Vol. 9 No. 4, July-August, 1981

Labor Occupational Health Program MONITOR

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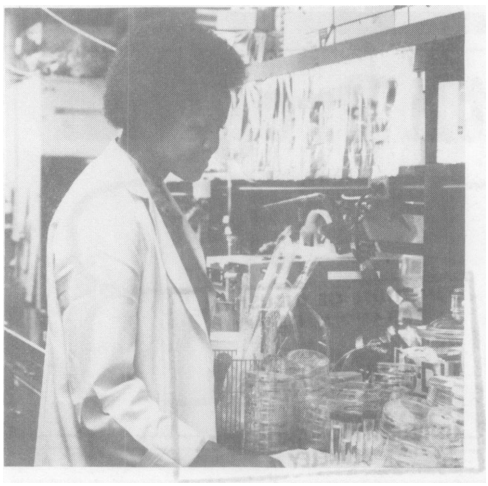

Labor Occupational Health Program MONITOR

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Vol. 9 No. 4, July-August, 1981

Published bimonthly (six issues per year) by the Labor Occupational Health Program, Institute of Industrial Relations, University of California, 2521 Channing Way, Berkeley, California 94720. Phone (415) 642-5507. LOHP is a labor education project of the Institute of Industrial Relations which produces a variety of occupational health materials and conducts workshops, conferences, and training sessions for workers and unions in California.

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Many workers, such as this laboratory employee at the University of California, Berkeley, may face invisible hazards to reproductive health on their jobs. Although the problem is often considered a "women's issue," men may be affected too. Unions, government agencies, and the courts have recently grappled with the conflict between reproductive protection and sex discrimination. (See page 10.) (Photo: Kate Caldwell.)

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MOVING?

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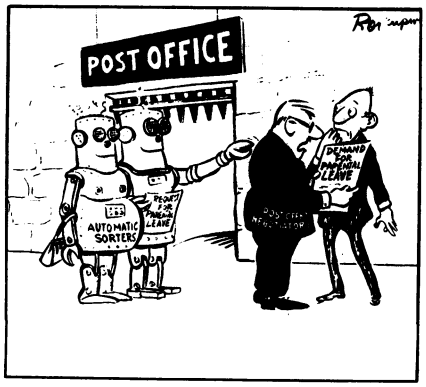

S.F. Bay Area Local

IBEW Urges PCB Standard

by Juliann Sum
Business Representative/Industrial Hygienist, IBEW Local 1245

(PCB's, or polychlorinated biphenyls, are insulating liquids frequently used in electrical equipment such as transformers and capacitors. Recent research has suggested that PCB exposure can cause skin irritation, liver damage, reproductive effects, and possibly cancer. The U.S. Environmental Protection Agency has banned manufacture of PCB's, but until they are replaced, thousands of outdoor pole-mounted transformers and capacitors on electric lines still contain the compounds. Ruptures of these components, causing PCB spills, are quite common. International Brotherhood of Electrical Workers (IBEW) Local 1245 in the San Francisco Bay Area, representing employees of Pacific Gas and Electric (PG&E), has been a leader in efforts to adopt a PCB standard to protect California workers. (For more on PCB's and PG&E, see **Monitor**, *September-October, 1980, p.10.)*

Labor, management, and government representatives on a PCB Advisory Committee met for the sixth and final time in April, 1981 to develop proposed language for a standard that will be used to protect California workers from PCB's.

Representatives who attended the meetings in San Francisco and Los Angeles were appointed by California's Division of Occupational Safety and Health last October, after IBEW Local 1245 petitioned the state for a PCB standard earlier in 1980.

The proposed standard will be the subject of public comment on August 27, 1981, when the Cal/OSHA Standards Board considers the committee's recommendations in an open meeting.

For unions and workers, Local 1245's petition is important in that:

1. it will lead to the reduction of work-related hazards involving PCB exposures; and
2. it demonstrates how unions can exercise their right to initiate occupational safety and health standards.

PCB's, or polychlorinated biphenyls, are a highly toxic synthetic liquid which has been used extensively for its thermal and electrical insulating properties. Consequently PCB's are found throughout the world, particularly, in many transformers, capacitors, switches, regulators, hydraulic equipment, and heat exchange equipment. Unfortunately, PCB's are found not only in such equipment, but through accidental leaks, ruptures, and improper disposal, PCB's have entered the environment and can be found in most humans due to an accumulation in the food chain.

Health effects from PCB exposure may include cancer, liver injury, skin lesions, birth defects, and reproductive damage.

LOCAL 1245 ACTS

Thousands of Local 1245 members have worked with, or may be exposed to, PCB's. The contact occurs when servicing and maintaining PCB-containing equipment; cleaning up PCB spills; transporting, installing, and removing equipment containing PCB's; and when PCB-contaminated equipment and work areas have not been adequately cleaned.

In light of the potential hazards of PCB's, Local 1245 has been actively seeking greater protection for exposed workers. After raising its concerns over PCB's with employers for many years, the Local decided to petition for the nation's first comprehensive standard to protect potentially exposed workers.

After much heated debate between labor and management representatives on the Cal/OSHA PCB Advisory Committee, a standard is now being proposed to the Standards Board. The proposed standard reflects many of the concerns and remedies which have been presented by Local 1245.

Since the August 27 open meeting of the Standards Board in San Diego will greatly affect the final content of the PCB standard, workers and their representatives must be willing to speak out on their experiences and concerns with PCB's.

For more information on issues contained in the proposed standard, and the San Diego hearing, feel free to contact Juliann Sum, IBEW Local 1245, P.O. Box 4790, Walnut Creek, CA 94596. Phone: (415) 933-6060.

The Standards Board will accept written statements on the PCB proposal through September 11, 1981.

WomenWorking

A First for LOHP

'Hazards of Office Work' Conference in S.F.

by Sharon Samek

Close to 100 clerical workers representing various unions and workplaces throughout the Bay Area got together on July 18, 1981 to learn about the hazards of office work and to strategize on how to make the office a safer, more healthful place to work. The event was an Office Workers' Health Conference sponsored by the Labor Occupational Health Program, held at University of California Extension in San Francisco.

