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Let My People Go, 'Cries Labor Union

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'Let My People Go,' Cries Labor Union

By Marc Linder Special to The National Law Journal

HE RIGHT TO URINATE MAY become a cutting-edge issue in labor-management relations. That bosses are free to use the toilet at any time, but may prohibit workers from doing the same, has not, until now, figured prominently in debates about workplace democracy. But union organizers say medical problems and indignities caused by bans on bathroom use outside formal breaks have made the matter a high priority among workers seeking to unionize. And after decades of neglect, the Occupational Safety and Health Administration may now see that a problem exists and that it has the authority to mandate a remedy.

Contrary to popular misconception, bathroom access is not a problem confined to sweatshops in Central America or a Nike factory in Vietnam. This was underscored by a suit filed in 1995 against Nabisco by workers in a California bottling plant for A-1 sauce and Grey Poupon mustard. The suit cited "bladder and urinary tract infections...from being forced to wait hours for permission to use the restrooms." Women even resorted to wearing diapers when ordered to face three-day suspensions or "to urinate in their clothes...on the production line."

The A-1 workers were not alone. Assembly-line workers, telephone sales representatives—even schoolteachers—face bathroom-break restrictions.

Do employers violate any laws by pro
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hibiting employees from using the toilet? Only a 1988 Minnesota statute expressly requires employers to "allow each employee adequate time...within each four consecutive hours of work to utilize the nearest convenient restroom."

Nationally, OSHA has had a toilet regulation for the past 25 years, stating that "toilet facilities...shall be provided in all places of employment...based on the number of employees." But what about access to those toilets? July 1997 was the first and only time OSHA cited an employer for denying workers "necessary use of bathroom facilities," though no fine was imposed. OSHA found that a Noel, Mo., Hudson Foods poultry plant "in effect" failed to provide bathroom facilities by not allowing them relief from the production line in order to use the toilets. Unsurprisingly, industry representatives reportedly said they would challenge this interpretation.

What Took So Long?

Why did it take OSHA 25 years to start enforcing its toilet standard? Believe it or not, some OSHA lawyers have contended that requiring employers to "provide" toilets includes no obligation to let employees actually use them. Toilets evidently are there only for show and tell. Why, then, did OSHA cite Hudson?

The answer is that it happened as part of a larger scenario. Not only are food-processing workers subject to brutal conditions, but employers implement revolving-door personnel practices: Workers are used up rapidly and replaced with other low-wage, quickly trained workers. When the United Food and Commercial Workers, or UFCW, failed to resolve employee complaints, it asked

OSHA to investigate. Among issues cited was toilet access. The agency found the toilet issue "surprising" and at first balked at citing Hudson, but it finally realized that not letting workers use toilets is tantamount to not providing them.

The UFCW seeks to turn its initial victory at Hudson into a campaign at other food-processing plants. OSHA, a timid agency that a pro-employer Congress has threatened to cripple, has announced for months it will soon issue guidelines mandating reasonable use of toilets, but has not yet done so. While the right to void might seem more suitable as one-liner material, in real life it is critical for the vast majority of workers without a union to defend their interests.

At a hearing on toilet regulations in 1972, when the political climate was less hostile to OSHA, some employer representatives proposed that OSHA mandate a method by which employees could signal the need for relief, which firms would be required to provide. The United Automobile Workers extracted relief systems from manufacturers years ago. But today many employers still say that providing relief time is expensive and that workers would abuse the right to urinate.

This argument is specious. True, some workers might dissimulate, but management would retain the power to discipline them. And the cost of more frequent toilet breaks would probably be offset by greater efficiency produced by workers' increased physical well-being.

If OSHA acts, some day a U.S. court may agree with the French labor court that held in 1996 that "as a fundamental freedom of a human being...the right to go to the toilet cannot be subject to authorization by a third person." IN