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Void Where Prohibited

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Medical problems and humiliation result because employers routinely deny workers needed bathroom breaks. It's an outrage!

By Marc Linder and Ingrid Nygaard

Women workers at Nabisco's Oxnard, California, plant faced an appalling dilemma: either urinate in their clothes while working on the production line or face suspension and ultimately loss of their jobs for leaving their work stations to use the restroom.

Rather than be fired, many of the women resorted to wearing diapers to work and some, who could not afford the $41 per week for incontinence pads and laundry, wore Kotex and toilet paper, although such makeshift protection is harmful when drenched in urine.

Finally fed up with supervisors' demanding that they relieve themselves while processing the A-1 steak sauce, Grey Poupon mustard and Ortega salsas Nabisco manufactured at the plant, the workers filed a lawsuit in 1995. The women complained they had developed "bladder and urinary tract infections . . . from being forced to wait hours for permission to use the restrooms."

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Sadly, the denial of bathroom breaks to workers is not a problem out of a distant past when ruthless employers, unfettered by government and unions, exploited the workforce with impunity. Indeed, in many cases, workers have lost rest break protections in recent years as the drive for greater efficiency and productivity by employers has coincided with weakening government regulation and declining union power.

The humiliation and loss of dignity that come from having a supervisor control the timing of intimate bodily functions create psychological pressures on workers, but even more serious can be the medical consequences to their urinary tract, bladder and other organs. Women, for example, often develop incontinence over time if they are unable to void, while men suffer similar bladder afflictions that may be complicated by prostate problems that worsen with age.

The right to rest and void at work is not high on the list of social or political causes supported by professional or executive employees, who enjoy personal workplace liberties that millions of factory workers can only daydream about. White-collar workers who have the freedom to make personal telephone calls, leave the premises to run errands, or chat with colleagues almost at will also can excuse

themselves whenever nature calls.

Many Americans would be amazed to learn that workers lack an acknowledged legal right to void at work—most people believe naively that employers permit workers to perform basic bodily functions when necessary. One of the most frequently asked questions of state and federal labor agencies is: Are workers in the U.S. legally entitled to breaks? Those who ask, usually because they receive none, are incredulous to hear a resounding: "No."

Indeed, even some union officials and labor lawyers erroneously assume that the right must exist, because federal law expressly states that short rest periods "must be counted as hours worked." But the obligation to compensate workers for such rest applies only to employers that voluntarily grant pauses.

In a country that, unlike many in Europe, lacks any nationwide cap on maximum hours or any protection against management's "reserved . . . right to require employees to work overtime," it is not surprising that no federal law confers a general entitlement to breaks—neither the national wage and hour statute (the Fair Labor Standards Act) nor the Occupational Safety and Health Act.

Today, as in the past, only workers, such as transportation employees, whose fatigue might cause them to injure or kill passengers or other non-workers are covered by mandatory federal rest regulations. Flight dispatchers, pilots, flight attendants and truck drivers are prominent examples. The District of Columbia is thoughtful enough to mandate an eight-hour day and "adequate rest periods" for horses in the carriage trade and a number of states mandate a one-minute rest period for boxers between rounds.

The handful of states that offer such protection to workers, however, may seem like a curiosity—out of step in a society headed toward labor deregulation. In fact, they are progressive throwbacks to a bygone era, now derided as paternalistic, when most states protected women (along with children) from the extreme demands of explosively expanding capitalism by limiting their workday and by mandating meal and rest periods and even seats. Indeed, historical amnesia has clouded that era so thoroughly that workers in states where protective laws have been eliminated are unaware that such statutory benefits ever existed.

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A urogynecologist's practice is filled with women suffering from bladder problems, many of which could be alleviated or prevented by more humane work-break policies. It is, of course, not only the bladder specialist who builds a practice based in part on the vicissitudes of employment. The orthopedist, chiropractor and rheumatologist treat multitudes of patients with repetitive stress injuries such as carpal tunnel syndrome; the neurologist or opthalmologist cares for patients with headaches or changes in vision; the gastroenterologist aids patients with severe constipation—the list goes on and on, all health problems related at least in part to lack of oppor-

tunities to void, rest fatigued muscles, drink adequate fluids and defecate.

