

UnFAIR LABOUR Practices, anti-union Discrimination, and workplace violence

Module 2: Understanding Anti-Union Discrimination



Structure of this module:

- Why do workers need to be protected against acts of anti-union discrimination?
- Impact of Anti-Union Discrimination.
- Forms of Anti-Union Discrimination.
- Strategies used to undermine trade union activities.
- Addressing anti-union discrimination at the national and workplace level.

Why do workers need to be protected against acts of anti-union discrimination?



The ILO's **Committee of Experts on the Application of Conventions and Recommendations (CEACR)** and **Committee on Freedom of Association (CFA)**, when dealing with specific cases, have considered that,

“anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions.”

Why do workers need to be protected against acts of anti-union discrimination?

Unless individuals are free to decide for themselves whether to form or join trade unions and/or take part in union activities **without external pressure** or the **risk of negative consequences**, workers' organizations cannot exist and operate freely and independently.

Impact of Anti-Union Discrimination



Compilation of decisions of the Committee on Freedom of Association:

“Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the **actual disappearance of trade unions** composed only of workers in an undertaking...”.

Compilation of decisions of the Committee on Freedom of Association:

“In cases of anti-union dismissals, newly established enterprise level unions are likely to suffer adverse consequences threatening their very existence, if their entire leadership and a large part of their membership is dismissed.”

Forms of Anti-Union Discrimination



The **CFA** has stressed that one form of anti-union discrimination, the **dismissal of trade union leaders**, may have a particularly damaging effect in the early stages of unionization.

This practice can “fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply joining the union.”

The **CFA** also stated that protection against acts of anti-union discrimination should cover not only **hiring** and **dismissal** but also any **discriminatory measures** during employment, in particular

- **suspension,**
- **transfers,**
- **downgrading,**
- the **exclusion** from certain benefits or career opportunities and
- all actions taken in **retaliation** against a worker exercising trade union activities, as well as compulsory **retirement**.

Compilation of decisions of the Committee on Freedom of Association:

“Acts of anti-union discrimination may vary in nature and are not confined to **discharge, dismissal, retrenchment or termination of service**, but also include **all actions taken in retaliation against a worker exercising trade union activities**, such as suspension.”

Compilation of decisions of the Committee on Freedom of Association:

“The **non-renewal of a contract** for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98.”

Strategies used to undermine trade union activities



Compilation of decisions of the Committee on Freedom of Association:

“In accordance with Convention No. 98, a government should take measures, whenever necessary, to ensure that protection of workers is effective, which implies that **the authorities should refrain from any act likely to provoke, or have as its object, anti-union discrimination against workers** in respect of their employment.”

Compilation of decisions of the Committee on Freedom of Association:

“Protection against acts of anti-union discrimination would appear to be **inadequate** if an employer can resort to **subcontracting as a means of evading** in practice the rights of freedom of association and collective bargaining.”

Compilation of decisions of the Committee on Freedom of Association:

“Fixed-term contracts should not be used deliberately for anti-union purposes.”

Compilation of decisions of the Committee on Freedom of Association:

“Granting bonuses to non-union member staff – even if it is not to all nonunion workers – and **excluding all workers who are union members from such bonuses** during a period of collective conflict, constitutes an act of anti-union discrimination contrary to Convention No. 98.”

Compilation of decisions of the Committee on Freedom of Association:

“It would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where **employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal,** dismiss any worker, if the true reason is the worker’s trade union membership or activities.”

Compilation of decisions of the Committee on Freedom of Association:

“The application of **staff reduction programmes** must not be used to carry out acts of anti-union discrimination.”

Compilation of decisions of the Committee on Freedom of Association:

“The liquidation of a company and the fact that the legal person under which the company operated has ceased to exist **should not be used as a pretext for anti- union discrimination** nor should they be an obstacle to the competent authorities determining whether or not there were acts of anti-union discrimination and, if such practices are shown to have taken place, to sanctioning such illegal acts and ensuring that the affected workers are duly compensated.”

How can employers interfere?

Aimed to protect against acts intended to:

- Promote the establishment of a trade union under the **domination** of the employer.
- Support trade unions by financial means, with the object of placing such organization **under control**.

Addressing anti-union discrimination at the national and workplace level



Compilation of decisions of the Committee on Freedom of Association:

“One of the fundamental principles of freedom of association is that workers should enjoy **adequate protection against all acts of anti-union discrimination** in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of **trade union officials** because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions...”.

Compilation of decisions of the Committee on Freedom of Association:

“The government’s obligations under Convention No. 98 and the principles on protection against anti-union discrimination cover not only acts of **direct discrimination** (such as demotion, dismissal, frequent transfer, and so on), but extend to the need to protect **unionized employees from more subtle attacks** which may be the outcome of **omissions**.

In this respect, proprietorial changes should not remove the right to collective bargaining from employees, or directly or indirectly threaten unionized workers and their organizations.”

Compilation of decisions of the Committee on Freedom of Association:

“Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions..., **additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts**”.

Compilation of decisions of the Committee on Freedom of Association:

“Protection against anti-union discrimination applies equally to **trade union members** and **former trade union officials** as to **current trade union leaders**.”

Compilation of decisions of the Committee on Freedom of Association:

“... The Committee itself has stated in relation to grievances concerning anti-union practices in both the public and private sectors that such complaints should normally be examined by **national machinery** which, in addition to being **speedy**, should not only be **impartial** but should also be **seen to be such by the parties** concerned.”

Compilation of decisions of the Committee on Freedom of Association:

“1086. Protection against anti-union discrimination should apply more particularly in respect of acts calculated to cause the **dismissal of** or otherwise **prejudice a worker** by reason of union membership or because of participation in union activities outside working hours or, with the employer’s consent, during working hours.”

Compilation of decisions of the Committee on Freedom of Association:

“1087. Protection against acts of anti-union discrimination should cover not only **hiring** and **dismissal**, but also **any discriminatory measures** during employment, in particular **transfers, downgrading** and **other acts that are prejudicial to the worker.**”

Compilation of decisions of the Committee on Freedom of Association:

“In a case in which **trade union leaders** could be **dismissed without an indication of the motive**, the Committee requested the government to take steps with a view to punishing acts of anti-union discrimination and to making appeal procedures available to the victims of such acts.”

Compilation of decisions of the Committee on Freedom of Association:

“As long as protection against anti-union discrimination is in fact ensured, the methods adopted to safeguard workers against such practices may vary from one State to another; but if there is discrimination, **the government concerned should take all necessary steps to eliminate it**, irrespective of the methods normally used.”

Compilation of decisions of the Committee on Freedom of Association:

“The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are **examined in the framework of national procedures** which should be **prompt, impartial** and **considered as such by the parties** concerned.”

Compilation of decisions of the Committee on Freedom of Association:

“Legislation should lay down explicitly **remedies and penalties against acts of anti-union discrimination** in order to ensure the effective application of Article 1 of Convention No. 98.”

Conclusion

In Conclusion: Safeguarding Freedom of Association

- Protecting workers from anti-union discrimination is not just a matter of law, but a fundamental pillar of freedom of association.
- As highlighted by the ILO, these acts can severely undermine the very existence and effectiveness of trade unions.
- Recognizing the impact and diverse forms of anti-union discrimination is the first step towards prevention.
- Robust national and workplace-level strategies are essential to ensure workers can exercise their rights without fear of reprisal.
- This module has underscored why protecting workers from anti-union discrimination is paramount for a just and equitable workplace.

End of Module 2

See Activities 2.1 to 2.4