

United Steelworkers

Health, Safety & Environment Department



Bargaining Over Injury Discipline Policies: Submitting Information Requests

Many employers have already implemented or wish to implement policies and programs that discipline workers who report work-related injuries, illnesses and accidents. Discipline can include counseling sessions, verbal and written warnings, suspension or unpaid time off work and termination. Some policies also provide for automatic drug testing for workers who report injuries. The United Steelworkers (USW) opposes such programs.

These programs do not improve workplace health and safety, and they discourage workers from reporting job injuries or filing workers' compensation claims. When injuries aren't reported, workers may not get the medical care they need and the hazards that caused the injuries are not identified and corrected. However, these programs benefit management. They provide management with a lower number of reported accidents for them to record on their injury and illness logs and fewer workers' compensation claims, meaning lower workers' compensation insurance premiums for the employer. Fewer injuries and illnesses recorded on the OSHA logs can mean less frequent visits from OSHA.

What can my local union do about these programs?

Workers often ask, "can my employer implement this kind of program?" The answer is yes and no. Injury discipline programs and policies are mandatory subjects of bargaining. In general, employers are required to notify the union before any such policy is implemented, and bargain with the union prior to implementing such a policy ***if the union requests to bargain***. The union should ***promptly*** request bargaining and begin to file an information request questions on information that will assist them in bargaining. If the employer refuses to bargain, the union has six months to file unfair labor practice charges. If the union does not request to bargain, management can implement these programs. If your workplace has had a program for more than six months, it can be a topic for bargaining at the next round of contract negotiations. A local union may still be able to request bargaining if local union officers were not properly notified about the new

Sample Informational Request Letter

United Steelworkers Local Union XXX



Date

Plant Manager, HR/IR Manager, or Safety Manager

In accordance with our rights under the National Labor Relations Act and in order to carry out our negotiations on the [insert the program/policy name here] the United Steelworkers Local Union XXX requests the following information.

Have you conducted or caused to be conducted an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees and/or supervisors to be injured or made ill? If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

If you have any questions, please let me know. The union will await management's response to this request.

Sincerely,

Local Union President or USW Staff Representative

program or policy and given an opportunity to bargain by the employer. USW local unions should exercise their bargaining rights by promptly requesting to bargain over these programs, and submitting information requests. USW local union health and safety committee members should work with their local union leadership and USW staff representative to ensure that the request to bargain is properly executed.

Information requests provide the means for unions to get information about a program or policy that is needed for effective bargaining. **Further, as long as there is a valid information request outstanding that an employer has not responded to in good faith, an employer is prohibited under the National Labor Relations Act from declaring impasse in bargaining and implementing its policy or program.**

Below is a sample list of information request questions for an employer who is seeking to introduce an injury discipline policy/program. There are many follow-up questions to each of these, as well as many other questions that can be submitted. Information requests should be submitted to management in writing. The questions below can be incorporated for use into a letter to management.

Sample Information Request Questions Regarding Injury Discipline Policies

1. Have you conducted or caused to be conducted an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees and/or supervisors to be injured or made ill?

If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

2. Have you conducted any study or analysis that led you to believe that the [*insert name of new policy/program*] is the appropriate program to reduce work-related injuries and illnesses at this workplace?

If so, please provide evidence upon which you rely for this belief, including but not limited to titles of books, articles, etc., and names and addresses of organizations, and/or consultants whose information created this belief.

3. Please indicate if any of the reasons listed below are your reasons for creating the [*insert name of new policy/program*]

	<u>Yes</u>	<u>No</u>
Reduce injuries in the workplace	___	___
Increase productivity at the workplace	___	___
Reduce workers' compensation claims	___	___
Enter fewer injuries/illnesses on OSHA 300 Log	___	___

Reduce absenteeism	___	___
Symbolic evidence of corporate responsibility	___	___
Increase overall organizational effectiveness	___	___
Reduce damage to company property	___	___

For each of the reasons that you have checked, please provide documentation that the [*insert name of new policy/program*] will address, ease or cure the problem.

- Does the company believe that the [*insert name of new policy/program*] will in fact reduce work-related accidents, injuries and illnesses? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and the names and addresses of organizations, and/or consultants whose information created that belief.
- Do you know how many lost work hours in the past 12 months were related to supervisors and/or employees being injured or made ill on the job?

If no, do you have any program in place or in the planning stage to make this determination?

If yes, how many of those lost hours came from employees in the bargaining unit?

If yes, how many different individual employees were involved in accumulating these lost hours?

If yes, which of these employees were injured or made ill as the primary result of an at risk behavior, unsafe behavior or unsafe act and which of these employees were injured or made ill as the primary result of exposure to a health or safety hazard on their job? Provide all documentation used to support these determinations.

- Please provide a list of all names, dates, incidences and injury, illness and/or property damage outcomes over the last five years in which supervisors and/or bargaining unit employees have failed to perform job assignments in a safe manner, with accompanying incident reports documenting this failure.
- Please provide a list of all names, dates, incidences and injury, illness and/or property damage outcomes over the past five years in which supervisors and/or bargaining unit employees have been involved in a work-related injury, illness or accident as a result of exposure to an unsafe or unhealthy workplace condition (hazard), with accompanying incident reports documenting the unsafe/unhealthy condition or hazard.

8. Please provide a copy of all “incident investigation forms” beginning Oct. 1, 2000, to the present for all salaried and bargaining unit employees.
9. Please provide a list of all OSHA recordable and nonrecordable symptoms, injuries and illnesses affecting bargaining unit employees and supervisors beginning Oct. 1, 2000, to the present, along with accompanying incident reports detailing such symptoms, injuries and illnesses.
10. Please provide a list of all incidents that led to the destruction of property beginning Oct. 1, 2000, to the present, including the approximate value of property damage for each incident, along with copies of incident reports regarding such property damage.
11. [Note—this question should only be used if a program is in place at your workplace that focuses on employees involved in multiple injuries, illnesses, and/or near misses] Please provide a list of all supervisors and bargaining unit employees who have received counseling under the “accident repeater program,” dates that they received counseling, and all accompanying paperwork and forms related to counseling sessions for each supervisor and/or bargaining unit employee counseled. Also indicate for each person on the list whether or not any further disciplinary action was taken regarding that individual, the date of the disciplinary action and what that disciplinary action was.

What if management does NOT agree to negotiate?

If management contends that they have the right to unilaterally implement this program or policy because of the *management rights clause* in the contract; or, if they refuse to negotiate from the union’s request, the local union should contact their staff representative and consider filing a charge with the National Labor Relations Board for management’s failure to bargain.

Where can my local union get help?

The USW urges local union members to work with their health & safety committee and local union leadership if an injury discipline program is proposed by management to ensure that the local union has a full understanding of the company’s proposal. The local union leadership should work with the USW staff representative to determine how to best address the union’s concerns with the proposal from management. The USW Health, Safety and Environment Department can provide assistance to your local union following a request through the USW District. Additional information can be found on this topic at www.steelworkers-usw.org (select resources—health, safety & environment). Local union representatives are also welcome to submit questions about these programs by e-mail to safety@steelworkers-usw.org.

In addition to answering questions the Health, Safety and Environment department is interested in learning more about these programs that are in place in our facilities. Interested local unions are welcome to provide us with the information about these programs at your workplaces and descriptions of how the union has taken these programs on in your workplace.