It is evolutionarily unfortunate that we have become so skilled at denying the very basic physiologic function of voiding, because this skill is essential in the chain of events that enables firms to filch bathroom time from workers. Employers often consider the time a worker spends urinating as "stolen" time, but the person actually suffering such a theft is the worker herself, who is often denied her physiologic right to empty her bladder.

This right is no less important than a worker's right to have protection against hearing loss or from cancer-causing chemicals, but it is a right largely neglected. It is our hope that the evolution of workers' rights will extend to the urinary tract as well, and that the process of voiding will be freed from societal control.

The problem crystallized for us—a lawyer and a doctor—one afternoon when two women with very different kinds of jobs related how they dealt with their bladders' call at work: a factory worker, not allowed a break for six-hour stretches, voided into pads (which cost her almost one-tenth of her weekly wages) worn inside her uniform; and a kindergarten teacher in a school without aides had to take all 20 children with her to the bathroom and line them up outside the stall door while she voided.

Such examples are not extraordinary. In the chicken processing industry, for example, it is not unheard of for firms to enforce rules prohibiting employees from going to the bathroom more than once a week "on company time." When those workers, who are not given enough time to use the overcrowded bathrooms, return late to the production line, they are subject to termination.

Even an employer with sophisticated Japanese-model labor relations may treat its workers no better. At the Subaru-Isuzu auto plant in Lafayette, Indiana, where bathroom breaks are strongly discouraged when the line is moving, a worker whose team leader is too busy to take over her station when she needs to use the bathroom is just "out of luck."

Like early-20th century telephone operators who had to get a supervisor's permission, which was not easily obtained, to go to the bathroom, female employees at Sprint in 1994 charged the company with making them "raise [their] hand like a child to ask for permission to go the bathroom." They said Sprint was discouraging bathroom breaks because they take time away from sales work. Despite jobs that required them to talk all day, the company urged operators not to drink water because "that would make them go to the bathroom more."

Difficulties related to bathroom use at work are, unfortunately, not a relic of the past.

In 1996, we surveyed 790 female teachers in public schools. While 80 percent felt the need to urinate at times other than during officially sanctioned breaks, less than half of them were actually able to go to the bathroom. The remaining women had various mechanisms for dealing with this problem. Most were able to "hold it," despite discomfort; however, 4 percent voided into a pad and fully 11 percent of elementary school teachers brought all the children with them to the bathroom when they were unable to hold it any longer.

In addition, half the teachers made a conscious effort to drink very little at work to avoid urinating while on the job. Aside from the need to urinate, some teachers also found bathroom access during their menses to be a

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problem. Two-fifths noted that they could not change menstrual pads as often as they needed to and one in twenty women stayed home from work on their heaviest flow day or days, specifically because of the problem of bathroom access at work.

It is worth noting that the average total daily duration of breaks taken by those surveyed was 71 minutes. This is more than the usual 60 minutes that are often found in collective bargaining agreements, yet most women perceived the lack of adequate bathroom opportunities to be a problem. Beyond the need for rest during the working day, the women surveyed said they needed an additional number of short bathroom breaks. Almost all responded that women should be allowed to void as often as they needed to while working. If told to choose a specific ideal minimum time interval for bathroom breaks, 80 percent chose either hourly or every two hours.

A second, smaller group of women we surveyed had undergone a job retraining program and were employed in occupations that were traditionally more male-oriented. These women typically had greater freedom to urinate when they needed to, as they tended to work without direct supervision.

However, they had their own set of unique problems related to bathroom access at work. Many refused to use the bathrooms provided because of their unsanitary nature. Typical comments from these women echo this one:

"I work on construction sites. I can go to the bathroom anytime I need to, but the facilities are usually port-a-potties. Sometimes these have no toilet paper, are very much a mess—smelling and unsanitary. So I try to avoid them by drinking less."

Autonomy-restricting regimes, which infantilize workers by forcing them back to their pre-toilet-trained period, must strike the intelligentsia and even many non-professional white-collar workers—accustomed to wandering around with freedom at work without having to ask a teacher, foreman, sergeant or jailer for leave—as nightmarishly preposterous. But no government agency intervenes to vindicate U.S. workers' rights to attend to their bodily needs.

This failure should be contrasted with the response to an incident in Germany in the 1880s. When owners of a sewing-machine factory in Bielefeld tried to install a doorkeeper to make sure that none of its 600 workers either used the latrine without written permission or tarried there too long, government officials quashed the plan on the grounds that "something like that is not even customary in houses of correction."

