HELP NEWS

The Monthly Newsletter of Helping Employees Learn Prosperity (HELP)

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Welcome!

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Helping Employees Learn Prosperity (HELP) is an IRC 501 (c)(4) charitable non-profit, tax-exempt, non-partisan, independent employee affiliation.

HELP is a Registered Employee Organization with the County of Los Angeles and has a County assigned payroll deduction code.

HELP's status with the City of Los Angeles is a Qualified Employee Organization.

Governor Newsom Signs New Legislation into Law

October 13th was the deadline for Governor Newsom to sign a wave of new state legislation into law. Here are some of the key legal changes affecting public employees.

Local Public Employee Organizations – Notice Requirements (AB 339):

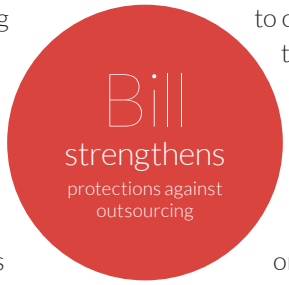
This measure amends the Meyers-Milias-Brown Act (MMBA) to require the governing body of a public agency to give a recognized employee organization no less than 45 days' written notice before issuing a request for proposals, request for quotes, or renewing or extending an existing contract to perform services that are within the scope of work of the job classifications represented by the recognized employee organization, subject to certain exceptions. The bill requires the notice to include specified information, including:

(1) The anticipated duration of the contract.
(2) The scope of work under the contract.
(3) The anticipated cost of the contract.
(4) The draft solicitation, or if not yet drafted, any information that would normally be included in a solicitation.
(5) The reason why the public agency believes the contract is necessary.

In an emergency or other exigent circumstance, the bill requires public agencies to provide the written notice described above to the employee organization with as much advance notice as is practicable under the circumstances. The bill does not exempt contracting out from the notice and meet and confer process and shall not be in-

terpreted to affect other bargaining rights and obligations under the MMBA that were not created by this law. The bill does not diminish any rights of an employee or recognized employee organization provided by a memorandum of understanding and does not invalidate any current provision of a memorandum of understanding when the law takes effect.

This bill is important because it strengthens the rights of public employee organizations to delay or prevent a public agency from contracting out bargaining unit work. "Contracting out" is when a public agency hires either an outside private company, staffing firm, or another public agency to perform the work of regular, permanent, public employees. Contracting out was common during the recession. It hollowed out the workforce and is still used in some agencies today, mostly to perform specialized work that is hard to fill with full time permanent employees. Contracting out usually means job displacement, less income, reduced benefits, loss of seniority, and a lower standard of living for workers. Agencies typically contract out because they think it will save them money, particularly in the form of lower labor costs, at least in the short term.



The temporary lowered labor costs often create major problems for residents. Services are usually diminished, and residents lose control over how those services are delivered. In California, private companies have already taken over large portions of what used to be public services: trash collection, parks, street maintenance, custodial, information services, and even jails and prisons. Residents later realize that contracting out results in diminished services and loss of control over the quality of services paid for by their tax dollars. Once the services are no longer performed by the agency, the agency loses the expertise and equipment to deliver those services. It is much more difficult and expensive for the agency to perform the work again in the future. Private companies know this and often use the agency's dependence on their services to rapidly increase costs in subsequent years. Furthermore, public agencies that consider contracting out often do not investigate thoroughly and, even in the face of opposition, move quickly to contract out. Estimates of several thousand dollars in savings might be used to justify the contract. The agency neglects to consider that contractors can increase their prices, recognizing that the agency can no longer perform the work. These estimates often turn out to be too optimistic. A prudent agency that investigates the impact of contracting out work often decides not to contract out. Knowledge is power.

Agencies that move quickly to contract out may neglect to consult with the affected employee organization, which is illegal. At a minimum, the agency must notify the employee organization and allow for good faith negotiations over the impact of contracting out, including exhausting any impasse process. Impact negotiations can cover topics such as severance pay, the order and timing of lay-offs, bumping rights, assistance with outplacement training, and the transfer of current employees to the contracting entity. Impact bargaining can even include alternatives to contracting out altogether. The employee organization's ability to delay implementation can sometimes prevent agencies from considering this course of action. This is more likely where the residents become aware of the consequences of losing in-house services. Agencies often underestimate the bond residents feel for their local workers, especially where those employees interact directly with residents.

