on the site.

## DO WE NEED A PERMIT TO PICKET?

Certain types of events require permits:

- A march, parade or stationary event which causes an interruption in the normal use of the public streets or sidewalks, such as blocking pedestrian or vehicle traffic or partial/full street closures, or
- Marches, parades or rallies at City parks, or certain designated non-city parks or plazas, such as federal property managed by the General Services Administration.
- However, you do not need, and should not request, a permit to picket on a public sidewalk so long as your picket line does not unreasonably prevent the general public who wish to walk past your picket line on the sidewalk from doing so.

Many local governments' permit schemes allow for the imposition of certain conditions on permits granted for these events, such as changes to the route of a march or limitations on the sound levels of amplified sound.

A permit cannot be denied because the event is controversial. And a city cannot pick and choose when it will enforce these requirements on an arbitrary basis, or because it merely suspects that there will be property damage or any violence associated with it. The government has no right, as part of the permitting process, to make you take out liability insurance or sign a permit application that says that you will be

**6** responsible for damage done during your protest.

## GUIDELINES ON HOW TO PICKET

Your right to picket has a very long and rich tradition in American history. At the picket, adapt these suggestions to your environment and follow any specific rules that your union or other organization has developed for this action.

### **Picket with purpose.**

Having idle picketers ruins the morale of the picketers engaged in persuading customers not to pass the picket line. Having idle picketers looks sloppy and disorganized to these customers and any media, and therefore encourages corporate management to continue insisting on pushing its demands. The time to socialize is after the picket. During the picket, stay focused and participate.

### **Picket at every vehicle entrance.\***

Pickets should be stationed at all vehicle entrances and, where possible, march on public sidewalks that cross such entrances. Your picketing on the sidewalk across driveways at property entrances may cause entering or exiting vehicles to slow down, but you cannot picket so as to actually prevent or unreasonably delay the vehicle from entering or exiting. But you can offer drivers your flyer and encourage them to turn around.

\* But different rules may apply at construction sites or where the company you're picketing is only there occasionally, for example, when its employees are delivering goods there.

If the employer has set up a special gate for the workers you are trying to reach you may be limited to that location. And if you are only picketing a jobsite because some workers come there every now and then you may have to limit your picketing to the times when they are on the site. Talk to your union to get instructions about any special rules that may apply.

**Avoid physical contact.**

Avoid physical contact with others and don't block their path. Keeping a distance of a few feet may help thwart any accusations.

**Share responsibilities.**

Some picketers are more comfortable with militant picketing than others. Don't let the burden rest with them. Train and encourage all picketers to take turns persuading people not to pass the picket line.

**Be prepared.**

Bring your cell phones, and wear suitable clothing and rugged shoes at every picketing event.

## **WHERE, WHEN & HOW**

**Traffic Laws**

Some police officers will aggressively enforce traffic and pedestrian laws. Police have, for example, cited motorists who honked their car horns in support of protestors.

If you want to avoid citations, obey all traffic laws. Don't stand in the street while waiting to cross intersections.

**8** Don't jaywalk.



The police may also impose rules even if you remain on the sidewalk. Those rules have to be reasonable: while they can require that you let members of the public or other workers enter and exit a facility, they cannot require that you stay far apart from other picketers or compel you to march if you prefer to remain standing in one place.

### **Unlawful Assembly**

Listen carefully to any police order to disperse. Even if you are engaged in no unlawful activity, you are subject to arrest if you do not leave the area defined by the police in their order to disperse. For example, if some individuals are blocking a street and some individuals are watching on the sidewalk, the police may order everyone to leave the area and arrest anyone, even if they are not violating any law, who does not do so.

### **Sticks**

Check to see if the local government has adopted any restrictions on the size of the stick to which a picket sign is attached, as Los Angeles has.

### **Noise ordinances**

Some cities have noise ordinances that limit the number of decibels that you can produce with bullhorns or by chanting or that apply special restrictions during certain hours of the day. Insist that the police stick to the letter of the law. And if the law is unreasonable or so vague as to be meaningless, like a law prohibiting “excessive noise,” tell the police that the law is unconstitutional and unenforceable as applied to your free speech activities.

## **SPECIAL RULES FOR ACTIONS INVOLVING CIVIL DISOBEDIENCE**

Most demonstrators do not face arrest for peacefully picketing, marching or handbilling. But people engaged in civil disobedience, such as blocking streets, should expect to be arrested. That requires some additional steps to prepare for that sort of action.

### **Carry current identification.**

If you don't have ID you may be taken to jail for a minor offense that would otherwise only call for a citation. But don't carry other information that you would not want the police to see.

### **Keep a list of phone numbers to call when arrested.**

You can ask for an attorney and make a phone call after you arrest. But don't have your own cell phone on you when you get arrested unless you are willing to let the police have the opportunity to read your text messages and note down everyone you have called or been called by.

### **Don't risk arrest if you have any outstanding warrants.**

You may be held in custody on that charge if arrested for your conduct at the CD. And it might even give the police an excuse for arresting and searching you even if they did not know about the warrant when they were arresting you.