The legislative struggle for shorter hours in the U.S. and Europe began with victories on behalf of children and women and proceeded to laws covering men as well. But the movement for rest periods in America has taken a different and regressive course.

Earlier in this century, most states protected women and children from the worst excesses of industrial capitalism by limiting the length of their working day and making meal and rest periods mandatory (despite evidence that more rest would have benefited men, too). State-mandated rest periods are less common today than they had been, at least for women, for most of this century—until three decades ago, when Title VII of the Civil Rights Act of 1964 invalidated gender-biased labor-protective laws.

As a result, statutory rest periods, until then the exclusive domain of the putatively weaker sex, virtually disappeared except in the few states that extended the right to male workers. Because men had not been the beneficiaries of state rest-period laws, many of them saw little practical difference in this regard after the landmark federal civil rights law was implemented.

The color war underlying the Civil Rights

Act was not limited to race: heated debate also took place between blue- and white-collar women over whether to repeal gender-based protective legislation or extend its provisions to men. The inability of the women's movement and the labor movement, in the wake of Title VII's invalidation of single-sex statutory rest periods, to find common ground meant that very few states enacted universal rest-period laws; those that exist have been enforced ineffectively, if at all.

U.S. unions have filled this legislative vacuum by securing rest periods for some workers; however, a large proportion of workers remain without them. The harsh economic environment has begun to affect rest breaks even for some white-collar workers who have long enjoyed their daily coffee break. In 1996, for example, a large Iowa insurance firm, caught in a race to the bottom with firms whose employees spend "a full 40 hours grinding away at their tasks," totally eliminated non-statutory breaks, which management deemed "excessive."


Kristyne Peter

Because employers are obligated, not only as a matter of local public health and building code law, state health law, or labor law but also, and more importantly, by mandate of the national Occupational Safety and Health Act, to furnish toilet facilities to their employees, common sense suggests that firms must have an implied duty to afford workers a reasonable opportunity to use the facilities.

Why else would the sanitation standard issued by the Occupational Safety and Health Administration (OSHA) command that "toilet facilities . . . shall be provided in all places of employment . . . based on the number of employees" if not to enable workers actually to void and defecate in them?

After all, the central and guiding commandment of the OSHAct is that "each employer . . . shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause . . . serious physical harm to his employees."

Why, moreover, would the U.S. government give thousands of workers the afternoon off when an inadvertent cutoff of water pressure rendered all of the Pentagon's toilets unworkable—unless better employers acknowledged that employees had a natural and therefore legal right to use those facilities and their sudden unavailability made even a few hours' work unreasonable?

Ample evidence has existed for decades about the deleterious effects of a break-free day on both worker efficiency and happiness. Indeed, at the very time that state rest-period laws for women were being repealed, physicians were publicizing the negative medical consequences of staving off the call of nature.

In the late 1960s, one of this century's most renowned urologists, Jack Lapides, called on the medical profession to mount an educational campaign to inform the public about the dangers of bladder overdistension. He warned that schools and employers, by denying students and workers adequate rest periods, were creating "infrequent voiders syndrome," and he identified a constellation of avoidable medical problems caused by not urinating frequently enough.

Unfortunately, physicians' cries were largely relegated to medical journals, and now Lapides's term is gaining synonyms rather than the syndrome being relegated to the history of conquered diseases. We now hear of "hairdresser's bladder" or "mineworker's bladder," and A. L. Bendtsen coined the term "nurse's bladder" when he found that 70 percent of nurses in a Danish study suppressed the desire to void during working hours.

To understand why the right to void in the workplace is not only an issue of personal dignity and comfort, it is helpful to review how the bladder normally works and why, in fact, ignoring the bladder's call to empty can be perilous.

All humans are born incontinent—that is, a baby's bladder simply contracts as soon as a small volume of urine empties into it. Over time, the bladder holds greater volumes and the spinal cord and brain mature to start coordinating the processes needed for continence. The child trades incontinence for continence—that is, the ability to void at will at a socially acceptable time and in a socially acceptable place.

