

Union Activity at Work

The following is intended to provide general information only and should not be relied on as legal advice. If you require specific advice regarding labour relations and/or employment related issues, please contact your CAPE Labour Relations Officer.

CAPE members have the right to promote and build our union in the workplace. Members have the right to be kept informed on the employer's premises during non-work time, before or after shifts and during paid or unpaid breaks and lunch periods.

Your freedom of thought, belief, opinion and expression is protected under the Canadian Charter of Rights and Freedoms, as are your other civil and political rights.

While freedom of expression and association is protected under the Canadian Charter of Rights and Freedoms, public service employees also have a duty of loyalty to their employer, which may limit what can and should be expressed in many contexts.

The Federal Public Sector Labour Relations Act prohibits the participation in or interference with the formation or administration of an employee organization, the representation of employees by an employee organization, or discrimination against an employee organization. While this does not give carte-blanche to union stewards and leadership, it does generally provide protections from discipline for making statements against the employer provided the comments are made while performing union duties.

Considerations

- In 1991, the Supreme Court of Canada upheld a Federal Court decision which confirmed that restrictions on political activity should not apply to the vast majority of federal workers. This decision is referenced in the employer's paper on the [Duty of Loyalty](#).¹
- The most defensible forms of workplace expression are those which are exclusively internally facing; are positive or supportive of a cause, rather than critical of government action; do not use government materials or systems; and are closely associated with activities that the union itself is engaged in.
- Directions to cease the activity would likely need to be complied with and then grieved to avoid disciplinary consequences for insubordination. However, the employer should not provide a blanket prohibition of certain activities.

¹ Osborne v. Canada (Treasury Board), 1991 CanLII 60 (SCC)

- Positions with client- or public-facing duties may be more limited. The expression by employees in externally facing positions may need to be more neutral or ambiguous. For example, recent decisions have upheld the wearing of union material as it did not pose a health and safety risk, was not illegal, abusive or defamatory and did not suggest non-compliance with the collective agreement or the PSLRA. Taking this action could however increase the risk of discipline.
- Various recourse mechanisms can be used to challenge employer actions against activities that are linked to union membership or broader union activities.
- Expressive activity should avoid using employer email, computer systems and equipment.
- There is a prohibition on strikes during the life of a collective agreement and outside of designated legal strike periods. Circumstances where a group of employees act together, on a common understanding or for the same purpose, in a manner that refuses work duties, slows down work duties, or otherwise limits the output of work will meet the definition of a strike. In contrast, uncoordinated individual actions that are not led by the union leadership that do not slow down work duties or output could fall outside of this definition.

Members have the right to

- Sign petitions and share information about the union's campaigns during non-working time such as during lunch hour and breaks.
- Talk to co-workers about the union at work as they would any other subject.
- Distribute materials outside or inside the workplace. The employer is prohibited from interfering with these lawful union activities.
- With the employer's permission, distribute publications that reflect the union's perspective on workplace issues in the workplace, as long as the information is accurate and non-defamatory. This is a great way to invite members to information sessions, provide updates on union business and recruit new volunteers.
- Use workplace bulletin boards for union purposes, in accordance with their collective agreement.
- Wear buttons, lanyards, stickers, t-shirts, union virtual background during meetings and email signature blocks, and other items that communicate the union's message. Even if members wear a uniform, there are ways of wearing a union message!
- Attend rallies and mobilization events. You can take part in in-person rallies or other union events during your paid breaks as well as before or after work.

Some restrictions may apply.

Members' risk of discipline will most likely be based on individual and contextual factors. Members should assess the best advocacy options and resources available with consideration to individual circumstances, goals, and risk tolerance.

The employer should not provide a blanket prohibition of certain activities. If this is occurring, or if you have any questions relating to union activity in the workplace, please contact your local CAPE representatives or the CAPE National Office.