This year, LOHP broke away from its tradition of sponsoring an annual conference on general job health hazards facing women workers, and instead focused exclusively on office workers. With the number of clerical workers increasing 167% over the past 20 years, the *rate* of injuries among clerical workers has increased 80%. With the increasing numbers of video display terminals (VDT's) coming into our offices—replacing typewriters, bringing speed-ups and stress into our jobs—it is apparent that "Is Office Work Making You Sick?" was an appropriate theme for the 1981 women workers' conference.

Helen Palter, president of the San Francisco-Oakland Newspaper Guild (Local 52) and active member of the VDT Coalition (See *Monitor,* May-June, 1981, p. 5), began the day with introductory comments on how indoor air pollution, video display terminals, noise, and other facts of office work can make you ill.

Next was the keynote address, given by Karen Nussbaum, a former clerical worker who is also a founding member of "9 to 5" (a group of unorganized clerical workers in Boston), president of "Working Women" (a national association of office workers), and newly-appointed Acting President of the Service Employees International Union, District 925. Karen spoke of how millions of female office workers are beginning to fight for rights on the job, reject low wages and sexual harassment, alert themselves to the hazards of clerical work, and demand that offices become safe and healthy places to work.

Workshops on specific hazards, office workers' rights, local resources, and a day-long health fair were all part of the program. The *Union WAGE* (Union Women's Alliance to Gain Equality) Health and Safety Committee conducted health screenings, including

At a press conference and rally at Crocker Plaza in the downtown San Francisco financial district, called to announce the LOHP Office Workers' Health Conference, colorful picket signs attracted the media (left.) Props such as a walking video display terminal (below) were provided by the Bay Area Labor Theatre. (Photos: Kate Caldwell).

Participants at the LOHP Office Workers' Health Conference (left) listened attentively as Karen Nussbaum, president of Working Women and of SEIU District 925 (right) urged more attention to the hazards of office work. (Photos: Kate Caldwell.)

blood pressure testing, stress evaluations, and back and neck care exercises. Two slide show presentations, **"Tomorrow's Technology, Today's Headache"** by Shop Talk Productions and the New York Committee for Occupational Safety and Health (NYCOSH), and **"Health Hazards of Clerical Work—the Story of Lotta Payne,"** a VDT skit performed by the Bay Area Labor Theatre, were included in the fair. An array of resource tables representing such groups as Union WAGE, Women Organized for Employment (WOE), Working Women, National Organization of Women (NOW), Coalition for the Medical Rights of Women, the *People's World,* and the San Francisco Community College Labor Studies Program helped contribute to the success of the day.

For more information on the hazards of office work, visit the LOHP Library at 2515 Channing Way in Berkeley, open Monday through Friday from 8 am until noon. For answers to specific questions on hazards, call LOHP at (415) 642-5507.

Available for purchase now is LOHP's new **VDT Packet,** a compilation of the most up-to-date articles and studies on the hazards of video display terminals. Another packet is available on clerical workers. Both sell for $3.00, including postage. Prepayment is preferred, and checks should be made payable to "The Regents of U.C."

Women's Workplace Health Conference in N.Y.

Instead of models wearing glittering evening gowns, working women will model good fits in hard hats and safety shoes at a unique "fashion show" highlighting the national conference, **"Working Women: Designs for Workplace Health"** in New York City on September 24, 1981.

The conference will be held from 10 am to 8 pm at District 1199 Cultural Center, 410 E. 43rd St. Sponsored by the Women's Occupational Health Resource Center of Columbia University, the conference will include displays of model work environments, continuous audiovisual presentations, and workshop/seminars. Among the model work environments will be a clinical laboratory, a hospital, an office, an artist's studio, a retail store, a household, and a sewing and stitching operation.

Speakers will include Ms. Judith Gregory, Research Director of *Working Women;* Dr. Jacqueline Messite, a NIOSH expert on reproductive hazards; and Dr. Jeanne Stellman, author of *Women's Work, Women's Health: Myths and Realities.* A publications corner will have the newest books on women's health, occupational health, and environmental issues. National and local women's networks will be represented by display booths. Suppliers of personal protective equipment from lab coats to mining gloves will demonstrate items designed to fit women, and manufacturers such as IBM and 3-M will exhibit furniture and lab safety equipment.

Tickets are $15 for the full day and $5 for the evening alone (after 5 pm.) Quantity discounts are available on tickets. For more information, write to: Columbia University, School of Public Health, 60 Haven Avenue, B-1, NYC 10032.

LOHP Union Reps' Course

A week-long residential health and safety course for union representatives, shop stewards, or anyone involved in health and safety activities in a local union will be offered by the Labor Occupational Health Program from September 14-18, 1981. The course, from 8:30 am - 5 pm Monday through Friday, will be held at the Institute of Industrial Relations Lounge, 2521 Channing Way, in Berkeley, California.

Registration fee is $50.00.

Participants will learn pragmatic health and safety skills and acquire a great deal of information. New and different approaches to communicating the information to the membership through steward training, health and safety committees, membership meetings, executive board presentations, etc. will be suggested.

For more information, or to register, call LOHP at (415) 642-5507.

Workers and the Law

The Right to Refuse Hazardous Work

by Larry Drapkin
LOHP Legal Coordinator

In the coming years OSHA will deemphasize workplace inspections and will more actively seek to promote voluntary employer compliance with existing health and safety standards. This approach may well foster some improvements in workplace health and safety. However, the decrease in OSHA surveillance of the workplace will require increased worker and employer watchdog efforts geared towards insuring that workplace health and safety is protected.

In seeking to prevent workplace injury and illness it is, at times, necessary that workers take *immediate* action in order to avoid imminent dangers and hazards to which they are exposed. These include efforts to quickly remedy hazards through the union, the employer, and, if necessary, OSHA. Further, a worker may feel it is necessary to refuse to perform work under these conditions. Various laws, regulations and bargaining agreements give workers a *limited legal right to refuse* dangerous work without threat of employer retaliation. Before describing the various legal rights it should be emphasized that these protections are by no means an assurance that a worker who refuses will not suffer discrimination. They only create the potential for the worker to get his or her job back, with back pay, if the employer discrimination can be shown in the courts or proven to an arbitrator.

