**SHRM Employment Law**

Module 12: Labor Law





Time:  2 minutes

Running time: 2 minutes

**Objective**: Introduce the topic of labor law.

**Description**:  Introduction to the topic and why it is important.

**Instructional Method**: Lecture/ice breaker

**Script:**

You might recall from Module 1 that employment law and labor law are not the same thing. In this module, we will take a deeper dive into the specifics of labor law. Specifically, we will discuss the process of unionization, union negotiation with employees, and the laws that protect the right of employees to collectively bargain.

**Facilitator Notes:**

Add your name or any other information to this slide in the subtitle.

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Time:  2 minutes

Running time: 4 minutes

**Objective**: Introduce the learning objectives.

**Description**: Show the objectives.  Answer any questions.

**Instructional Method**: Lecture

**Script**:

Here are the student objectives for this module:

* Define the key terms related to labor law.
* Determine the appropriate laws to apply to given employment situations.
* Identify the appropriate legal procedures for establishing a union.
* Discuss the employer rights and responsibilities in dealing with union activities and employees.
* Describe the meaning of good faith bargaining in union relations.

**Facilitator Notes:**

Use the objectives topics to create evaluation for the review.

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Time:  20 minutes

Running time: 24 minutes

**Objective**: Define key terms for Compensation.

**Description**: Identify and define key terms for Compensation.

**Instructional Method**: Game

**Script**:

Let’s play a game to define some key terms used in the compensation and benefits profession.

**Exercise**:  Key terms Gam

**Note**: The winning group will have the most key terms listed correctly

7 Minutes

1. Put students into groups of 3 – 6
2. Have each group number a list from 1 – 30.
3. Read the definition of the term (note what number you read)
4. Have 1 student write the name (or number) of the term on their list.

3 minutes

1. Give students the answers.
2. The team with the most is the winner.

**Facilitator Notes:**

**Key Terms**

1. **Agency shop clause**- requires nonunion members to pay dues even if they don’t want to be subject to the provisions of the collective bargaining agreement.
2. **Bargaining Unit**- a group of employees who have the legal right to bargain terms of employment and workplace issues with the employer on behalf of the group.
3. **Bargain in good faith**- willing to meet at the agreed place and time to discuss the subjects of bargaining
4. **Bumping rights**- Under a collective bargaining agreement, employees with more seniority have the right to displace those with less seniority if a position is eliminated.
5. **Closed shop**- hires only union members
6. **Collective bargaining agreements (CBA)**- a document that is agreed to by the bargaining unit and the employer that outlines all the terms and conditions of employment for a specified period of time.
7. **Craft Union**- Unions for persons who practice a particular trade or skill such as welders, plumbers, or electricians.
8. **Federal Mediation and Conciliation Service**- provides mediation and conflict resolution services to industry, government agencies, and communities.
9. **Free rider**- employees who don’t pay union dues but are still entitled to the benefits provided by the union.
10. **Grievance and arbitration process**- Under a collective bargaining agreement, an established method for employees to challenge employment decisions and discipline.
11. **Impasse**- the place where neither the bargaining unit or the employer is willing to come to an agreement and strikes or lockouts may be considered.
12. **Industrial Trade Union**- those in the manufacturing industries and include auto manufacturing, coal mining, and construction industries
13. **Illegal bargaining subjects**- those that are unenforceable by law such as clauses requiring a closed shop, union shop, or anything violates state or federal laws.
14. ***Jurisdictional strikes***- a refusal to work by union members because they are asserting their members’ rights to certain job assignments or to protest the assignment of work others who are not in a union or are in a different union.
15. **Labor union**- a group of employees who elect to form a bargaining unit to negotiate with an employer concerning the terms and conditions of employment.
16. **Lockouts**- Locking employees out of the workplace until a collective bargaining agreement is worked out.
17. **Mandatory bargaining subjects**- include wages, hours, working conditions, or other terms and conditions of employment.
18. **Open shop**- Union membership is not a requirement of employment.
19. **Permissive bargaining subjects-**  those that can be proposed by either party, and the other side may choose.
20. **Picketing**- Carrying signs outside of a workplace during a strike to help convince the employer to meet the demands of the labor union and stop the work stoppage.
21. **Rights arbitration**- resolving conflicts using a neutral third party.
22. **Right-to-work laws**- employees have a right to work without being forced to join a union.
23. ***Secondary boycotts***- An action of a trade union in support of a strike at another company
24. ***Secondary and mass picketing***- picketing at businesses that depend on the organization that is on strike, and bringing large numbers of external picketers in.
25. **Shop Steward-** a union member elected by the body to act as a mediator between the employer and the union members.
26. ***Solidarity or Political Strikes***- a strike to show alliance or support for a particular party.
27. **Strikes**- Stoppage of work until a collective bargaining agreement is worked out.
28. **Union shop**- union and management agrees that all employees must be members of the union.
29. ***Wildcat strikes***- a strike not authorized by the union.
30. **Yellow dog contract**- pledges by workers not to join a labor union.

