



## What Unit Officers/ Stewards Need to Know About Past Practice

A past practice is any longstanding, frequent practice that is accepted and known by both union and management. Bona fide past practices are considered part of the contract, so grievances or charges can be filed if management violates them. Be sure to check your language that limits their use for grievances. In most cases management cannot end a past practice without first bargaining with the union. In some cases management must wait until contract negotiations to change a past practice.

There are 3 categories of past practice:

**1. CONTRACT-CLARIFYING PAST PRACTICE** is the strongest type. When contract language is vague or general, the practice clarifies the general language.

e.g. The contract language reads, "For many years the company has allowed stewards reasonable time off to attend union meetings and annual training." A practice clarifies and backs up what the contract means by *reasonable*. With a strong past practice, an employer must bargain to change it and cannot change it if the union doesn't agree.

**2. INDEPENDENT PAST PRACTICE** is not addressed by any contract language. Most often these are benefits that workers take for granted and so were not included in the contract.

e.g. There have always been vending machines in the cafeteria and free parking in the company lot. Management cannot just do away with these benefits.

Management can terminate independent past practices under 3 conditions:

- It can prove that there has been a significant change in the original conditions that started the practice.
- It can prove significant ongoing employee abuse of the practice.
- It notifies the union during contract negotiations that it will end the practice during the next contract.

Even in the first two situations, the employer must bargain with the union before ending the practice. Most arbitrators will not extend these past practices rights to work methods. e.g. Management wants workers to run 3 machines instead of 2, claiming new technology makes them easier to run. The union probably cannot claim it is a past practice that workers run only 2 machines. However, the union can demand that management bargain over a change in working conditions.

**3. CONTRACT-CONFLICTING PAST PRACTICE** is the hardest to prove with most arbitrators saying the contract should prevail. However, the arbitrator may rule in favor of practices that have existed for a long time, happen frequently, clearly conflict with the contract, and were clearly known to both parties.

e.g. The employer has never given union reps absentee points for attending union training, even though there are no such provisions in the contract. For 10 years, the union has notified management each time who would be attending. Although the practice conflicts with the contract, it probably would be considered valid. The employer must notify the union of its intent to end this type of past practice and must bargain if the union requests.

The tests for a valid past practice are:

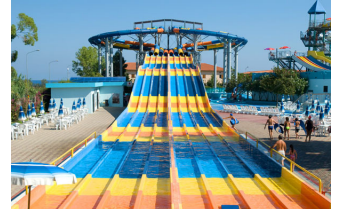
- Has existed for a reasonably long time. The longer a practice has been in effect, the more weight it carries. Many arbitrators think that a practice must be 3 to 5 years old and must have been in practice during at least 2 contracts.
- Occurs repeatedly, the more times the better. An exception might occur around a holiday. If every year for 7 years management allows workers to go home early Christmas Eve, this could be a valid past practice.
- Is clear and consistent, repeated the same way each time. If there are minor deviations, there must be at least a predominant pattern of consistency. e.g. Management has always let workers accept personal phone calls. The union can document 100 times in the last 5 years. Management points out 3 occasions where workers were refused the right due to exceptional conditions. The overwhelming pattern favors the union.
- Must be known to both management and union. While a past practice does not have to be *negotiated*, it must be something that both parties know about. Sometimes it's not good enough for a low-level foreman to know, it must be higher management. According to the absentee program, they should receive one point, but the foreman never gives points for Friday. Upper management finds out and decides to give everybody warnings. Management did not inform the union that it wanted to change the practice. However, since upper management did not know about this practice, it would be hard to argue that workers could continue to leave work early every Friday.
- Must be accepted by both management and union. Often the fact that a practice occurs frequently over a long period of time indicates that the parties agree to it. A practice that is openly agreed to by both parties gains past practice status quicker than one that is not openly accepted.

e.g. For many years workers have been allowed to line up at the clock after the first bell rings, signifying 5 minutes until quitting time. A new boss says no one can line up until the quitting bell rings. The union has a strong case; the fact that management never did anything to stop this practice indicates acceptance.