LEGAL STANDARDS

There are four major legal standards which grant a limited right to refuse hazardous work. Some of these standards overlap and give multiple coverage to an individual. Rather than give an exhaustive explanation of each standard, this article will focus on the key elements of the various standards and will emphasize the type of evidence needed to show protected activity. Further, this article will assess the difficulties and potential risks a worker encounters when refusing under these standards.

The Reasonable Person Standard

Under the federal OSHA refusual regulation,[1] as well as under the interpretation of some state (such as California's) laws,[2] the crucial test is whether the working conditions to which the refusing individual was exposed, would be seen by a "reasonable person" as posing "a real danger of death or serious injury." This test does not consider an individual's fears sufficient to justify a refusal unless the fears are deemed a reasonable response by an average individual. This is a somewhat vague and difficult standard to apply, even when a worker knows that this is the applicable test. Further, other factors are considered under these regulations and laws such as whether:

1) the worker sought to resolve the problem by raising it with the employer, OSHA, or another appropriate agency; or
2) the worker explained to the employer or the employer's representative the basis for his or her concern; or
3) the worker expressed his or her intent to refuse work unless the hazard was rectified.

There are numerous difficulties in utilizing a reasonable person test. Foremost is the uncertainty of whether a refusal will or will not be considered appropriate under a vague standard. Therefore, while the federal standard and California Labor Code provide a right to refuse, the exercise of this right by California workers is not without significant risk of loss of job or reprimand for refusing what is later determined not to constitute an imminent hazard as seen through the eyes of a reasonable person.

The Good Faith, Subjective Fear Standard

Private sector workers who are covered under the National Labor Relations Act (NLRA)[3] have varying degrees of protection under that law. In terms of refusals of hazardous work, there exist two pertinent standards. For workers not covered by a collective bargaining agreement which contains a no-strike clause, the NLRA standard is more flexible than the previously described reasonable person standard. These workers need show only that their refusal was based on a good faith personal fear. The fears need not be considered rational by others. However, these protections under the NLRA do not prohibit the employer from permanently replacing the worker exercising his or her refusal rights. The worker would be protected only from discipline and terminations which were substantially in response to the actual refusal to do work.

The Abnormally Dangerous Conditions Standard

Those private sector workers who are covered by a collective bargaining agreement which contains a no-strike clause will not be protected under the subjective fear standard. The NLRA will afford these workers protection against what are termed "abnormally dangerous conditions." This means that the worker must fear a substance or physical danger which is indeed abnormally hazardous. Thus the federal OSHA and California OSHA standards are more lenient in that they only require that there *appears* to be a significant hazard. For this reason the abnormally dangerous conditions standard is not of particular help to those covered by the NLRA because the OSHA and California standards offer broader protection under a more flexible standard.

COLLECTIVE BARGAINING

It is clear that the right to refuse is, for many workers, an impractical right. This is so because of the risk of one's job inherent in refusal situtations. Only when the refusal meets the criteria of one of the various applicable standards does the law offer protection. But whether the standard is met is, of course, unknown by the worker and the

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(Photo: Ken Light.)

What Are the Problems? What to Do?

Occupational Hazards and Minority Workers

by Brenda Presley
LOHP Labor Coordinator

and Larry Drapkin
LOHP Legal Coordinator

There is an unrelenting crisis in the American workplace—an epidemic of occupational injuries, illnesses, and deaths. The numbers are not exact, but conventional agencies have estimated that 14,000 workers will die on the job each year. Further, 100,000 deaths in a given year may be attributable to occupational diseases and another 390,000 new occupational illnesses may arise annually. Finally, a staggering 2.2 million workers can expect to incur a work-related disabling injury during a single year. The numbers give stark exposure to a problem of substantial magnitude.

MINORITY WORKERS

While the hazards of the workplace are indicated in the figures cited above, the problem of workplace health and safety has grown even more serious among minority group workers. The numbers of workplace illnesses and injuries in minority communities are disproportionately high.

There are many explanations for this reality. Foremost is the fact that minority workers are more likely to be employed in physically demanding and dangerous jobs than their white counterparts. The explanation for this development is simple—discriminatory employment patterns ensure that, in general, lower paying hazardous work is reserved for economically and socially disadvantaged groups. Further, lower paying jobs generally do not provide for upward mobility as compared to less dangerous and higher paying occupations.

Another consideration is that minority workers are more likely to be the subject of a "blame the victim" approach than white workers. Thus, instead of emphasizing a cleanup of the working environment, it has been possible to argue that certain ethnic or social groups should be excluded from dangerous but more highly paid positions. But this same exclusionary approach has not been followed in the lower paying jobs and occupations.

WHAT IS LACKING

Even though we may recognize the problem, and may seek to end historical discrimination, many obstacles lie in our way. There is a significant lack of information and data that will allow minority workers to address the health and safety hazards which they face. Adequate data should (1) identify which groups of workers are at greater risk, and (2) relate injuries, illnesses, and deaths on the job to specific occupational groups or classifications of workers including factors of race, sex, and age.

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MINORITY WORKERS

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The development of information and data is necessary so that we as a society will recognize the scope and magnitude of occupational health hazards faced by minority workers. Further, we must seek to identify all populations and subpopulations who might be at "special risk."