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Time:  4 minutes

Running time: 28 minutes

**Objective**: Define the key terms related to labor law.

**Description**: Define the key terms related to labor law.

**Instructional Method**: Lecture

**Script**:

What is a labor union?

According to the [U.S. Department of Labor website](https://www.dol.gov/general/workcenter/unions-101), a labor union is:

“a group of two or more employees who join together to advance common interests such as wages, benefits, schedules and other employment terms and conditions. Joining together - or "acting collectively" - workers represented by unions have a powerful voice that strengthens their ability to negotiate with their employer about their concerns. Higher wages, health insurance, vacation days, paid sick leave and retirement benefits are a few examples of what workers achieve through their unions. Workers also pursue other enhancements - such as flexible scheduling, protections against harassment and safer working conditions - that improve the quality of jobs and workers' well-being.”

*Employment Law vs Labor Law*

The majority of this course has been focused on employment law. However, employment law doesn’t fully cover the collective bargaining process and laws concerning unionization. For this module, we will be learning about labor laws which govern all aspects of union organization and operation.

*Right-to-Work vs Employment-at-Will*

Throughout the course, we’ve discussed the concept of Employment-at-Will which means that an employer or employee can terminate the employment relationship at any time and for any legal reason.

Now, we are shifting our focus to the concept of Right-to-work which means that employees have a right to work without being forced to join a labor union or pay union dues.

The two terms are not interchangeable, although they are frequently used incorrectly. When we refer to right-to-work in this module, we are referring to union activities only. A state can have both employment-at-will and right-to-work laws, but the are different and must be identified separately.



Time:  4 minutes

Running time: 32 minutes

**Objective**: Determine the appropriate laws to apply to given employment situations.

**Description**: Explain how these laws were created and helped for 2 types of unions.

**Instructional Method**: Lecture

**Script**:

These abuses by employers eventually led employees to seek to form ***labor unions*** so they could negotiate better working conditions. Since employers cannot exist without employees, the employers were forced to negotiate with the unions.

There are two types of unions, industrial trade unions, and craft unions. ***Industrial trade unions*** are those in the manufacturing industries and include auto manufacturing, coal mining, and construction industries, for example. ***Craft unions*** are unions for persons who practice a particular trade or skill such as welders, plumbers, or electricians.

**Facilitator Notes:**

[The Norris-LaGuardia Act of 1932](https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/norris-laguardia-act.aspx) was one of the first labor laws in the U.S. and it was important because it signaled a change in government labor policies concerning the formation of unions as an impediment to progress and the real beginning of the labor movement.

The [National Labor Relations Act of 1935](https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1935-passage-of-the-wagner-act) provides employees with the right to join together to form labor unions in the interest of negotiating terms and conditions of employment with an employer. This law grew out of the need to demand that employers treat employees humanely and provide safe and healthy workplaces, fair wages, and benefit options. Prior to passage of the act, employers were free to require employees to work in any conditions, for any wages they chose to pay, were not required to offer breaks, and could make employees work as many hours per day as they liked.

