

Virginia Workers' Rights



Industrial Workers of the World (IWW)
Richmond Virginia General Membership Branch
(p)804-496-1568 (e) richmondiww@gmail.com
www.richmondiww.org

Join us!

An injury to one, is an injury to all!

In these times it often seems we don't have the right to work in our own country. Industries are continuing to freely move production overseas, sometimes just across the border, where labor is cheaper and workers have even fewer rights. In the United States, unemployment continues to increase and workers are clutching onto whatever work they can find in order to stay afloat. Sinking seems inevitable.

In the past two years there has been a massive increase in people looking for work, but corporations are working harder than ever to keep labor costs from cutting into their profits. Concern for worker safety is dwindling as are pay increases, health care and other benefits.

The Richmond Industrial Workers of the World (IWW) is a labor union utilizing the strategy of 'solidarity unionism' in order to organize across all industries, while advocating for workers rights. We wish to ensure that all workers are aware of their rights, and have access to the resources and a community which can assist in claiming those rights. We want to support working people by holding management in their respective industries accountable while organizing to change the standards within that industry.

The Richmond, Virginia General Membership Branch of the Industrial Workers of the World (IWW) is a union for all workers. We are interested in building a democratic and revolutionary labor movement that workers can depend on for solidarity, support and mutual aid.

Contact us:

phone: (804)496-1568 e-mail: richmondiww@gmail.com
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The Legal Rights of Workers in Virginia

This publication is a broad overview of workers' rights and resources. If you have problems of a legal nature with your employer, you should seek the help of an attorney. Legal Aid societies are also available to help workers who can not afford legal representation on their own.

The Richmond Industrial Workers of the World are also willing to help, and our point of view is that whenever a problem can be solved without the help of a lawyer, do it. Besides being expensive the law takes a long time. Laws are written, administered and enforced by individuals who, for the most part, do not understand or sympathize with the experience of working people.

Know Your Rights!

A partial list of rights recognized by Federal law includes:

- 1.** The right to work collectively with co-workers to improve labor conditions and pay (Section 7 of the **National Labor Relations Act**).
- 2.** The right not to be ordered or coerced by Federal courts when engaging in such collective activity (Section 4 of the **Norris-LaGuardia Act**).
- 3.** The right to refuse to perform abnormally dangerous work (Section 502 of the **National Labor Relations Act**, and the **Occupational Safety and Health Act**).
- 4.** The right to equal pay for equal work regardless of gender (**Equal Pay Act**).
- 5.** The right to a minimum wage and to overtime pay after forty hours work in a week (**Fair Labor Standards Act**).
- 6.** The right not to be discriminated against because of race, color, religion, sex, national origin, age, or disability in hiring, promotion, or discharge (Title VII of the **Civil Rights Act** and other laws).
- 7.** The right to free speech about union affairs, and to a minimum of due process when disciplined by a union (Title I of the **Labor Management Reporting and Disclosure Act**).
- 8.** The right to pension security (**Employee Retirement Income Security Act**).
- 9.** The right to job-protection and unpaid leave due to a serious health condition or to care for a sick family member, or new child. (**The Family and Medical Leave Act**)
- 10.** The right to lost wages and medical benefits if you are injured at work regardless of citizenship or immigration status. (**Worker's Compensation**)

Pay, Overtime and Deductions

Minimum Wage: You have the right to a minimum wage and overtime after 40 hours. The current minimum wage is **\$7.25 an hour**. Disputes can be filed with the VA Department of Labor, small claims court or the US Department of Labor. Call 1-866-4USWAGE for help resolving pay/overtime disputes or claims.

Over Time: Time and a half for overtime is not required by Virginia state law, but it is required by the federal Fair Labor Standards Act, enforced by the US Department of Labor, Wage and Hour Division. If the total hours worked in one pay period is over 40 you are legally owed overtime pay. Overtime claims should be made directly to the Federal Wage & Hour Division at the closest regional office. Richmond District Office U.S. Department of Labor, Wage and Hour Division, 400 North 8th St., Richmond, VA, 23240, phone (804) 771-2995.

Different pay for the same job: You may notice that similar, even the same jobs done for different companies pay completely different wages. Unfortunately, a company is allowed to do this. Unions have historically challenged these discrepancies, and organized for standard and fair wages that span across an industry.