Under AB 339, if an agency wants to solicit bids to contract out bargaining unit work, it must now provide the employee organization with at least 45 days' written advance notice before requesting proposals. The employee organization can demand to meet and confer over any proposal before the agency solicits bids and decides on a course of action. The employee organization can choose how much to cooperate with the proposal. For example, it may be wise to meet with elected officials to explain the downside of any proposal before the item is put on the agenda. It is often best to discuss it privately and strategically before raising any concerns at the bargaining table or at a public meeting.

Paid Family Leave – Eligibility – Care for Designated Persons (SB 590):

Amends the Unemployment Insurance Code to expand eligibility for benefits under the Employment Development Department ("EDD's") State Disability Insurance ("SDI") Paid Family Leave ("PFL") program. Under SB 590, workers can now receive paid leave to care for a seriously ill "designated person." The bill defines designated person as any care recipient related by blood or whose association with the individual is the equivalent of a family relationship. An individual who requests benefits to care for a designated person must identify the designated person and, under penalty of perjury, attest to how the individual is related by blood or how their association is the equivalent of a family relationship. The law represents an important expansion of the PFL program and supports workers who need to take time off work to care for a close person who did not previously qualify as a family member under the PFL program. Workers can begin requesting PFL benefits for a designated person beginning July 1, 2028.

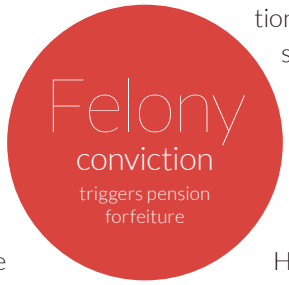
PFL now covers designated persons

Previous legislation (AB 1041) amended the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014 (Labor Code Section 245.5) to allow workers to take time off to care for a "designated person." This legal change took effect January 1, 2023. However, AB 1041 did not provide paid benefits to care for a designated person. Under CFRA and the sick leave law, workers had to use their own paid leave accruals to cover the absences. SB 590 now allows workers who are enrolled in SDI to file a claim with EDD for wage replacement benefits under the PFL program. PFL benefits typically cover about 70% - 90% of the worker's wages. Employers can supplement the amount the employee receives under PFL with the employee's own accrued leave so that the worker receives full pay for the leave. This means an employee's leave accruals will last longer under SB 590 than they would have previously, because PFL benefits will cover most of the employee's wages while off work caring for a designated person. For workers enrolled in SDI who do not have accrued leave, they will not have to take unpaid leave to care for a designated person. Most of their wages will now be covered under PFL. SB 590 does not expand how much leave an employee can take under PFL, but it does expand eligibility to care for a designated

person that was previously not covered.

Public Employees' Retirement – Felony Convictions (AB 1067):

This new Government Code Section 7522.76 requires a public employer that is investigating a public employee or public official for misconduct arising out of or in the performance of their official duties to continue the investigation even if the person retires while under investigation, if the investigation indicates that the person may have committed a crime. The law also applies to job related misconduct that occurs when a public employee or public official pursues an office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits. A public employer may close the investigation once it refers the matter to the appropriate law enforcement agency. If the public employee is convicted of a felony for any job-related misconduct, the public employee would forfeit all accrued rights and benefits in any public retirement system pursuant to the provisions governing forfeiture of retirement benefits under the Public Employees' Pension Reform Act of 2013 ("PEPRA").



This law is an important reform. After a well-publicized scandal involving officials in the City of Bell during the Great Recession, the PEPRA was enacted. The legislation made it possible for a public employee to lose their retirement benefits for committing a job-related felony. Some employees and officials accused of felony misconduct found a loophole by signing separation agreements that would allow them to resign quietly and avoid a conviction that could cost them their pension under PEPRA. AB 1067 now requires the public employer to continue the investigation and refer it to law enforcement authorities for potential prosecution of a crime. Those under investigation can no longer use resignation to cover up a job-related felony. Job-related felony misconduct occurs more often than one might expect. The law adds transparency and accountability to government work for those under serious investigation of wrongdoing.