Thus, when an adult sits on the toilet, she initiates one of the body's most complex yet least respected actions. Voiding is a finely tuned activity, with input from several centers of the brain, spinal cord, bladder, urethra and pelvic muscles. The typical adult woman urinates six to ten times during waking hours; it follows that she would urinate three to five times during her working day—if she were able, as many workers are not, to void at her own discretion.

The body, of course, has many intricate functions over which we have little to no control. This lack of control is probably fortunate. Otherwise, one could envision a bleak factory where workers are instructed not to breathe to avoid contaminating the microchips. Perhaps some workers, like pearl divers or swimmers, would develop the capacity to desist from breathing for minutes, while others would become blue or unconscious or seize, or even die. Silly scenario, one might think, but the analogy to the bladder is apt.

Today, we instruct workers not to perform a basic bodily function. Some learn to hold greater and greater quantities of urine safely, just as some swimmers hold their breath for long periods without obvious consequences. More often, however, that finely tuned system that we so proudly mastered as children goes haywire. A complication is childbirth, a process quite destructive to the pelvic floor and bladder. Thus, many women faced with a decree not to void lose control of continence once again.

Even those who, either by nature of gender, fate or desire, escape the ravages of childbirth must face age, which may also play havoc with bladder control. With age, the capacity of the bladder decreases, as does the interval between acts of voiding. More people have medical problems or take medications that adversely affect bladder control. Other physiological changes occur: prostates enlarge, urethras shorten, bladders drop—all resulting in the need to urinate more frequently. In addition, 10 to 30 percent of adults develop varying degrees of urinary incontinence or accidental urinary leakage.

What happens when we are not able to void on desire?

As the pressure in the bladder rises with increasing volumes of urine, one of two things often follows: either the urethra acts as an escape valve, releasing enough urine to bring the bladder pressure back down, thus resulting in incontinence; or the urethra, ever socially conscious, resists and the pressure in the bladder continues to rise. In some cases, reflux can occur, which ultimately may damage kidneys. In others, the persistent bladder dilation decreases the blood flow in a manner

that can lead to decreased resistance to infection.

Thus, one study found that 61 percent of female college students with recurrent urinary tract infections reported voiding infrequently compared with only 11 percent of controls without bladder infection. Similarly, Lapides found that 60 percent of urinary tract infections in a series of 112 women were associated with infrequent voiding. Reasons women gave for infrequent voiding included being too busy with their occupation, bosses' displeasure with trips to the restroom during working hours and too few toilets for the number of workers.

It is shameful that most of these women needlessly suffered the pain and sometimes long-term morbidity of a bladder or kidney infection, simply because society has succeeded in taking away our basic right to micturate. Lapides found that preventing further recurrence of infection was easy: the women simply voided every two hours.

Male workers, too, have gender-specific urinary problems, which cause them to spend additional time voiding. With age, the prostate hardens and "projects more . . . deeply into the urethral canal. The urinary stream becomes dismayingly slow . . . That which was once an arc of liquid glory for which any transom was an easy hurdle becomes a pathetic intermittent dribbling that yields more nostalgia than results," notes surgeon Richard Selzer.

Nevertheless, even long-term workers with prostatitis have been discharged for voiding prematurely, and those whose "urge to urinate" is caused by kidney problems serious enough to require surgery to remove kidney stones have been suspended for violating company rules prohibiting "unnecessary leaving work station during working hours without permission to engage in matters not pertaining to job duties."

Many blue-collar workers, including some covered by collective bargaining agreements, face precisely the urinary risks outlined above when they are put to the choice of subjecting themselves to discipline for committing the "Class I" offense of leaving their post without their supervisor's permission. Their alternative: declaring "your rules are stupid," responding to nature's call and losing their employment and income.

One high-ranking state labor standards official tells workers who inquire about their right to use the toilet that they should just go and lock the door behind them, and then promptly concedes "there's not a lot of recourse there" if the employer fires them. At a (then unorganized) poultry plant in Arkansas, for example, management imposed a system under which absence, lateness or a visit to the bathroom outside of official breaks generates an "occurrence," six of which trigger dismissal. Unsurprisingly, people are being fired constantly; some are then rehired, and treated as new hires with no benefits for months and no vacation time.

At another chicken processing plant in Mississippi where a union has been able to secure workers two 30-minute unpaid rest periods daily, workers are still "written up" for leaving the line if their supervisor fails to grant them permission to go to the bathroom. Where unions do organize poultry processing plants, one of their most urgent negotiating demands is rest periods, which they have generally succeeded in attaining.