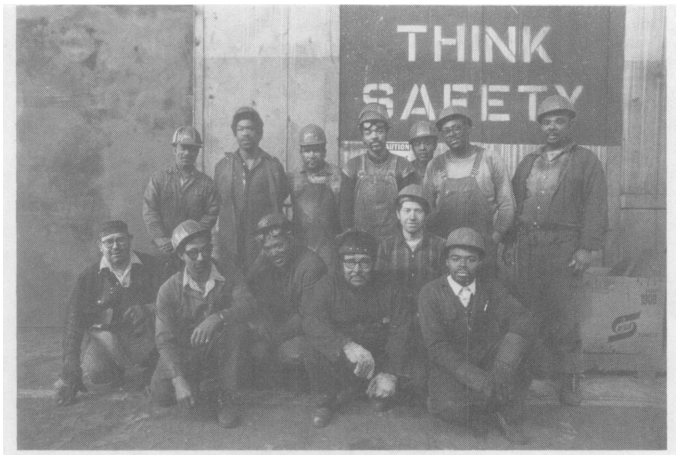
We have examples of "special risk" populations such as these:

- Blacks make up only 22% of the basic steel industry workforce, but 91% of Blacks employed in the steel industry are assigned the most dangerous tasks;
- Within the Pacific Asian-American community, there are issues focusing around problems of language barriers and sweatshops in textile manufacturing;
- Issues particular to Latin workers include the obvious hazards faced by farmworkers who perform physically demanding work as well as being exposed to various toxic pesticides and fungicides;
- The Native American community of the Southwest mines uranium and is subjected to disproportionately high rates of related cancers.

STRATEGIES FOR SOLUTIONS

Solutions require that we first acknowledge the problem and document its magnitude, effects, and its social and economic costs. Basic epidemiological research must be done on the multifaceted problems faced by minority workers. We must address and substantiate the types of hazards more likely to be faced by various minority groups.

In addition, our health system must adapt and respond to these problems. For instance, greater emphasis and sensitivity to workplace hazards should be developed among health providers. An ability to recognize and identify occupational health hazards and their resulting ailments is essential in the treatment of the problems of minority workers. Providers must be trained to look for occupational diseases, to take work histories, and to emphasize preventive measures which workers can exercise in order to stave off work-related illnesses.



(Photo: Ken Light.)

Also, the specialty of occupational medicine must be advanced and services must be made accessible to all affected workers.

Workers, their unions, employers, and the community must be the subjects of effective education on hazard recognition and the appropriate methods of prevention of occupational injuries, illnesses, and deaths.

Unions, interested organizations, individuals, and workers must look to solutions that will ensure that health and safety becomes a right in every workplace. While the Occupational Safety and Health Act assures this right, in practice it must be sought on a workplace-by-workplace, job-by-job basis.

Finally, employers must be encouraged to ensure safer and more healthful working conditions. This could be accomplished through union and governmental initiatives. However, such efforts must have public support and this requires adequate public awareness and understanding of occupational health hazards.

A NEW APPROACH

Minority workers face a disproportionately high risk of becoming victims of occupational health and safety hazards. Up to now, we have accepted the fact that certain groups of workers may be forced to operate within an "acceptable level of risk" which presupposes a certain number of illnesses, injuries, and deaths in our workplaces. It is time to alter this approach and to ensure that all workers will receive the same levels of protection both in theory and in practice. To continue to allow some groups to bear a greater burden of workplace hazards serves only to perpetuate inequality and to contradict the national goal of reducing occupational health and safety hazards.

NIOSH Conference on Minority Hazards

Morris Davis, former director of the Labor Occupational Health Program, was a featured speaker at a National Conference on Occupational Health and Safety Issues Affecting Minority Workers, July 6-8, 1981, in Cincinnati, Ohio. The conference was sponsored by the National Institute of Occupational Safety and Health (NIOSH).

Other speakers included William Lucy, president of the Coalition of Black Trade Unionists and a national officer of AFSCME, and Leone Lynch, international vice president of the United Steelworkers of America.

Workshops were conducted on: the lack of data on minority occupational health issues; community health care facilities' role in detection and treatment of occupational disease; and affirmative action. Recommendations from these sessions included: federal funding of minority educational institutions to study hazards facing minorities; formation of a National Health Service; and NIOSH studies regarding minority workers to be published in the native languages of those workers.

MINORITY WORKERS CONFERENCE

Occupational Health and Safety Issues

September 11-12, 1981

Friday: 8am-5pm; Saturday: 8am-noon

Dwinelle Hall, University of California, Berkeley

Registration: $10.00

There is an unrelenting crisis in the American workplace—an epidemic of injury, illness, and death. Minority workers do the country's most dirty and dangerous jobs and, as a result, die or become ill in disproportionately high numbers.

The occupational health and safety problems faced by minority workers will be examined in a one and one-half day conference, sponsored by LOHP, which will be held September 11-12, 1981, on the University of California, Berkeley campus.

Specific topics will include an historical and present-day analysis of the occupational health and safety problems most likely to be encountered by minority group workers, and discussion of the health and safety rights of workers including legal rights under various labor and anti-discrimination laws. Workshops will examine the problems of minority workers in specific industries and occupations. A "strategies for solution" session promises to combine the multi-disciplinary talents of workers, union representatives, health and legal professionals, and interested community and governmental groups.

The conference will be among the first in Northern California to analyze the seriousness and scope of the occupational hazards faced by ethnically diverse worker populations. For more information, call Brenda Presley, LOHP Labor Coordinator, or Larry Drapkin, LOHP Legal Coordinator, at (415) 642-5507.

(Photo: Ken Light.)

Topic Highlights

- **Minority Workers in Various Industries**
- **Safety and Health Rights of Workers**
- **Employee Rights Under Employment Discrimination Laws**
- **Workers' Compensation**
- **Legal Remedies for Injuries and Illnesses**
- **How to Identify Hazards**
- **Strategies for Solution**

REGISTRATION

Name _____ Telephone _____

Address _____

Union or Organization _____

Registration is $10.00 per person.

Enclosed is $_____ for _____ people.

Mail registration to: LOHP, 2521 Channing Way, Berkeley, CA 94720.

Make checks payable to: The Regents of U.C.

Gambling With The Future

Reproductive Hazards in the Workplace

by Janet Bertinuson

Every year as many as 8% of the children born in the United States suffer from some type of birth defect. An even greater number of children are born with problems such as learning disabilities which don't show up until later in life. In addition to birth defects, other reproductive problems such as miscarriage and stillbirths occur in significant numbers; some estimates are that as many as 50% of all pregnancies end in miscarriage.