Final Wages: If you are laid-off or fired final wages must be paid on or before the next regular payday you would have been paid on had you remained employed.

Sick Leave, Benefits, Etc: The law does not require an employer to provide vacation, holiday, severance pay, maternity/paternity leave, health care, retirement benefits or paid sick days. However an employer may agree to provide benefits, and if the employee performs work in reliance on that promise, the employee may be entitled to the benefits as a matter of contract, and may file a private lawsuit to secure them.

You may be able to take paid or unpaid time off of work for illness, injury, pregnancy or family by filing for either Workers Compensation or Family and Medical Leave. The Family & Medical Leave Act can secure your job and provide un-paid time off for up to 12 weeks per year if you need to leave work due to a serious illness, caring for a sick family member or the arrival of a new child. It also requires that your group health benefits (if you have them) be maintained during the leave. To file for Family and Medical Leave contact The US Department of Labor's Wage and Hours Division 1-866-4USWAGE

Deductions: The only deductions allowed are 1) payroll, wage or withholding taxes, and deductions authorized by law, and 2) amounts authorized to be deducted by written and signed contract of the employee. The authorization must be truly voluntary and not signed as a condition of employment.

Employers may not make deductions from an employee's wages to cover damaged equipment or cash register shortages if the employee does not provide a truly voluntary written and signed consent to do so according to VA Code § 40.1-29(D).

Employers can be fined for a violation of the payment of wage law. A civil monetary penalty up to \$1,000.00 per violation may be assessed. Each failure to pay properly each employee for each pay period is considered to be a separate violation. A willful violation, or a violation with intent to defraud, constitutes a crime punishable by jail and a fine up to \$2,500.00. In addition to being subject to civil monetary penalties and criminal prosecution, any employer who fails to make payment of wages in accordance with the payment of wage law shall be liable for the payment of all wages due plus interest at an annual rate of 8% accruing from the date the wages were due. Virginia Code § 40.1-29.

Unemployment Insurance

As a temporary worker, you may qualify for unemployment insurance depending on the following conditions:

--You must have been employed by the agency for 30 days. Be sure to sign in every day and have witnesses that you were there so the company will not lie and say otherwise.

--You were laid-off or not sent out for work. Lack of work and layoffs is the biggest reason for unemployment insurance payments. As a general rule, if you are at the agency for a period of 2 weeks without being sent out for work, you may file. Temp companies will usually claim that you quit voluntarily or that you failed to show up for an assignment. Even if you quit or were fired you may still be eligible for unemployment, and should file a claim and may want to discuss the situation with an attorney or legal aid office.

Questions and claims for unemployment insurance can be directed to the The Virginia Workers' Compensation Commission Richmond Central office, 1000 DMV Drive, Richmond, Virginia 23220, toll free 1-877-664-2566.

Worker's Compensation

If you are injured on the job, you should immediately report the injury to your supervisor and the employer (the temp agency). In Virginia, you must file a claim within two weeks of the injury. Keep all documentation of doctor's visits and any paperwork you receive from the employer and consult an attorney or local Legal Aid.

The employer is required to report the injury to the Virginia Worker's Compensation Commission, but you should not count on them to comply with the law, and should file a claim directly with the Virginia Worker's Compensation Commission within 10 days of the accident to ensure that your rights are protected. 1-877-664-2566

Garnishments

Temp agencies, unfortunately, are now allowed to charge administrative fees for garnishments arising from support, fines, debts, and other items. Temp workers, because of their lower earnings, are sometimes prone to falling behind on payments and then garnished.

Each garnishment has its own particular rules on how much can be taken out and how often. Be sure to keep good records of garnishment deductions. Do not be afraid to ask questions and raise issues. For more information on how your employer is required to calculate any garnishment see § 34-29(c) of the Code of Virginia (1950). or www.doli.virginia.gov/ and click "Garnishment/Support FAQs."

Discrimination

(Title VII of the Civil Rights Act of 1964 and subsequent statutes)

It is unlawful to discriminate against any worker due to race, color, religion, disability, national origin or sex. Sexual harassment is illegal under the law as well. It is also unlawful to be discriminated against, because you have filed a safety complaint or exercised your rights under OSHA law.