**If you're a non-citizen, the government may inform ICE about your arrest, which could have an impact on your immigration status.**

This is particularly true if you are undocumented but it applies to green card holders and others, too. If you aren't sure this applies to you talk to an immigration attorney before the action, not after it.

## **IF YOU ARE QUESTIONED**

### **Your Fifth Amendment rights**

You have the right to remain silent. Use it. You must give the police your name and address, but don't say anything else. You do not have to use any special formula to invoke your right; it is enough to tell the police that you do not want to answer questions.

If you change your mind and start answering questions then you can still change your mind again and refuse to answer more questions. It is safer, however, not to answer any questions, other than your name and address, in the first place. Don't be fooled by that friendly police officer who tells you that you have nothing to worry about or who tries to draw you into a conversation.

### **Your Fourth Amendment rights**

The police need more than just a suspicion that you have broken the law to arrest you or to search you. You give away this protection, however, if you agree to let the police search you or your backpack or your car. Do not give them permission if they ask to search you or your possessions.

## IF YOU GET ARRESTED

### Arrests

It is impossible to predict what charges the police will use when they make arrests. Likewise, it is impossible to predict what release procedures the police will use. But here are some general rules to keep in mind in the unlikely event that you are arrested.

### Resisting Arrest

The police often treat any noncooperation with the arrest process as a separate offense of interfering or resisting a police officer. For example, if you “go limp,” some law enforcement agencies will add the additional charge of “resisting arrest,” which may prevent your release on citation or result in higher bail. If the police believe that you have used force or threat of force to resist arrest, they will often charge you with “felony resisting arrest,” an even more serious charge. And if protesters chain themselves together or to another structure or object that will be treated as resisting arrest in some jurisdictions.

### Bail

In some circumstances, individuals are arrested, taken to the police facility, booked, and released on a written promise to appear. In other circumstances, persons are arrested, booked, and only released prior to their first court appearance by posting bail. In some circumstances, people are arrested for misdemeanors and can be released on \$1,000 bail and in other circumstances individuals are charged with felony conspiracy and held on \$20,000 bail.

**12** It is impossible to predict what the police will do.

If you remain in custody a judge will review your case within 48 hours and you must be taken to court within two business days. But you do not have to wait for the police to take you to court; call the magistrate to ask to be released on your own recognizance, meaning “without bail,” which will get you out of jail faster without having to pay the premium on a bond.

If you are released on bail, try to post the amount of the bail rather than posting a bail bond. If you are exonerated of the charges against you, your bail will be returned. If you cannot post the bail you can purchase a bond, usually at ten percent of the amount of the bail. You cannot recover the cost of a bond, however, even if the charges against you are dismissed.

### **Your right to an attorney**

You have the right to legal counsel. Ask for an attorney. Don’t discuss your case with the police without consulting your attorney.

You also have the right to make free local phone calls after being booked. A parent with childcare responsibilities should be allowed to make two additional calls to arrange for childcare.

## **IMMIGRATION ISSUES**

### **Avoid arrests if you are a non-citizen**

If you’re a non-citizen then the government may communicate your arrest to ICE, which could have repercussions for your immigration status.

### **If you are questioned**

You have the right to remain silent. Do not answer questions about your immigration status and do not respond if law enforcement or ICE asks you for a green card, work authorization, or other immigration documents. Presenting false or expired papers to DHS may lead to deportation or criminal prosecution. If law enforcement asks everyone to line up in two lines, one for those who have work authorization and one for those who don't, do not join either line.

You do not have to use any particular formula to invoke your rights, but the following will suffice:

I do not wish to speak with you, answer your questions, or sign or hand you any documents based on my Fifth Amendment rights under the United States Constitution.

### **Do not sign anything**

Never sign anything without reading, understanding and knowing the consequences of signing it. This is particularly true when dealing with ICE or DHS.

### **Talk to a lawyer.**

If possible, carry with you the name and telephone number of an immigration lawyer who will take your calls. The immigration laws are hard to understand and there have been many recent changes. DHS will not explain your options to you. As soon as you encounter a DHS agent, call your attorney. If you can't do it right away, keep trying.

### **Seek protection from ICE enforcement**

Workers involved in a labor dispute—which can mean a union organizing drive or a strike or a large scale wage and hour claim—may be able to keep ICE from conducting raids or I-9 audits at their workplace. The Department of Labor, the Equal Employment Opportunity Commission and the NLRB have an agreement with the DHS that should help keep ICE away while the dispute is going on. If this applies to you have your union or other organization look into this protection as soon as possible.

## **RESOURCES**

The local chapters of the National Lawyers Guild attempt to provide legal observers for demonstrations, such as major rallies, that are likely to draw a police presence. While the Chapter may not be able to provide observers for much labor picketing, particularly picketing that will extend for more than one day, contact the Chapter in your area to ask for observers as far ahead of your event as practicable.

If you need help finding a lawyer please consult the following websites:

National Lawyers Guild Referral Directory:  
**[nlg.org/referral directory](http://nlg.org/referral-directory)**

National Police Accountability Project Referral  
Directory: **[Nlg-npap.org/find-an-attorney](http://Nlg-npap.org/find-an-attorney)**

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YOUR  
MIND.  
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**—MUHAMMAD ALI**