State Holidays – Diwali (AB 268):

Officially designates Diwali as a state holiday. Authorizes community colleges and public schools to close on Diwali. Allows state employees to take the day off and allows public school employees to be given time off with pay in recognition of Diwali. Authorizes public schools and educational institutions throughout the state to include exercises acknowledging and celebrating the meaning and importance of Diwali. Adds Diwali to the list of exceptions to judicial holidays, which includes Admission Day and Columbus Day, meaning courts will remain open on Diwali. The law takes effect on January 1, 2026. In 2026, Diwali will fall on November 8. Diwali is a festival of significance to Indian Americans and South Asian Americans. It is celebrated annually by Hindus, Sikhs, Buddhists, and Jains throughout the United States and across the globe. Diwali is a shortened version of the Sanskrit term "Deepavali," which means "a row of lamps." Diwali is one of the world's oldest continuing religious holidays, bringing together families, friends, and communities in California, the United States, and around the world in goodwill, peace, and a shared sense of renewal. Diwali is a festival of lights during which celebrants light small oil lamps, place them around the home, and pray for health, knowledge, and peace. Local government employees will not get Diwali off with pay in 2026, unless they have specific holiday language in their MOU that provides for holiday pay for all state holidays. However, like other state holidays (most recently Juneteenth), local public employee organizations may negotiate to add the holiday to their list of recognized holidays during the next MOU negotiation.

Employment – Labor Organization and Unfair Practices (AB 288):

To protect its workers, California has added Section 923.1 to the Labor Code. AB 288 expands the jurisdiction of the Public Employment Relations Board ("PERB") by authorizing workers to petition PERB to protect and enforce prescribed rights under specified circumstances, including if the worker is employed in a position subject

News Release - CPI Data

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

2.9% - CPI for All Urban Consumers (CPI-U) Nationally

3.2% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

2.5% - CPI-U for San Francisco Bay Area

3.5% - CPI-U for the Riverside Area (from July)

4.0% - CPI-U for San Diego Area (from July)

to the National Labor Relations Act ("NLRA") where the National Labor Relations Board ("NLRB") has expressly or impliedly ceded jurisdiction. The bill authorizes PERB to, among other things, decide unfair practice cases pursuant to a specified timeline and order all appropriate relief for a violation, including civil penalties, as prescribed. To pursue relief from PERB, a covered worker or their representative must file an unfair practice charge or petition that includes specified information, including, where applicable, the original charge or petition filed with the NLRB. The bill requires PERB to hold the supporting documentation and evidence confidential and maintain it as part of its investigatory file and exempts this documentation and evidence from the California Public Records Act. The bill authorizes PERB to rely on its own decisions and precedent under the NLRA and authorizes review of its decisions by a state appellate court, as specified. The bill applies to all workers covered by the NLRA as of January 1, 2025. The bill states that over the past several decades, the NLRB has become less effective at protecting and enforcing private sector workers' rights, due to a variety of factors such as inadequate funding, understaffing, a narrowing of the types of workers who can invoke the protection of the NLRA, and a narrowing of the scope of protected concerted activity. The bill also says the NLRA's enforcement mechanisms are further threatened with the loss of decision making due to a lack of a quorum with its administrative proceedings being enjoined through challenges to its constitutionality and its independence. The bill says the delay and increasing inability of the NLRB to provide meaningful and timely relief negates the very purposes underlying the NLRA and opens the door to the industrial unrest and violence that plagued pre-NLRA labor relations. In an article published by the Sacramento Bee, a leader of the California Labor Federation called AB 288 "the most significant labor law reform in nearly a century." However, after Governor Newsom signed the bill into law, the NLRB filed a federal lawsuit against the State of California seeking to block AB 288 from taking effect. The NLRB argues that the new law violates the NLRA, which grants the NLRB exclusive jurisdiction over private-sector labor relations. The NLRB contends that allowing PERB to handle these matters would create a parallel enforcement system that conflicts with federal authority and disrupts the uniformity of national labor policy, which could lead to inconsistent rulings, duplicative proceedings, and a confusing patchwork of standards for employers operating in multiple states. New York has adopted a similar law in response to the NLRB's lack of quorum after President Trump fired Board Member Gwyne Wilcox. The NLRB is also seeking to block the New York law from taking effect. According to a Bloomberg Law article, acting NLRB General Counsel (and former Los Angeles Regional Director) William Cowen called it a "direct attack" on the "core jurisdiction" of the NLRB. "It's a matter that needs immediate action," he said. "It's not a minor incursion. This is a throwdown of significant weight." In a bit of irony, the NLRB itself cannot vote to file a lawsuit now because it has only one member, short of the three members needed for quorum. However, Mr. Cowen said the Board delegated litigation authority to the general counsel in 2011 that takes effect anytime the Board lacks a quorum, as they now currently do.