Some examples of discrimination are harassment, teasing, firing, demotion, transfer, layoff, losing opportunity for overtime or promotion, exclusion from normal overtime work, assignment to an undesirable shift, or denial of benefits. Complaints may be filed with the Virginia Council on Human Rights, (804) 225-2292; or the Federal Equal Employment Opportunity Commission, (804) 771-2200.

Termination

Virginia is an employment-at-will state; this means the employer may terminate any employee at any time, for any reason, or for no reason. Therefore, the employee has no right to challenge the termination. There are a few very limited exceptions. For example, an employee may not be discriminated against or terminated because he has filed a safety complaint or exercised his/her rights under OSHA law. Virginia Code § 40.1-51.2:1. Also, federal law protects employees from termination based on discrimination because of age, race, sex, religion, national origin or ability

Day to Day

Breaks: Federal and Virginia law does not require an employer to give you breaks paid or unpaid (unless you are under 16 years old), nor do they have the authority to keep you on the job 24/7 non-stop. Fortunately, because of standards set by the labor movement, even bad employers allow for lunch and possibly a break.

Personal Days: Under Virginia law employers do not have to give you time off for a religious holidays, bereavement, vacation, personal and family time or sick leave unless contractually obligated to do so.

Transportation: Many cities have banned temp agencies or curbed them from charging excessive fees for transportation to and from jobs. Richmond is not one of them. If you need help getting to work, organize with fellow workers for a car pool, use public transportation, or organize with a local labor union like the IWW to work towards controlling transportation fees.

RideFinders is a division of the Greater Richmond Transit Company (GRTC) that helps find commuters in your area that share similar work locations and hours to share the ride. Finding a match is free. 804-643-RIDE or 1-800-693- RIDE

Unfair Labor Practices

The Federal Service Labor-Management Relations Statute creates rights and obligations on the part of unions, agency management, and employees. If either labor or management fails to perform its obligation to the other party, an unfair labor practice (ULP) charge may be filed with the National Labor Relations Board (NLRB). A ULP charge may also be filed if either labor or management interferes with the rights each has been given under the Statute. Employees may also protect their rights under the Statute by filing ULP charges against labor or management. For example, it is illegal for agency management to threaten or retaliate against employees for seeking union representation or to refuse to provide a union information that the law requires the agency to provide. Similarly, unions may not try to influence management to discipline employees who did not join the union or refuse to represent employees because they are not union members. Neither an agency nor a union may refuse to bargain with the other in good faith.

Unions and The Worker

It is completely legal for all workers to belong to a union, organize a union at their work site, or be a union member on the contractor's job site. The National Labor Relations Board (NLRB) has ruled that all workers can participate in union drives at their workplaces and vote in elections at the contractor's job site.

This booklet is intended to be an overview of the most pressing of legal issues for a worker. Many 'on the job' problems are not suited to legal debate. They should be addressed by organizing and solidarity with fellow workers informally or possibly in collective action. This is where the Industrial Workers of the World come in! **Come join us!**

A Message To Temp Workers

by: Nicholas DeFilippis, Member

After reading this booklet about your rights on the job, you are probably wondering what a union can do for you. Or perhaps you are thinking that, due to the temporary nature of your position, that a union would be unable to help you. Let us be the first to assure you that a union can help workers like you, and here are some examples to prove it.

In the early half of the 20th Century, migratory workers traveled all over the western USA and Canada, working on farms, in mills, as lumberjacks or as construction workers for only a short period of time before they hopped onboard a freight train in search of their next job in another area. These workers were called "bindlestiffs," and the IWW had deep support among them. Because they were organized as an IWW union, the bindlestiffs were able to struggle for, and win, improved working conditions, better food, and clean bedding at many of their temporary job sites.

When workers at the South Charleston Stamping and Manufacturing plant decided they wanted the United Auto Workers to represent them, the union was able to help many temp workers become regular, permanent employees.

In 1998, temp workers at Microsoft offices in the state of Washington formed the Washington Alliance of Technology Workers (WashTech). It now has members at over 70 Seattle-area companies and has been influential in the struggle for the rights of temp workers in the technology industry. WashTech has won improved benefit packages from employment agencies by exposing the exploitation of workers carried out by Microsoft and Amazon. WashTech has also initiated effective legislative struggles for government regulation and investigation of temp agency practices. They have also set up popular training programs for new workers in the high-tech software industry.