In recent years the question of how substances in the workplace affect the rate of birth defects, stillbirths, and other damage to the reproductive system has received national attention. Most chemicals that enter the workplace have not been adequately tested (or tested at all) to determine how they affect the ability to conceive and bear normal healthy children. However, available information indicates that reproductive hazards are a potential problem for many working men and women.

WHEN AND HOW DOES REPRODUCTIVE DAMAGE OCCUR?

Prior to Conception

Some substances found in the workplace can affect reproduction by preventing conception through changes in sex drive or damage to eggs and sperm, changing the genetic material carried by eggs and sperm, or by causing cancer or other disorders in the reproductive organs.

• A number of chemicals in the workplace and general environment can prevent conception. They do this by causing *decreased sex drive* and *impotence* as well as *menstrual problems.* The menstrual problems are often related to an upset in the female hormone system, and may prevent ovulation from taking place.

• Another effect that can occur before conception is *direct damage to the sperm and egg cells* (also called germ cells). Such damage can lead to abnormal sperm or reduce the number of sperm below what is necessary for conception to take place.

• Changes called *mutations* can also be produced in the genetic material of cells. The genes and chromosomes determine the traits children will inherit from their parents, so these mutations can be passed on to future offspring. Such changes in the genetic material can also result in birth defects, stillbirth, or miscarriage depending on what kind of damage is produced in the developing embryo or fetus. When the effects are severe and the fetus can't live, miscarriage or stillbirth will occur. Some mutations may cause minor changes in the child, and even a child with no visible damage may pass a mutation on to his/her children. Substances (called *mutagens*) which cause mutations can be identified with special laboratory tests using bacteria, as well as through animal testing. However, much of what is now known about mutagens comes from studies of exposed workers, their spouses and children. A number of these substances can also cause cancer in humans.

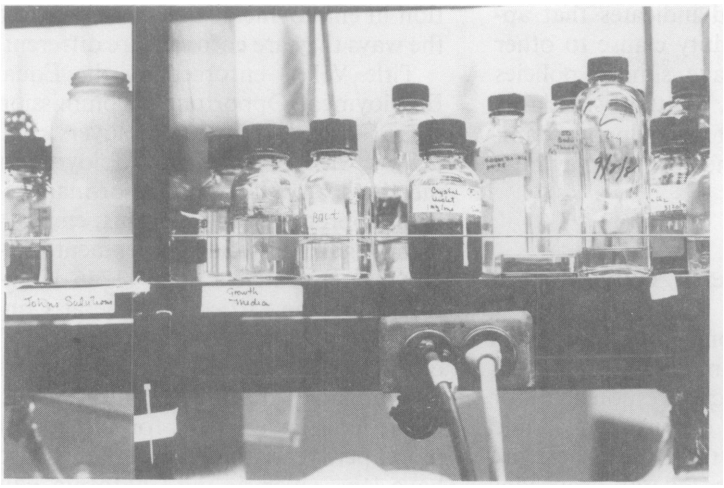
• Cancer causing substances (carcinogens) which affect the reproductive system may also prevent conception. They may affect the scrotum or testes preventing sperm production, or cause prostate cancer which interferes with semen production.

During Pregnancy

Once conception occurs, an embryo or fetus can be harmed by substances which pass through the placenta to the fetus or which are present in the uterus lining. Because major organs are forming in the first 14 to 60 days of pregnancy, the fetus is thought to be at greatest risk during this time. However, the effects of exposure to hazardous agents may vary depending on how far the fetus has developed, so the same substance might cause miscarriage at one point or cause organ damage at other times.

Substances which prevent normal development of the fetus are called *teratogens.* Most people are familiar with the teratogen, thalidomide, which caused deformed or missing limbs in children of mothers who took the drug to prevent nausea during pregnancy. While thalidomide is the most widely known teratogen, a number of chemical and biological agents found in the workplace also cause birth defects. The mother's exposure to hazardous substances during pregnancy may also result in miscarriage or stillbirth because damage to the fetus is so great it can't

(Photo: Kate Caldwell.)



(Photos: Kate Caldwell.)

survive.

If a cancer causing material reaches the fetus it could cause cancer in the child. However, thus far only one substance (DES) has been linked to cancer caused by exposure to the fetus.

After Birth

After birth a developing child may still be harmed by exposure to harmful chemicals brought home on parents' work clothes. Long-term exposure to such substances has been linked to diseases normally seen only in exposed workers. Infants may also take in harmful substances present in breast milk.

HOW ARE WORKERS PROTECTED?

Even though there is a lack of information on reproductive effects related to workplace exposures, it is clear that many chemical or physical agents do cause reproductive problems in both men and women. There are also other substances which have been shown to be mutagens or teratogens in bacterial or animal tests.

Industry Response: Exclusionary Policies and Women

What action has industry taken to protect workers in light of this information? Generally the response of many companies has been to exclude or transfer the workers they consider most susceptible to reproductive hazards—fertile women. In reality such policies are aimed at protecting the fetus should an exposed woman become pregnant. While injury and illness to workers are compensated under the "no-fault" workers' compensation system, damage to a fetus is not. A person up to the age of 21 could potentially bring a lawsuit against an employer claiming that a deformity or other defect was caused by his/her parents' exposure.

Whatever the reason behind them, exclusionary policies are not applied uniformly. For the most part such policies have been applied in jobs which are traditionally closed to women, but as more women move into industrial jobs, reports of exclusions have become more common. In industries where women have always been and still are vital members of the labor force, exclusion is not a policy, despite the fact that there is potential exposure to reproductive hazards. For example, x-ray technicians, beauticians, dry-cleaners and launderers, and operating room personnel are exposed to agents which can affect reproduction, yet women have not been removed from these jobs. In some cases, such as in operating rooms, control measures have been developed to remove the harmful agents, thus protecting all workers. Transfer policies which provide for workers to move out of exposure areas when pregnant or contemplating pregnancy are also used in some industries.

Industry Response: Exclusionary Policies and Men

While women are discriminated against through denial of, or removal from, certain jobs, fertile men remain in the workplace, exposed to substances which are known to affect sexual function or cause mutations they can pass to their children. It is clearly important to be concerned with the effects of workplace exposures on the fetus. Yet if attention is focused solely on an agent's ability to harm the fetus, mutations and other reproductive problems experienced by men are ignored. In fact reproductive hazards to men have not been well studied at all.