Timeline

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Time:  8 minutes

Running time: 40 minutes

**Objective**: Identify the appropriate legal procedures for establishing a union.

**Description**: Describe the appropriate legal procedures and key terms for establishing a union.

**Instructional Method**: Lecture

**Script**:

The NLRA outlines the rights of employees and the necessary steps for forming a labor union. If a group of employees would like to form a union, they must get 30% of the employees to sign a card or petition stating they want a union, and then the [National Labor Relations Board (NLRB](https://www.nlrb.gov/about-nlrb/who-we-are)) will conduct an election. If the majority of voting employees agree, the NLRB will certify the union as the representative for collective bargaining ([NLRB.gov](https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/your-right-to-form-a-union)).

**Facilitator Notes:**

The ***bargaining unit*** is a group of employees who have the legal right to bargain terms of employment and workplace issues with the employer on behalf of the group. This unit will meet with the employer to develop a ***Collective Bargaining Agreement.*** This CBA is a document that is agreed to by the bargaining unit and the employer that outlines all the terms and conditions of employment for a specified period of time.

Under the terms of the NLRA employees and the bargaining unit are expected to bargain in good faith concerning the terms and conditions of employment.

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Time:  10 minutes

Running time: 50 minutes

**Objective**: Describe the meaning of good faith bargaining in union relations

**Description**: Describe good faith bargaining and other subjects.

**Instructional Method**: Lecture - Exercise

**Script**:  
Under the terms of the NLRA employees and the bargaining unit are expected to bargain in good faith concerning the terms and conditions of employment. Bargaining in ***good-faith*** means being willing to meet at the agreed place and time to discuss the subjects of bargaining. Let’s discuss subjects of bargaining.

**Exercise:** Subjects of bargaining in good faith (10 minutes)

1. Break students into groups

2. Have each group create 2 detailed issues for each of the 3 subjects.

3. Discuss the issues for each subject.

**Facilitator Notes:**

Good-Faith Bargaining

Bargaining in ***good-faith*** means being willing to meet at the agreed place and time to discuss the subjects of bargaining.

*Mandatory Subjects*

If either the employer or the bargaining unit requests it, ***mandatory bargaining subjects*** must be discussed. These include wages, hours, working conditions, or other terms and conditions of employment. These issues can be argued to the point of an ***impasse***, or inability to reach an agreement by any means.

*Permissive Subjects*

***Permissive bargaining subjects*** are those that can be proposed by either party, and the other side may choose to bargain over them or not. These issues cannot be argued to the point of an impasse.

*Illegal Subjects*

***Illegal bargaining subjects*** are those that are unenforceable by law such as clauses requiring a closed shop, union shop, or anything that violates state or federal laws.

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Time:  5 minutes

Running time: 55 minutes

**Objective**: Students will identify the appropriate legal procedures for establishing a union.

**Description**: Describe types of Union Shops.

**Instructional Method**: Lecture - Discussion

**Script**:

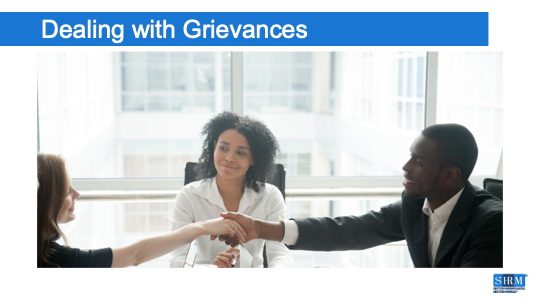
Depending on the terms of the collective bargaining agreement, bargaining units will create one of several types of union ‘shop’.