New York Local 294 of the International Brotherhood of Teamsters filed an unfair labor practices charge with the National Labor Relations Board, stating that Gourmet Award Foods had not treated its temporary warehouse workers in accordance with its union contract. In 2001, the NLRB ruled that temp workers must be covered by existing union contracts.

In 2007, the United Workers Association helped the temporary employees who clean Oriole Park at Camden Yards in Baltimore win a pay increase of over 60 percent, which brought the pay of these workers up to living-wage standards.

Temporary workers at the University of Washington are currently being represented by Local 925 of the Service Employees International Union.

Despite all of this, it has been hard for traditional unions to organize temp workers and day laborers. As a result, many day laborers have organized themselves into workers' centers and advocacy organizations. For example, in the D.C. metro area, the Employment Justice Center gives free legal advice and assistance to temp workers and helps lead the legal battles for workers rights in the area. Since 2000, EJC has helped thousands of low-income workers gain over \$5.5 million in backpay and damages. EJC helped pass the Accrued Sick & Safe Leave Act in 2008, a law that guarantees workers in the D.C. area a minimum amount of paid sick days.

EJC is not a union, but it is aided by various unions, including the SEIU and those affiliated with the AFL-CIO.

The conditions faced by temp workers and day laborers can be improved, and have been in different places at different times. It is now up to you, our fellow workers, to decide how the IWW (the one big union) can fight for you.

Sources & Other Information:

Industrial Workers of the World

Richmond General Membership Branch
PO BOX 7055
Richmond, Virginia 23221
Email: richmondiiww@gmail.com
Web: www.richmondiiww.org
Phone: (804) 496-1568

Virginia Department of Labor

North Run Business Park
1570 East Parham Road
Richmond, Virginia 23228
Phone: (804) 371-3104

Virginia Employment Commission Reemployment Office

3100 West Marshall Street
Richmond, Virginia 23230

VEC Unemployment Compensation

703 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-3004

VEC Workers' Compensation

1000 DMV Drive
Richmond, Virginia 23220
Phone: 1-877-664-2566

Equal Employment Opportunity

Commission (Discrimination Questions)
830 East Main Street Suite 600
Richmond, Virginia 23219
Web: www.eeoc.gov
Phone: (804) 771-2200 or 1-800-669-4000

Virginia Council on Human Rights

Suite 1202, Washington Building
1100 Bank Street
Richmond, Virginia 23219
Phone: (804) 225-2292

RideFinders (Carpooling)

Web: www.ridefinders.com
Phone: (804) 643-RIDE or 1-800-693-RIDE

National Labor Relations Board (NLRB)

103 S. Gay Street - 8th Floor
Baltimore, MD 21202-4061
Web: www.nlr.gov
Phone: (410) 962-2822

United States Department of Labor Wage & Hour Division Richmond District Office

400 N. 8th Street, Room 416
Richmond, VA 23219-4815
Web: www.dol.gov/whd
Phone: (804) 771-2995 or 1-866-4USWAGE

VA Department of Social Services

730 East Broad Street
Richmond, Virginia 23219
Phone: (804) 692-1900

Hispanic Liaison Office

4100 Hull Street Road
Richmond, VA 23224
Email: Tanya.Gonzalez@Richmondgov.com
Web: www.Richmondgov.com
Phone: (804) 646-0145

Richmond Metro North Workforce Center

8093 Elm Drive
Mechanicsville, Virginia, 23111-1160
Web: www.vec.virginia.gov
Phone: (804) 559-3133

Central Virginia Legal Aid Society

101 West Broad Street, Suite 101
Richmond, Virginia 23220
Phone: (804) 648-1012 or 1-800-868-1012

Occupational Safety & Health Administration (OSHA)

Federal Office Building, Room 614
200 Granby Street
Norfolk, Virginia 23510-1811
Phone: (757) 441-3820

Other Resources:

Can My Boss Do That? A Guide To Your Workers Rights -www.canmybossthat.com/
'Labor Law for the Rank & Filer' by Staughton Lynd & Daniel Gross [PM Press]
Industrial Worker News Paper - <http://www.iww.org/projects/IW/>

Credits:

Written and Edited by: Kenneth Y, Robert P, Lauren V and other R-IWW members
Layout and Design: Vincelli Design
Printing and Labor: R-IWW Members
Cover Illustrations: Mended Arrow
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