Many labor unions, scientists, and government officials believe that if a substance is harmful to the fetus, it is probably harmful to germ cells as well. In fact, while the relationship is unclear, there is a link between the action of mutagens and teratogens. A 1979 study by OSHA showed that of 36 substances with which some companies will not allow women to work because of fetal effects, 21 have been shown to affect men causing sterility, mutations, or cancer.

Policies which treat women as perpetually pregnant and exclude fertile women from the workplace, yet don't extend protection to fertile men, fail to protect the rights of workers to equal employment opportunity and their rights to a healthy and safe workplace provided in the Occupational Safety and Health Act. But, how has government dealth with the issue?

Government Response: OSHA

Until recently, agencies such as OSHA and state OSHA programs skirted the issue of reproductive hazards, so that such hazards were not taken into account until the federal OSHA lead standard was set in 1978. In 1979 and 1980, OSHA dealt with one industry response to reproductive hazards by citing two companies, a smelter and a pigments plant, for violations of the "general duty" clause. This clause requires the employer to provide a place of employment free from serious hazards.

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REPRODUCTIVE HAZARDS

continued from p. 11

The companies were citied because they adopted policies that require women employees to be sterile (surgically or otherwise) in order to work in areas of the plant where they would be exposed to lead. Five women at the pigment plant underwent sterilization in order to keep their jobs.

In its citiation OSHA said that a company cannot seek to eliminate a hazard for women employees by forcing them to choose between their jobs and sterilization. Also, in the process of removing one group of workers instead of cleaning up the workplace, the companies were continuing to expose the remaining male workers to the risk of reproductive damage and other health problems related to lead exposure. Citations were also issued to both companies for a number of other serious violations of the OSHA lead standard.

The citing of two major lead companies indicates OSHA has taken a stand on the issue of reproductive hazards. However, the fact that the citations were appealed indicates that applying the general duty clause to other workplaces that have similar policies might be difficult. Setting standards that protect against reproductive damage to both men and women may be a better approach.

Other Government Agencies

Since excluding one group of workers seems to be a discriminatory practice, it is clear that agencies responsible for equal employment opportunity should be concerned with the issue. There are in fact two major federal provisions which prohibit discrimination in employment on the basis of *sex,* color, religion, and national origin:

- Title VII of the Civil Rights Act of 1964 as amended by The Pregnancy Discrimination Act of 1978 (which expands coverage to include pregnancy, childbearing, and related conditions); and
- Executive Order 11246 of 1965, as amended in 1967.

While both laws prohibit discrimination in employment, their coverage and the ways they are enforced are different.

Title VII is enforced by the Equal Employment Opportunity Commission (EEOC) and covers employers and unions with 15 or more employees or members, as well as joint labor-management apprenticeship programs, employment agencies, and government employers. Executive Order 11246 is enforced by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, and covers all companies that have contracts with the federal government for $10,000 or more per year. Individual states also have laws (such as the California Fair Employment Practices Act) which provide coverage similar to Title VII.

While both Title VII and Executive Order 11246 could be used, how they will actually be applied by the courts is unclear in cases of discrimination based on reproductive capacity since few cases have been actually heard. However, in an attempt to apply Title VII and Executive Order 11246 specifically to reproductive hazards, in January 1980, EEOC issued proposed guidelines on reproductive hazards and discriminatory employment policies. Although this was

HAZARDS TO REPRODUCTION

Agent	Some Industries or Occupations Where Found	Health Effects
Anesthetic gases	Hospital operating room	MALE: Miscarriage in spouse of exposed worker FEMALE: Miscarriage FETUS: Birth defects
Benzene	Degreasing; paint removal; drycleaning	MALE: Changes in genetic material; cancer FEMALE: Changes in genetic material; menstrual problems; cancer FETUS: Birth defects
Carbon disulfide	Viscose rayon manufacture	MALE: Decreased sex drive; impotence; abnormal sperm FEMALE: Menstrual disorders; miscarriage FETUS: Decreased size
DES	Production of synthetic hormone	MALE: Enlarged breasts; lowered sperm count FEMALE: Increased risk for breast cancer FETUS: Female-vaginal cancer, increased difficutly in conceiving, miscarriage; male-decreased sperm count
Manganese	Welding	MALE: Impotence
Methyl mercury	Pesticide production	FETUS: Birth defects
Lead	Soldering; welding; pigment production; mining and smelting; storage battery manufacture	MALE: Decreased sperm count; abnormal sperm FEMALE: Menstrual disorders; miscarriage; stillbirth FETUS: Suspected birth defects
PCBs	Communications; utilities (capacitors; heat-transfer systems)	MALE: Decreased fertility FEMALE: Menstrual problems; suspected stillbirth
Ionizing radiation	Dental offices; hospital x-ray departments; nuclear industry	MALE: Changes in genetic material; decreased fertitlity; cancer FEMALE: Same as in male FETUS: Birth defects; childhood leukemia
Vinyl chloride	Vinyl chloride and polyvinyl chloride production	MALE: Cancer; abnormal sperm FEMALE: Cancer; miscarriage and stillbirth among wives of exposed workers FETUS: Birth defects
Viruses (such as rubella)	Hospital workers; teachers	FEMALE: Miscarriage FETUS: Birth defects

a step in the right direction the guidelines were unclear, as well as simply being guides without the force of law. In late 1980, the guidelines were withdrawn by EEOC.

Through Title VII and the OSH Act, there are legal remedies available to workers who are excluded from, or left to work in, jobs where there is potential exposure to reproductive hazards. OSHA and Title VII should be used together. The Occupational Safety and Health Act mandates a safe and healthful workplace for all workers, including those who are considered to be more susceptible, and EEOC is supposed to protect those workers whom industry has decided to exclude. Exclusionary policies are a way to avoid cleaning up the workplace, and are not a solution to the problem of reproductive hazards found in the workplace.