**Ask**: Why would an employee join this type of shop? What are Pros and Cons of each?

**Facilitator Notes:**

Types of Union Shops

* **Closed Shop**- hires only union members. This type of shop is prohibited by the Taft-Hartley Act.
* **Open Shop**- Union membership is not a requirement of employment.
* **Union Shop**- union and management agrees that all employees must be members of the union.
* **Agency Shop Clause**- requires nonunion members to pay dues even if they don’t want to be subject to the provisions of the collective bargaining agreement.
* **Free riders**- employees who don’t pay union dues but are still entitled to the benefits provided by the union.



Time:  10 minutes

Running time: 65 minutes

**Objective**: Discuss the employer rights and responsibilities in dealing with union activities and employees.

**Description**: Discuss the employer rights and responsibilities in dealing with employee grievances.

**Instructional Method**: Lecture - Exercise - Discussion

**Script**:

When a situation at work occurs between an employer and a member of a union, the union member will visit with a **Shop Steward** who is a union member elected by the body to act as a mediator between the employer and the union members. The union member will visit with the shop steward to determine if there is sufficient cause to file a grievance against the employer.

A grievance is a conflict over details of a collective bargaining agreement between a union member and an employer. A grievance can be filed over any number of issues such as the failure of the employer to follow the agreed-upon procedure for posting and filling open positions within the workplace.

Usually, the grievance can be resolved without outside assistance, but sometimes the issue will escalate with neither side being willing to come to agreement. When this occurs, an arbitrator is often used to resolve the conflict using ***rights arbitration*** and a neutral third party to help find a resolution.

**Exercise**

1. Have students work in groups of 3 – 5 and create a list of possible grievances. (5 minutes)
2. Gather all of the lists to use in discussion.

**Discussion** (5 minutes)

**Ask**: How can a 3rd party help in (list grievances in the list one at a time). Do you see agreement or moving to lockouts or strikes in this situation?

**Facilitator Notes:**

When an Agreement Cannot be Reached

When a collective bargaining agreement cannot be reached, unless a no-strike, no-lockout clause has been previously agreed-to, lockouts and strikes may occur. A no-strike, no-lockout clause is when a labor union and employer agree to place a clause in the collective bargaining agreement that agrees that neither side will strike or lock-out the other party.

If an employer feels that the bargaining unit is being unreasonable, they can institute a work ***lockout***, which means locking the workers out of the workplace until an agreement is reached. Both the employer and the employee lose money while the workplace is shut down.

If the bargaining unit feels the employer is being unreasonable, they may choose to ***strike***, meaning they institute a work stoppage until the collective bargaining agreement can be reached. When union members strike, they can often be seen ***picketing*** (carrying signs outside of a workplace) during a strike to help convince the employer to meet the demands of the labor union and stop the work stoppage.

[The Federal Mediation and Conciliation Service](https://www.fmcs.gov/)- provides mediation and conflict resolution services to industry, government agencies, and communities that help to resolve conflicts and get union members back to work.

Timeline

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Time:  5 minutes

Running time: 70 minutes

**Objective**: Students will discuss the employer rights and responsibilities in dealing with union activities and employees.

**Description**: List and discuss what employers cannot do to discourage unions to employees.

**Instructional Method**: Lecture - Discussion

**Script**:  
 According to the [NLRB website](https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/discriminating-against-employees-because-of-their-union)

It is unlawful to discourage (or encourage) union activities or sympathies "by discrimination in regard to hire or tenure of employment or any term or condition of employment."

For example, employers may not discharge, lay off, or discipline employees, or refuse to hire job applicants, because they are pro-union.

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer, "by discrimination in regard to hire or tenure of employment or any term or condition of employment [,] to encourage or discourage membership in any labor organization." (An employer that violates Section 8(a)(3) also derivatively violates Section 8(a)(1).)