Immigration Enforcement Protections (SB 294):
Existing law prescribes the duties and rights of employers and employees relating to specified labor laws, including, among other things, notice requirements related to inspections conducted by an immigration agency. This bill would establish the Workplace Know Your Rights Act and require an employer, on or before February 1, 2026, and annually thereafter, to provide a stand-alone written notice to each current employee of specified workers' rights, including constitutional rights of an employee when interacting with law enforcement at the workplace, as specified. The bill requires employers to provide written notice to each new employee upon hire and to provide the written notice annually to an employee's authorized representative, if any. The bill requires the Labor Commissioner to develop a template notice that an employer may use to comply with this notice requirement. The Labor Commissioner shall post the template notice on its internet website on or before January 1, 2026, and post an updated template notice annually thereafter. The Labor Commissioner shall also develop a video for employers ad-

vising them of their rights and requirements on or before July 1, 2026. The bill requires an employer, if an employee has designated an emergency contact for this purpose, to notify that contact if the employee is arrested or detained on their worksite. The employer must also notify the contact if the arrest or detention occurs off-site, either during work hours or during the performance of the employee's job duties, if the employer has actual knowledge of the arrest or detention. The bill would require an employer to provide an employee with the opportunity to name an emergency contact on or before March 30, 2026, for an existing employee, and at the time of hiring for a new employee hired after March 30, 2026. The bill prohibits an employer from discharging, threatening to discharge, demoting, suspending, or in any manner discriminating or retaliating against an employee for exercising or attempting to exercise their rights under the bill. The bill also provides for various civil penalties, requires the Labor Commissioner to enforce the bill, and authorizes enforcement by a public prosecutor.

Other Bills:

Other noteworthy bills affecting public employees include:

- SB 827 – Amends the Government Code to require expanded ethics training and establishes a fiscal training requirement for local agencies and special districts. Existing ethics training is required for local elected officials and governing body members. The new bill expands this to include department heads and similar administrative officers. It also adds a new fiscal and financial training requirement mandate for all local agency officials involved in financial oversight. This includes 2 hours of training every 2 years covering budgeting, debt management, auditing, revenue mechanisms, investments, and ethical stewardship.
- SB 642 – Existing law imposes requirements on employers to share the pay scale for a position with an applicant or in a job posting. This bill revises the definition of "pay scale" to mean an estimate of the expected wage range that an employer reasonably expects to pay for the position upon hire and is made in good faith.
- SB 464 – Existing law requires specified employers to submit annual pay data and related demographic information to the Civil Rights Department. This bill requires employers to collect and store any demographic information separately from employee personnel records.
- SB 513 – Existing law grants current and former employees or their representative the right to inspect and receive a copy of personnel records maintained by the employer relating to the employee's performance or to any grievance concerning the employee. This bill provides that personnel records relating to the employee's performance include education and training records and requires an employer who maintains education and training records to ensure those records include specified information.
- AB 847 – Grants access to the confidential personnel records of peace officers and custodial officers and records maintained by their employing agencies to law enforcement oversight boards or commissions during investigations or related proceedings concerning the conduct of those officers. Requires those oversight boards to maintain the confidentiality of those records and authorizes them to conduct closed sessions to review confidential records. Authorizes a county inspector general to access those personnel records.
- AB 692 – Makes it unlawful to include in any employment contract a term that requires the worker to pay an employer, training provider, or debt collector for a debt if the worker's employment or work relationship with a specific employer terminates. The bill deems these contracts an unlawful restraint from engaging in a profession, trade, or business, and as void and contrary to public policy, except as provided. Authorizes civil actions and provides for specified penalties and relief.
- SB 648 – Authorizes the Labor Commissioner to investigate and issue a citation or file a civil action for

gratuities illegally taken or withheld by an employer.