Workers who feel that they have been discriminated against because of reproductive function, can file a claim with EEOC, or a state agency such as the California Fair Employment and Housing Commission. For information or assistance contact these agencies, your union, or the Coalition for Reproductive Rights of Workers (CRROW). (See address at end.) For more information on how Title VII and Executive Order 11246 can be used in discrimination cases, see the CRROW handbook, *Reproductive Hazards in the Workplace* listed at the end of this article.

WHAT IS BEING DONE?

There is no one single way to solve the problem of reproductive hazards and the exclusion of certain groups of workers. Unions, public interest groups, scientists, and government representatives have been fighting the issue on many fronts in recent years. While some progress has been made in dealing with the issue through existing laws and government agencies, much more is needed. Research into the hazards affecting reproduction must be increased and reproductive effects of materials used or produced in the workplace identified. Regulation of such substances must come before workers are exposed and before they and their children suffer adverse effects.

Government and Public Policy

What can be done by government and those in a position to affect public policy? To ensure workers' rights to have healthy children, government must provide for:

- more research on groups of workers exposed to known or suspected reproductive hazards as well as policies requiring animal and bacterial tests aimed at detecting reproductive hazards (the National Institute of Occupational Safety and Health, NIOSH, has increased its research in this area);
- consideration of reproductive hazards when health standards are set;
- informing workers of what they are working with and what the hazards are, including effects on reproduction; and
- transfer rights and rate retention for workers of both sexes who are potentially exposed to reproductive hazards.

Workers and Their Organizations

To prevent future exposures to reproductive hazards and continued exclusion of certain workers, unions and workers can:

- pressure industry and government agencies to conduct more research on reproductive hazards, and pressure government to set standards which will protect against them;
- develop contract language to eliminate exclusionary policies, or where necessary to provide for transfer with rate retention;
- keep records of reproductive history to help identify hazards;
- join or form groups such as the Coalition for Reproductive Rights of Workers (CRROW) which is working to protect *all* workers from reproductive hazards; and
- participate in the standard setting process by giving oral and written testimony on effects of workplace hazards and/or effects of exclusionary policies.

CONCLUSION

There are many steps that can and must be taken to protect workers and their future children from reproductive hazards and from attempts to deny them employment. It is clear that reproductive problems affect more than an individual parent or child, and that they are only one aspect of the growing epidemic of illness related to exposures on the job. Preventing women or other workers who are considered hypersusceptible to occupational diseases from taking certain jobs or working in certain industries will not protect today's workers or tomorrow's children; only cleaning up the workplace and environment can do that.

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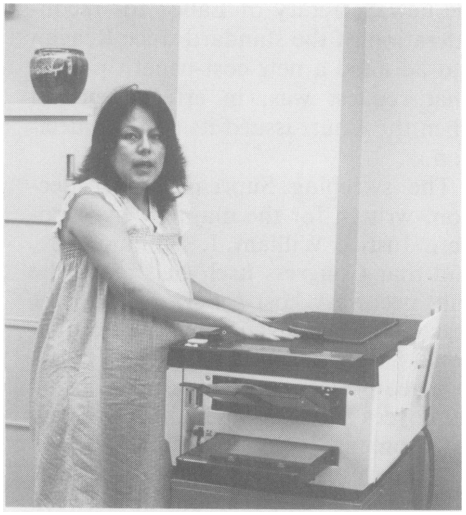


(Photo: Kate Caldwell.)

Newswire

Cotton Dust and Lead

Two Supreme Court Decisions Uphold Key OSHA Standards

Landmark Ruling that Cost-Benefit Analysis Unnecessary

On June 17, 1981, the U.S. Supreme Court set back the Reagan administration's anti-regulation agenda by upholding the OSHA cotton dust standard, originally adopted by the Carter administration, in a 5-3 decision. Then, on June 29, the Court let stand the Carter administration lead standard, challenged by both industry and the present administration.

The cotton dust decision rejected arguments by the textile industry that the standard was invalid because of federal OSHA's failure to show that the cost of compliance was justified by the health benefits to workers. The standard was upheld by the U.S. Circuit Court of Appeals for the District of Columbia last year, but the textile industry appealed that ruling to the Supreme Court. In the final weeks of the Carter administration, the Department of Justice defended the standard and argued that the law prevented OSHA from undertaking cost-benefit analysis. Hearings were held January 21, just before Reagan's inauguration. Later, in a highly unusual action, the new administration asked the Court not to decide the case, but to refer it back to the new Secretary of Labor for reconsideration of the standard since Reagan had adopted a new cost-benefit policy. That request was, in effect, rejected when the Court issued its June 17 decision.

The sweeping Supreme Court decsion, written for the majority by Associate Justice William J. Brennan, Jr., said that Congress itself had made the only necessary cost-benefit analysis 11 years ago when, in enacting the Occupational Safety and Health Act, "it chose to place pre-eminent value on assuring employees a safe and healthful working environment."

"Congress itself," Brennan said, "defined the basic relationship between costs and benefits, by placing the 'benefit' of worker health above all other considerations save those making attainment of this 'benefit' unachievable. Any standard based on a balancing of costs and benefits by the Secretary of Labor that strikes a different balance than that struck by Congress would be inconsistent with the command" of the statue.

The Court's majority concluded that protection is required by workers "to the extent feasible" according to section (6)(b)(5) of the OSH Act and that cost-benefit analysis was not intended by this language. Shortly after the decision was issued, George H. Cohen, AFL-CIO counsel, said that the decision "leaves no room, not an inch" for cost-benefit analysis. He said that "organized labor will not sit still for any interpretation of the decision that acts as if it is not definitive." But new OSHA head Thorne G. Auchter said that OSHA would interpret the decision to mean simply that cost-benefit analysis "is not required" but may be used by the agency to determine the "least costly alternative" for worker protection.

Many critics of the decision, such as the National Cotton Council and the U.S Chamber of Commerce, expressed the view that the cost-benefit issue will have to be finally decided by Congressional changes in the original OSHA legislation. However, Sen. Harrison A. Williams (D.-N.J.), co-author of the original 1970 OSH Act, pledged "fierce resistance" to any attempts to rewrite the law.