**Ask:**

* **List the many activities employers may NOT do to discourage unions?**
* **What can employers do if union employees strike?**

**Facilitator Notes:**

For example, you may not:

* Discharge, constructively discharge, suspend, lock out, lay off, fail to recall from layoff, demote, discipline, or take any other adverse action against employees because they support the union or engage in union activities.
* Engage in discriminatory conduct that is inherently destructive of employee rights under the Act, unless you can show a legitimate and substantial business justification for your conduct that outweighs the invasion of employee rights.
* Close one of your facilities, if your motive is to chill unionism at any remaining facility and such an effect is reasonably foreseeable.
* Transfer work (e.g., to another plant or other employees) in order to avoid your obligations under the Act.
* Refuse to hire or consider job applicants because of their union membership, activities, or sympathies.
* Refuse to hire union-represented employees of a business you have acquired to avoid succeeding to an obligation to bargain with the union.
* Refuse promptly to reinstate returning unfair labor practice strikers or returning economic strikers who have not been permanently replaced, unless they engaged in strike misconduct sufficiently grave to lose the Act's protection (such as assaults, destruction of property, or threats of serious injury).
* Fail to accord returning economic strikers who have been permanently replaced their reinstatement rights under Laidlaw Corp., 171 NLRB 1366 (1968), unless they engaged in strike misconduct sufficiently grave to lose the Act's protection.
* Grant a benefit to non-strikers and/or replacements that is withheld from strikers or impose a burden on strikers that is not placed on non-strikers or replacements.
* Permanently replace locked-out employees.

However, you may, for example,

* Lock out your employees defensively - e.g., in response to an unprotected intermittent or partial strike - provided that you are not motivated by a purpose to interfere with and defeat union activity.
* Lock out your employees defensively in response to a "whipsaw" strike against a fellow member of a multi-employer association.
* Lock out your employees offensively where your sole purpose in doing so is to bring economic pressure to bear in support of a legitimate bargaining position.
* Hire temporary replacements to continue operations during a strike or a lawful lockout.
* Hire permanent replacements to continue operations during an economic strike.
* Comply with a union demand under a union-security agreement, subject to certain exceptions (see below).
* Discharge employees who engage in an unprotected or prohibited strike. Unprotected strikes include sit-down strikes, partial strikes (such as slowdowns), and intermittent strikes. Prohibited strikes include strikes that violate Section 8(b)(4)(D), 8(b)(6), or 8(b)(7) of the Act (see the "for unions" sections of this app), strikes that fail to comply with the mandates of Section 8(d) or 8(g), and strikes that violate a contractual no-strike provision (unless the strike is in protest of serious unfair labor practices).
* Discharge sympathy strikers - i.e., employees who refuse to cross a picket line at another employer - if (1) the primary strike is unprotected or prohibited; (2) a sympathy strike violates the no-strike provision of your collective-bargaining agreement; or (3) the sympathy striker's refusal to cross the picket line disrupts your business so significantly as to clearly outweigh the striker's right to honor a picket line in a protected strike.
* Discharge or discipline strikers who engage in misconduct that would reasonably tend to intimidate or coerce, such as assaults, destruction of property, or threats of serious injury.
* Choose to go out of business entirely, even if your decision to do so is motivated by anti union considerations.

Section 8(a)(3) contains two provisos. The first provision exempts lawful union-security agreements. The second proviso places limits on the enforcement of such agreements. For example, you may not:

* Enter into a union-security agreement with a minority union or a union whose majority status you helped it obtain through unlawful assistance.
* Discharge an employee under a union-security agreement if you know or reasonably suspect that the union failed to give the employee notice of his dues delinquency and an opportunity to pay.
* Discharge an employee under a union-security agreement if you reasonably believe that union membership was not available to him on the same terms the union applies to other employees.
* Discharge an employee under a union-security agreement if you reasonably believe the union's demand is for reasons other than the employee's failure to tender dues or fees.
* Discharge an employee under a union-security agreement if you reasonably believe that his union membership was denied or terminated for reasons other than his failure to pay dues or initiation fees. (In other words, if a union expels an employee from membership for a reason other than nonpayment of dues or fees - for example, because he led a decertification effort - it may not thereafter seek his discharge for nonpayment of dues or fees, and you may not discharge him for nonpayment.)

