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A Fight for Restroom Rights

THE fact that bosses who are free to use the toilet whenever they want can bar workers from responding to the same need is a power inequity. Though the right to go to the bathroom has not figured conspicuously in debates about workplace democracy, it may soon be a labor-management issue.

Indeed, union organizers say medical problems and indignities stemming from restrictions on bathroom use are a high priority for many workers in unionization drives. And after decades of neglect, the Occupational Safety and Health Administration may be recognizing that a problem exists and that it can mandate a remedy.

A lawsuit by workers at a Nabisco plant in California — one that bottled A-1 steak sauce and Grey Poupon mustard — underscored that bathroom restrictions may not be peculiar to sweatshops in Central America or Asia. The 1995 suit cited bladder and urinary tract infections that stemmed “from being forced to wait hours for permission to use the restrooms.” The suit, which contended that women employees even had to resort to wearing diapers when supervisors ordered them to urinate in their clothes or to face three-day suspensions, was settled in 1996.

These workers are not alone in their complaints. Assembly-line workers, telephone sales representatives and even schoolteachers say they are often prevented from going to the bathroom when they need to.

Is there a law governing bathroom breaks? A few states have rest-period laws, but they are poorly enforced and not tailored to bathroom access. Only a Minnesota statute, enacted in 1988, expressly, but inadequately, requires employers to “allow each employee adequate time from work within each four consecutive hours of work to utilize the nearest convenient restroom.”

What about the Occupational Safety and Health Act? OSHA has had a toilet regulation for 25 years, stating that toilet facilities shall be provided in all places of employment based on the number of employees. Would any reasonable person understand this directive to mean that employers are in compliance if they install toilets, but dismiss employees for using them? Believe it

or not, some OSHA lawyers have contended that requiring employers to provide toilets does not include any obligation to let employees actually use them.

In contrast, in the late 19th century, states began enacting legislation (largely superseded by OSHA) that not only required employers to provide toilets to employees, but also mandated reasonable use of them. Yet this public health concern is so lost to history that an OSHA compliance official recently asked why reasonable use of toilets should even be an OSHA concern.

Twenty-five years ago, some large employers proposed that OSHA impose a performance standard, providing replacements to spell workers who need to take toilet breaks. What do employers say today? They complain that employing such replacements is expensive and that employees would abuse bathroom rights.

More frequent use of the bathroom might increase costs, but if we can assume that workers who are more comfortable are also more efficient, the costs and the savings might cancel each other out. And any overall increase in costs would merely mean that what for years had been a burden on workers' bladders was finally showing up in employers' ledgers, where it belonged. Granted, some workers might abuse their new right to go to the bathroom. But to punish and injure millions for abuse by a few is unjust and inefficient.

Beyond these economic issues, the stuff of toilet jokes is, in fact, a human rights issue. At the state level, at least one regulator has taken note. “The call of nature is not controlled by the time clock,” said the Iowa Labor Commissioner, Byron Orton, “and does not always wait for coffee and lunch breaks.”

In July 1997, for the first time, OSHA cited an employer for denying workers necessary use of bathroom facilities. OSHA found that a Hudson Foods poultry plant in Noel, Mo., “in effect” failed to provide bathroom facilities by not allowing workers relief from the production line to use the toilets. Hudson is contesting the citation.

OSHA has said that it will soon issue guidelines requiring employers to give employees reasonable access to toilets. If employers are foolhardy enough to contest that interpretation, a Federal court may someday agree with a 1996 ruling in France. “As a fundamental freedom of a human being,” the French labor court said, “the right to go to the toilet cannot be subject to authorization by a third person.” □

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