• SB 578 – Requires the Department of Industrial Relations within the Labor and Workforce Development Agency to establish and maintain the California Workplace Outreach Program to promote awareness of, and compliance with, workplace protections that affect workers.

• AB 1340 – Titled the Transportation Network Company Drivers Labor Relations Act, establishes that transportation network company drivers have the right to form, join, and participate in employee organizations and to bargain through their representatives and engage in concerted activities for the purpose of bargaining or other mutual aid or protection. Authorizes PERB to enforce the Act.

• SB 477 – Revises existing law concerning civil actions brought under California's Fair Employment and Housing Act, including tolling of deadlines to bring an action.

• SB 447 – Current workers' compensation law about death benefits establishes that when a local firefighter or peace officer is killed or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of their duties, the employer must continue providing health benefits to the deceased employee's minor dependents under the benefits extended to the surviving spouse, or if there is no surviving spouse, until the minor dependent is 21 years of age. This bill increases that age to 26 years of age.

• AB 715 – Creates the Office of Civil Rights to work with local educational agencies to prevent and address discrimination and bias including antisemitism prevention.

• SB 48 – Requires the Office of Civil Rights to employ various discrimination prevention coordinators to help ensure educational equity in public schools.

• AB 250 – Revises the Code of Civil Procedure to extend the eligibility period for revival of sexual assault claims to include claims that would otherwise be barred prior to January 1, 2026. The bill exempts public entities from these provisions and provides that public entities are not required to indemnify perpetrators of sexual assault, as specified.

• SB 301 – Prohibits a county or district whose officers and employees are enrolled as members of a retirement system under the County Employees Retirement Law of 1937 from excluding from membership in the system any employee, group, or classification, other than those excludable officers and employees, as defined (i.e. temporary, seasonal, intermittent, or part time only).

• SB 853 – Makes minor changes to the various public employees' retirement laws.

• SB 53 – Enacts the Transparency in Frontier Artificial Intelligence Act (TFAIA) that adds additional legal obligations for developers of generative AI systems regarding the data used by the developer to train the generative AI system or service.

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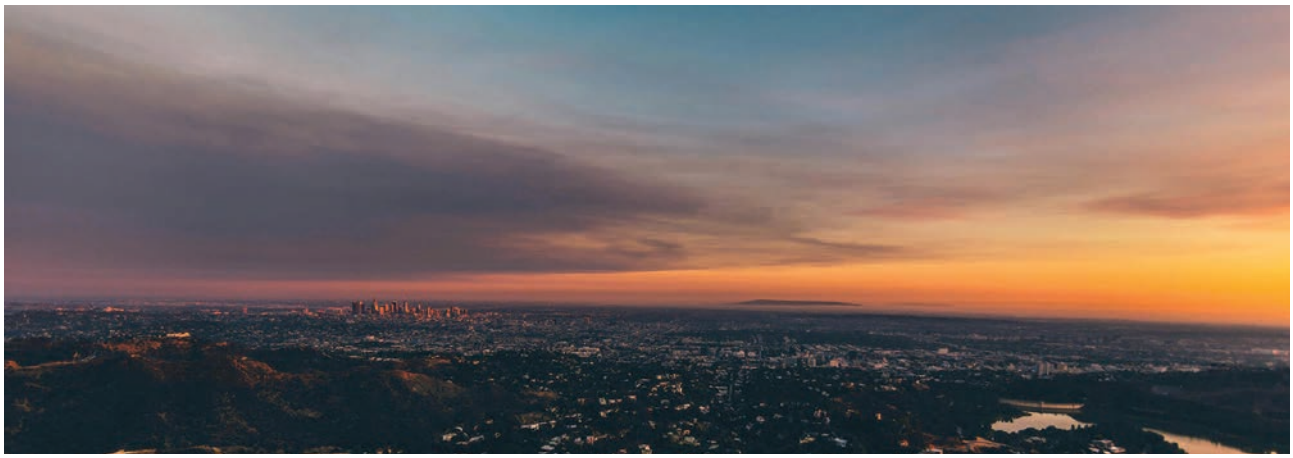
Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job.
The following are some GENERAL answers.
If you have a specific problem, talk to your professional staff.