Unemployment compensation tribunals frequently hear cases of production workers whose employers contest their entitlements to benefits on the ground that they were fired for good cause—namely, leaving the assembly line without permission to use the toilet.

Even where workers have a formal entitlement to rest breaks, whether contractual or statutory, the built-in compulsions of piece-

rate systems often make it economically infeasible for them to exercise that right. A Canadian clock factory manager, for example, frankly explained that his firm promoted piecework in the 1950s because it "prevents people from loafing off, going to the washroom." In the U.S. clothing industry, women working on piece rates commonly refrain from voiding for fear that the lost time will prevent them from earning a living.

When OSHA issued its first workplace toilet regulations in 1971, it was a "national consensus standard" adopted from one developed by a business-oriented national standard-setting group. The standard required toilets in the workplace that are "readily accessible" and within 200 feet of all locations at which employees work regularly.

Employers objected to a rigid distance requirement in the proposed regulations, but their comments almost universally committed them to providing ready access. U. S. Steel and the American Meat Institute suggested eliminating the 200-foot rule, but retaining the "readily accessible" standard, while Swift, the large meatpacker, was content with the existing rule that included both.

Many smaller companies argued against the 200-foot rule, but did so by saying that, as long as adequate numbers of toilet facilities were provided, firms should be free to pay workers while they walked somewhat longer distances to access them. Johnson Sawmill, which had 30 workers, said it had "no objection to paying the employees wages to travel back and forth to our present facilities."

Some employers went further by suggesting direct intervention in the way factories were run. For example, Rohm & Haas, a large chemical firm, proposed a "performance standard" according to which "employees on continuous operations shall be provided a relief operator or allowed to leave the workplace for the time necessary."

What was OSHA's regulatory response to these mind-bogglingly radical proposals by employers? At first blush, it seemed, in its own way, as incomprehensible as the employers' initiatives. Concluding that "the basic criticism running through all the relevant comments" was the arbitrariness of the 200-foot rule, OSHA dropped the fixed distance criterion altogether.

But then, instead of replacing it with any of the employers' positive proposals, OSHA, without mentioning let alone explaining this step, also deleted the "readily accessible" language. As a result, the new standard, still in effect today, requires employers to provide a certain number of toilets according to the size of its workforce.

The explanation for this unexpected turn of linguistic events was that it was not OSHA's intent to restrict, let alone eliminate, workers' right to void at work. After all, not only did no employer in its comments or testimony in 1972 ever suggest that workers did not have a right to use the toilet at work, but many employers proposed expanding workers' real access to the bathroom. Although elimination of the fixed-distance rule was expressly designed to propitiate employers, no other provisions were added in its stead precisely because no one believed that access was a general problem; certainly, at least, no one believed that employers were preventing workers from voiding.

Today, despite all the medical evidence, in a display of choplogic astonishing even for lawyers, federal and state OSHA policy-making and enforcement officials deny that employers' duty to provide toilets implies the duty to permit workers to use them.

OSHA's field sanitation standard for farmworkers does expressly state that employers must not only provide toilets, but also give employees reasonable access to them. The

medical testimony that scientifically undergirded OSHA's issuance of regulations for farmworkers, precisely because of its general applicability, makes a mockery of the agency's refusal to extend humane treatment to all workers:

"Urine retention leads to distension of the bladder wall. Prolonged distension leads to a disturbance of the elastic components of the wall, causing flaccidity and consequently weakening the evacuation power of the bladder. When the bladder is unable to empty completely, residual urine remains. Urine . . . is a good culture medium for bacteria . . . Frequent, complete voiding of the bladder greatly reduces the concentration of bacteria."

OSHA took 14 years to put out the field sanitation standard for farmworkers—a delay noted by the D.C. Circuit Court of Appeals as OSHA's "disgraceful chapter of legal neglect." But ironically, today some farmworkers—on paper, at least— enjoy greater on-the-job urination rights than other workers—even if they have to walk a quarter mile to use them.