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Time:  5 minutes

Running time: 75 minutes

**Objective**: Determine the appropriate laws to apply to given employment situations and labor practices.

**Description**: Discuss the laws that define unfair labor practices and discuss situations where they are helpful to employees and employers.

**Instructional Method**: Lecture - Discussion

**Script**:   [The Taft-Hartley Act of 1947](https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1947-taft-hartley-substantive-provisions) made major changes to the NLRA, defining several unfair labor practices. The Labor Management Reporting and Disclosure Act (The Landrum-Griffin Act) of 1959

[amended the Taft-Hartley Act](https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1959-landrum-griffin-act) .

**Ask**: What did the Taft-Hartley Act of 1947 and laws that amended this act do to help employers and employees? (have students research the acts to answer the questions)

**Facilitator Notes:**

Use study aid #12 labor Law & Unfair Labor Practices

[The Taft-Hartley Act of 1947](https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1947-taft-hartley-substantive-provisions) made major changes to the NLRA, defining several unfair labor practices:

* Prohibited ***jurisdictional strikes***- a refusal to work by union members because they are asserting their members’ rights to certain job assignments or to protest the assignment of work others who are not in a union or are in a different union.
* Prohibited ***wildcat strikes***- a strike not authorized by the union.
* Prohibited ***Solidarity or Political Strikes***- a strike to show alliance or support for a particular party.
* Prohibited ***secondary boycotts***- An action of a trade union in support of a strike at another company.
* Prohibited ***secondary and mass picketing***- picketing at businesses that depend on the organization that is on strike, and bringing large numbers of external picketers in.
* Prohibited ***closed shops***- which only hire union members.
* Prohibited monetary donations by unions to federal political campaigns

The Labor Management Reporting and Disclosure Act (The Landrum-Griffin Act) of 1959

This law [amended the Taft-Hartley Act](https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1959-landrum-griffin-act) so that:

* State courts and state labor relations boards were given jurisdiction over cases declined by the Board under its jurisdictional standards.
* Secondary boycott prohibitions were tightened and hot cargo agreements (under which employers committed themselves in advance to boycott any other employer involved in a dispute with the union) were outlawed.
* A new unfair labor practice made it unlawful for a union to picket for recognition or organizational purposes in certain circumstances.
* Pre-hire and seven-day union shop contracts were legalized for the construction industry.
* Permanently replaced economic strikers were given the right to vote in representation elections within one year of the beginning of the strike.
* The non-Communist affidavit provisions were repealed.
* The Board was authorized to delegate most of its authority to define bargaining units and to direct elections to its regional directors, subject to discretionary review.
* Other parts of the new law established a code of conduct guaranteeing certain rights to union members within their union, and imposed reporting requirements on unions, union officers, employers, and consultants. These provisions were assigned for administration to the Department of Labor. Thus, the Landrum-Griffin Act protected employees' union membership rights from unfair practices by unions, while the National Labor Relations Act protected employee rights from unfair practices by employers or unions.

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Time:  10 minutes

Running time: 90 minutes

**Objective**: Review main points in this module.

**Description**:  Be sure that students have a fun way to remember the material.

**Instructional Method**: Game – Review

**Script**:

Let’s see how much we remember about this module.

**Facilitator Notes:**

Review Exercise:  Create a fun game to review the material.  Remember to use the objectives to measure learning:

* Define the key terms related to labor law.
* Determine the appropriate laws to apply to given employment situations.
* Identify the appropriate legal procedures for establishing a union.
* Discuss the employer rights and responsibilities in dealing with union activities and employees.
* Describe the meaning of good faith bargaining in union relations.
* Have each student submit a question on a piece of paper, crumple it up and toss it in a bucket (clean wastebasket), Instructor will then read them and give points to each team with the correct answer.
* Any game show – Family Feud, Jeopardy, $10,000 pyramid, Password, Tic Tac Toe
* Extra credit quizzes

There are many ways to review material virtually or in person.  Students can use their phones or computers to navigate to various online review websites.

A few are:

* Kahoot
* Quizlet