Question: I was involved in a traffic incident on duty. A vehicle made an illegal U-turn and ran into my vehicle. I reported it to management. A physical therapist through workers' compensation is treating me. HR has just asked me to sign a medical release so the City's provider can access my medical records. Do I have to sign this? I do not want them to access my medical history.

Answer: The short answer is yes. The City's provider will need to access your relevant medical records to process your claim. You will need to sign a medical release in some form, otherwise the provider will have no basis to evaluate the injury and claim. Often, the important thing to determine is which records are relevant. For example, if you are claiming an injury to a specific body part from a specific incident, then your mental health records from years past likely do not need to be released.

Injured workers who file a workers' compensation claim are often asked to sign a broad medical release that provides the insurance company with their entire medical file. Under California workers' compensation law (Labor Code §3300 et seq), both the injured worker and the insurance company are entitled to engage in discovery. This is the process in



which either party tries to gather information to support or reject a claim for a work-related injury. The law says injured workers shall, upon request, disclose all previous permanent disabilities or physical impairments.

Last year, the Workers Compensation Appeals Board held that California law requires disclosure of specific disability or impairment, but the law does not require disclosure of all prior medical treatment. The insurance company must show a reason for the inquiry to support their request. The court may find that specific written disclosures are unduly burdensome when the insurance company has not shown why other discovery methods, such as deposing the injured worker, would be inadequate. If an insurance company suspends or denies benefits based on a failure to comply with a broad request for all prior medical treatment, the injured worker may be able to present this bad faith denial before a workers' compensation judge to try and get benefits reinstated.

This should not prevent you from pursuing a valid claim for benefits, but it is important to know that you will have to disclose a fair amount of your medical history to the employer's workers' compensation provider, and you may be questioned under oath about your injury and related medical history. This can be more involved in two instances. First, for "stress claims" – claims for psychological injury. Second, for claims where there may be both work and non-work causes of the injury. If you are concerned about signing an overly broad medical release, you may consider contacting a workers' compensation attorney. Your professional staff can provide you with a referral.

Question: **The employer is saying that I must shave my facial hair to get the proper fit for a respirator. I wear a respirator for my field job, but they have never required this before. I do not want to shave. Can they require this?**

Answer: If using a respirator is a requirement to carry out your assigned job duties, management can require that your facial hair allows a proper fit, even if the respirator is used only occasionally or in emergencies. If management does not apply this rule consistently to all similarly situated employees, you may have grounds to push back. If you can ensure a proper fit without shaving, you can raise that issue too.

If management is creating a new rule, or changing how a current rule is applied, the employer should provide your employee organization with notice and an opportunity to meet and confer before doing so. Your employee organization can negotiate over the impact of the change. However, management does not have to provide notice or bargain if shaving is already a job requirement, or they have simply been lax in enforcing the current rule. Management must

still be consistent in enforcing the rule with all similarly situated employees going forward.

Ultimately, the employer may be concerned about liability if someone is injured by an improper fit due to lax grooming requirements. The employer can take the necessary steps to ensure that workers wear the necessary protective gear as required by current policy and state workplace safety laws.

Question: **Does the City have a duty or can the employee organization request that the City notify us each time an employee is under investigation or has been put on leave? The City has not done so in the past. It has led to members going without representation because they are not aware they should reach out to us for help. What is the best way to prevent this in the future?**

Answer: Having union representation when questioned about anything that could possibly lead to disciplinary action is an important legal right. Unfortunately, the City has no duty to notify employees of this right nor is it obliged to tell employee organizations that a member is under investigation. You can ask the City to let you know when that happens, but unless the City has agreed to do so as part of MOU or City policy, you cannot legally force them to do it. Educating your members about their right to representation is key to avoiding this problem in the future. The employee organization is there to protect its members. The employee organization can let employees know when they sign a membership card about their right to union representation and how to invoke it if they are called into an investigatory meeting. Information can also be shared or obtained at membership meetings, in the newsletter, and in "know your rights" email blasts.

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