Now, employers of the estimated one-third of all farmworkers who are engaged in hand-labor operations with at least 11 employees must not only provide one toilet facility for every 20 workers, but "shall allow each employee reasonable opportunities during the day to use them." The covered farmworkers are entitled to use the facilities provided for elimination and to "drink water frequently and . . . urinate as frequently as necessary." Such a urologically enlightened standard underscores the extent to which workers' entitlement to protection of their bodily integrity may have shrunk during the 20th century.

Thus far, no state has seen fit to follow a measure enacted by Minnesota in 1988 requiring all employers to "allow each employee adequate time from work within each four consecutive hours of work to utilize the nearest convenient restrooom."

The legislative history of the Minnesota mandatory micturition break demonstrates how serendipitous the enactment of public policy can be. State Senator Marilyn Lantry, on a visit to a high school, asked students what they would change if they were legislators. One student responded she would like to be able to go to the bathroom during her six-hour shift at a Fotomat where she worked on weekends—something not allowed by management. After confirming the Fotomat rule, Senator Lantry submitted a bill subsequently adopted by the Minnesota legislature.

The unhealthfully restrictive regime controlling workers' access to the toilet in the U.S. may be juxtaposed to the recent wave of enactments of so-called potty parity laws, which mandate more water closets for women than for men in public buildings. This movement recognized inequity when long lines at the rest room caused women attending a concert or ball game to wait and thus to miss a few minutes of the event. With alacrity state legislatures rushed to rectify "this inadequacy of sanitary facilities" on the ground that it is "not only a gender-specific inconvenience, but a threat to public health, safety and comfort."

Remarkably, outside the context of capital-labor relations, it seems obvious even to the men who write the national model plumbing code that because biological "logistics" require women to take 34 to 96 seconds longer to use the bathroom than men, "equality sometimes isn't equal." In the literal public arena, formal gender equality suddenly became passé, creating virtual unanimity that a one-to-one ratio in toilet facilities between men and women "has the effect of discriminating against women."

Ironically, when the needs of middle-class women as consumers are at stake, the formal

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inequality that some strenuously denounced, combated and ultimately had taken away from working-class women suddenly becomes "a matter of equity, . . . of good common sense."

Management refusal to agree to rest breaks has frequently impelled workers to seek self-organization and collective representation. In one particularly brutal case, the manager of a large tortilla plant in Chicago, in response to workers' request for a regularly scheduled rest break, called them "a bunch of pigs" and sent them home early as punishment. Thus began a union organizing campaign there in the early 1980s.

In the poultry industry, United Food and Commercial Workers officials state that while emergency bathroom breaks now are incorporated into the agreements that the union has been able to achieve, workers in nonunion plants are either not permitted to go to the bathroom outside of sparsely granted and revocable scheduled rest periods or are subject to increasingly severe discipline for making such requests.

Surprising as it may seem, not every collective bargaining agreement provides for rest periods—far from it. Indeed, some contracts specifically state that there will be no "rest periods or other non-working time established during working hours." In continuous processing industries, even organized workers for years lacked breaks. Even where contracts include break provisions, they may be quite restrictive, specifying, as one did at Du Pont that "each employee shall obtain permission of his foreman or supervisor prior to taking such relief period."

The survey of major collective bargaining agreements conducted by the Bureau of Labor Statistics, until the Reagan Administration eliminated this data collection program, underscores that not even union power guarantees negotiated rest periods for workers.

Of the 6.6 million workers covered by the 1,550 such agreements in force on Jan. 1, 1980 (the last time that the BLS was authorized to gather these figures), only 41 percent received rest periods. Only 4 percent of contracts covering retail trade workers had rest break provisions, while 95 percent of those in primary metals did. While 92 percent of covered apparel workers lacked rest periods, 40 percent of workers in transportation equipment, 33 percent in communications, 32 percent in hotels and restaurants and 21 percent in food manufacturing did. This ranking roughly mirrored that of a quarter century earlier.

A private company, the Bureau of National Affairs, monitors union agreements, and a survey of those on file confirms the older BLS data. In 1992, rest periods were not mentioned in 56 percent of the agreements. The contracts also confirm that the typical pattern is one 10- or 15-minute break during each half of the shift.

The strongest unions, in exchange for ceding control over the process of production to management, have negotiated the longest rest periods for their members. As early as 1968, the United Auto Workers (UAW) had secured 48 minutes paid relief time for assembly-line workers at Ford. The 1993 national agreements between the UAW and the Big 3 automakers provided for 23 minutes of relief time before and after lunch for all workers employed in continuous manual operations that cannot be left unattended, as well as in other operations the employer determines afford workers "no control over their work pace."