LEAD RULING

On June 29, the Supreme Court refused to review the Carter administration lead standard, which had been challenged by the Lead Industries Association and others. This action let stand a U.S. Circuit Court of Appeals for the District of Columbia decision, upholding the standard.

The Reagan administration, which inherited the regulation, had joined the industry challenge to the standard. The administration had asked the Supreme Court to vacate the appeals court decision and send the issue back to OSHA for a cost-benefit study.

But in a one-sentence order (Associate Justices Stewart and Powell not participating), the Court announced it would not hear the case, effectively upholding the standard.

The D.C. appeals court ruling generally held the lead standard valid in most respects, but limited the number of industries required to adopt engineering and work practice controls pending an OSHA review of feasibility in other industries. (See *Monitor,* September-October, 1980, p. 6.) That review is currently underway, but OSHA has postponed its deadline for putting regulations into effect for these industries several times.

A representative of the United Steelworkers said that the lead standard "contains the most revolutionary provisions of any OSHA health standard to date." Specifically, the lead standard contains a medical removal provision, which requires that workers with a specific level of lead in their blood be kept off the job, with no loss of earnings or seniority, until their condition returns to normal. Although the cotton dust standard contained a similar provision, in that case the Supreme Court vacated the provision and referred it back to the appeals court for further hearings. In the lead case, however, the Court's refusal to review the standard leaves the medical removal provision in effect without further proceedings, since the appeals court upheld it.

—Compiled from *New York Times,* Associated Press, BNA *Occupational Safety and Health Reporter,* and other sources.

RIGHT TO REFUSE

continued from p. 6

employer at the time a suspected imminent hazard exists. Thus, in order to refuse, or to consider exercising a right of refusal, the worker must realize that loss of job, or other discipline, may follow. This realization, coupled with economic uncertainty, difficulty in finding other comparable work and pay, and the delays inherent in litigating a discrimination claim, serves as a strong disincentive to refuse dangerous work. Consequently, many unions have begun to move towards incorporating a right to refuse, coupled with job retention, into their collective bargaining agreements.

The language used in the collective bargaining agreement can most appropriately correct the shortcomings in the various standards already discussed. For instance, some bargaining agreements allow a worker to refuse based on a personal fear. This refusal need be based only on a good faith belief on the part of the individual that a hazard exists. While a determination is being made as to whether the hazard exists, the worker may have the right to alternative work, and cannot be discharged or disciplined for the initial decision to refuse. Thus a determination can be made by the parties (as provided in the contract) as to whether a condition was imminently dangerous and how it can be corrected. The refusing worker would only be required to return to the original job after it was determined that no hazard existed or that it had been corrected. In the meantime, the worker would have the right to alternative work.

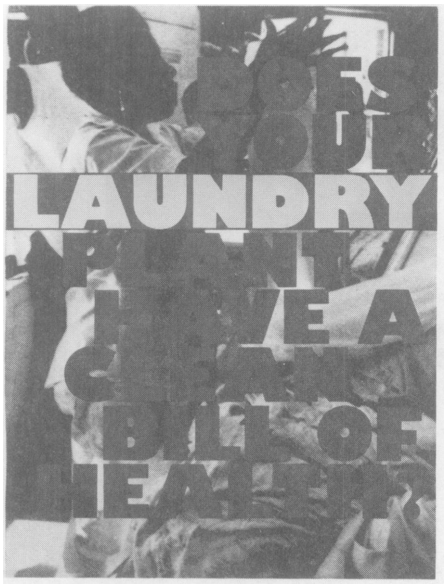
The model bargaining agreement thus removes the risk of the loss of employment when exercising a right to refuse. Such an approach makes the right to refuse a much more viable means through which workers can insure their right to safe and healthful working conditions.

CONCLUSION

The right of workers to refuse dangerous work is an important tool in the immediate prevention of serious occupational injuries and illnesses. However, this right is often confused, uncertain, and difficult to exercise with a sense of certainty. As we move into an era which relies on greater worker and employer recognition and response to workplace hazards, the right to ultimately refuse work considered hazardous becomes more important. Indeed the right of refusal may be viewed as a backbone in the efforts towards voluntary compliance. Thus unions and employers must recognize the need for insuring that workers will not needlessly expose themselves to imminent dangers in the workplace. The incorporation of practical collective bargaining agreement language on this subject will go far towards the goal of assuring safer and more hazard-free working environments.

Footnotes

1. 29 C.F.R. 1977.12(b) (2).
2. California Labor Code 6311.
3. 29 U.S.C. 151 *et. seq.*



***Does Your Laundry Plant Have a Clean Bill of Health?** is a new pamphlet co-produced by the Labor Occupational Health Program and the Food and Beverage Trades Department, AFL-CIO. Authored by Joanne Molloy of LOHP, and edited by Debbie Berkowitz, the pamphlet discusses and illustrates the common hazards in laundries, and proposes solutions. Copies are not available through LOHP, but may be obtained from: Safety and Health Program, Food and Beverage Trades Department, AFL-CIO, 815 Sixteenth St., N.W., Washington, D.C. 20006. Phone: (202) 347-2640.*

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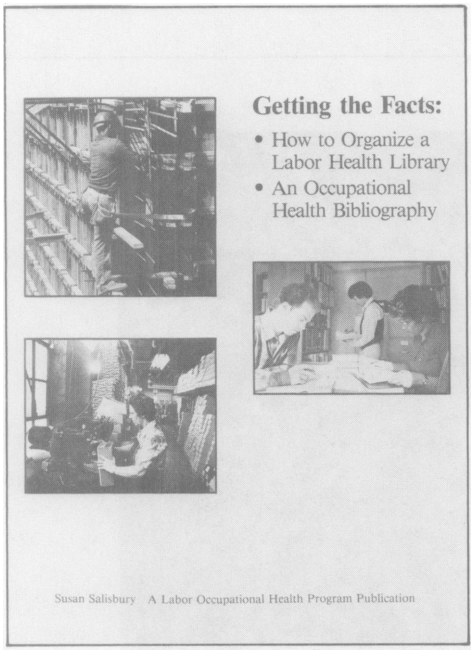

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