Many collective bargaining agreements, however, provide for only one rest period. In the meatpacking industry, for example, contracts until the 1980s generally prohibited uninterrupted work periods of longer than two

and a half to three hours. And two 10- to 15-minute rest periods were common; some contracts even stated explicitly that "employees are expected to take such rest periods."

But in the 1990s, the industry, dominated by Iowa Beef Processors, the world's largest meatpacker, typically was offering only one (morning) break during eight-hour shifts in both its unionized and non-union plants.

By contrast, workers in other countries have fared better. Although German workers, through statute and collective bargaining agreements, have gained a shorter work week and much longer vacations than U.S. workers, labor unions in Germany continue to focus more attention than their American counterparts on the need for rest periods to combat the effects of labor intensification. Such attentiveness is rooted in their post-war experience: many firms achieved a reduction in the work week in the 1950s by increasing the pace of production and cutting rest breaks.

The German metalworkers' union, I. G. Metall, in 1973 achieved an agreement characterized as "1 hour of work = 52 minutes." It guaranteed a five-minute break (in addition to three minutes for "personal needs") every hour for eight hours to all workers compensated according to a payment-by-results system. The rest periods gained by the German metal union set a standard that remains unmatched in the U.S. or, to be sure, for many other German workers.

The U.S. may not be the world's only industrialized country without national statutorily mandated rest periods—in some heavily organized countries, such as Denmark, industry-wide collective bargaining can be relied on to create *de facto* standards—but most of its world market competitors have created such protections. The European Union, for example, in 1993 adopted a Council directive on working time that prescribes an entitlement to a break when daily working time exceeds six hours.

The utopian workplace in which workers gain autonomy over their resting and voiding requirements remains far from legal and societal reality. Courts in 1992, for example, struck down laws in Suffolk County, New York and San Francisco that prescribed 15-minute rests periods or alternative work after two hours for workers using video display terminals (VDTs).

Existing law potentially could accommodate the health needs of employees who have to void or, because of exposure to repetitive stress, rest more frequently than employers permit. One possibility here is the Americans with Disabilities Act (ADA). But even if legal recourse were available to vindicate excretory rights for workers prepared to overcome the medical and legal obstacles to acquire the label of "disability," is it not ludicrous to single out as a disability the inability to suppress a normal physiological function that was never meant to be suppressed?

In a more rational world, would not workers be able to void when necessary? That world may already exist—at least in France. There a labor court ruled last year, in a case filed by deboners on a conveyor belt at a large packinghouse, that going to the toilet "meets a physiological need which only the individual is in a position to judge."

As "a fundamental freedom of a human being," the tribunal wrote, "the right to go to the toilet cannot be subject to authorization by a third party" or conditioned on the employer's finding a replacement. Consequently, employees are at liberty to respond to their needs outside of collective breaks so long as they inform their supervisors. Although workers do not need permission to void, the court held that abuses could be punished.

Employers' most plausible objection to a right to void is that trusting workers to use their own judgment as to when they need a

toilet break would promote the shirking that perpetually lurks in human nature. If workers were free to heed nature's call whenever they claimed to hear it, so the argument goes, many would abuse the privilege by "socializing" in the bathroom or reading the newspaper in the privacy of a stall.

Here, we set aside the question of why upper management is self-authorized to read the business pages in luxuriously appointed $20,000 private executive bathrooms, while workers, the length of whose bathroom visits may be monitored by hand-held computer scanners, can be fired for reading union news on less fastidiously furnished and maintained toilet seats.

Crucial to understanding why workers cannot rely on the labor market to generate rest breaks is determining whether they cost an employer anything. Unfortunately, very few firms or industries are even willing to study rest periods scientifically. Such an approach is shortsighted, because it ignores large, long-term costs caused by workers' absenteeism, turnover and impaired physical and mental health.

It is possible that if workplace rest were expanded, as some worker advocates have urged, employees might be able to produce more during less working time because they would be less fatigued. Only a foolishly rigid management that insisted on a narrow, ideological notion of "discipline" would resist such a change that it knew would both be profitable and potentially make the workforce less alienated. But it is also possible that newly introduced or extended rest periods would, at least in the short run, benefit only the workers. Although less fatigued, they might not be able to make up for this "unproductively" spent time.

Depending on many macro- and micro-economic variables, such workplace recuperative and rehabilitative leisure would constitute the social costs of production that might have to be financed by consumers, if the products they desire are excessively fatiguing to produce.

Workers' needs for rest, nutrition, excretory autonomy and well-being, and, ultimately, free time for self-development and community activities should be addressed by a comprehensive reorientation of the national wage and hour statute. Nationally uniform norms are necessary because local regulation leads to the familiar tendency of states to refrain from intervening altogether for fear of causing capital to flee to jurisdictions with weaker or no standards at all.

In addition to curbing employers' coercive power to demand overtime work as a condition of employment, the Fair Labor Standards Act (FLSA) should be amended to create a framework for setting minimum standards for the duration and scheduling of meal and rest periods and voiding breaks. Because of the enormous range of workplaces, employees and unions should be empowered to codetermine the structures adopted at each place of employment.

The statute, at a minimum, should mandate a 45-minute meal period and the equivalent of six minutes of freedom from work per hour. Even apart from physiological reasons, 30 minutes are insufficient in many firms and industries where workers have so much protective clothing and equipment to doff and don and the cafeteria is so far away from their workplace that they may wind up with only 10 minutes to eat.

The 48 minutes of rest per eight-hour workday could, for example, be taken as four 12-minute blocks every two hours. Employers who failed to provide hourly rest breaks would be prohibited from disciplining any worker who had to use the toilet more frequently than during the scheduled breaks.

In addition, the OSHA general sanitation regulations should also be amended to make express the employer's duty to permit work-

ers to urinate as often as necessary, while the ADA regulations should incorporate a threshold for urinary disability in terms of voiding frequency.

Indeed, the OSHAct is the single most plausible anchor for recreating in U.S. law the employer's duty to look out for employees' welfare and for applying it to necessary bodily functions.

Although OSHA has, during the last quarter century, failed to promulgate a regulation imposing on employers a duty to provide employees with reasonable use of toilet facilities, recently it reportedly indicated a willingness to issue an interpretation to that effect. Whether, in the face of employer and congressional opposition, it possesses the determination to issue that interpretation and give force to it by citing employers for violating the regulations remains to be seen.

But on July 22, 1997, federal OSHA finally issued a citation to an employer for denying its employees "necessary use of bathroom facilities." OSHA concluded that "toilet facilities were not provided in accordance with" the agency's regulations at the Noel, Missouri, poultry processing plant of Hudson Foods, Inc., because supervisors "do not allow workers relief from the production line in order to use the toilets, in effect, locking them out of or failing to provide bathroom facilities." The company has contested the citation.

In the absence of such national policymaking, one promising conflictual model of asserting worker control was forged by "Grandma" Zinninger, a 56-year-old production worker at General Electric's huge Appliance Park plant in Louisville, Kentucky. She single-handedly vindicated some years back the right of workers there to void when necessary.

Virginia Zinninger drove 90 miles round-trip daily to the plant, where she had worked for 14 years without receiving any disciplinary demerits, to support herself and her 75-year-old husband. She returned to work from bowel duct surgery and explained to the general foreman, Donald Dietz, that she was having bowel problems before starting her shift.

With her break still 90 minutes away, an arbitrator later found that "Zinninger's work was interrupted at approximately 4:10 p.m. by a sudden and unexpected bowel movement." She asked a fellow worker to get the foreman or the union steward to get relief. The steward relieved her and, while en route to the restroom, she met the foreman to whom she explained her loss of control.

"I told her it was a little early for her to be going to the restroom," the foreman later told the arbitrator.

On the way back from changing her undergarment in the bathroom, she engaged the foreman and two other supervisors in a discussion that ended with "Grandma" Zinninger throwing the soiled pants which hit Dietz in the right arm. He suspended her and GE fired her a few days later, stating that "attempting to strike a supervisor with underpants saturated with human excrement is a far more serious affront to authority than attempting to strike a supervisor with one's fist."

But 14 months later, she was reinstated with full seniority and back pay by the arbitrator, who found the supervisor's conduct had "openly ridiculed" Zinninger. As a result of this creative development of the common law in the plant, GE managers have never again contested the workers' right to use the toilets at Appliance Park. ■