Article based on attorney Robert Schwartz' book, *How To Win Past Practice Grievances*

# SPRING HAS FINALLY SPRUNG by Morici & Morici, LLP

*As the warm weather is now upon us, residents are heating up for outdoor activities. As follows any increase in outdoor activities is the unfortunate inevitable increase in injuries due to these activities. MORICI & MORICI, LLP is here to inform members of their rights and responsibilities while enjoying another summer. What you read here might surprise you...*



## **SLIDES & RIDES**

Water parks, amusement parks and horseback riding; these activities are all exciting attractions for families to enjoy during the warm weather months. However, these attractions come with the inherent risks involved causing injuries every year. Generally speaking, New York Court's acknowledge certain "assumed risks" associated with such activities. These assumed risk activities are more commonly referred to as "at your own risk". However, recent developments in the law have resulted in there being a not so clear cut line as to which risks associated with an activity are really "at your own risk" and which are not. For instance, recent successful and unsuccessful cases pertaining to participant's injured while horseback riding have focused on whether the activity was classified as "instructional" or "recreational". Although these cases specific cases drew a line permitting or denying the right of recovery to the injured party, where that line is drawn in future cases is still not clear.

In addition to the above activities, recent cases have provided money awards for participants injured while playing sports such as softball and kickball in public parks. Even though these activities are accompanied by inherent risks, should it be found a condition in the park was a factor in causing the injury, the "assumed risk" can become overridden by the defective condition. As these warm weather activities and the unfortunate resulting injuries continue, the one sure thing is that the courts will continue to assess whether compensation to the injured party is appropriate on a case by case basis. Therefore, should an injury occur during this warm season's activities, it is imperative to reach out to MORICI & MORICI, LLP so that we can assess the situation and make sure your rights are protected! Initial consults are FREE for ALL union members.

## **OTHER WARM WEATHER CONSIDERATIONS**

As the weather warms up, many residents are also preparing to tackle those home improvements they have been putting off. Many homeowners plan on completing these home improvements without the assistance of hiring a contractor. It is important for property owners to be aware of which home improvements require a building permit and which do not so as to avoid unnecessary fees and hassle after the home improvement has been completed. This is most relevant to the homeowner "fixing things up" in an attempt to sell their home. Any home improvement completed which requires a permit, and done so without one, will cause fees and delays during the sale due to issues passing "good title". Permits are likely needed for placement of a new fence on your property, building a deck in the backyard and even possibly for central air conditioning units and generators that are installed as fixtures attached to your home. The requirements for building permits can be set by the State, County, Town or Village. It is therefore important to contact the building department in your Town or Village so that you are aware of the requirements for your specific property before you get started.

## **WORKERS' COMPENSATION ALERT!!!**

The Business Council of New York State is trying to have a number of bills considered as part of the state budget negotiations that would devastate benefits for injured workers. Among the bills are proposals to:

- Require the Board to adopt schedule loss of use guidelines that would significantly reduce or eliminate these awards for injured workers;
- Run the caps on permanent partial disability benefits retroactively to the date of the accident, and make any weekly benefits previously paid in excess of the permanent disability rate an overpayment to be recouped by the carrier;
- Expand the PPO (employer-managed care) opt-out period from 30 days to 120 days.

The Business Council has been actively lobbying both houses of the Legislature (and presumably the Governor's office) in support of these bills. We need to show our elected officials that these bills do not have the support of the public.

Please see the petition at the below link and distribute widely to all who are concerned about working people.

[http://petitions.moveon.org/sign/oppose-the-business-council?source=c.em&r\\_by=15294694](http://petitions.moveon.org/sign/oppose-the-business-council?source=c.em&r_by=15294694)

## The 7 Most Common Causes of Workplace Accidents

- **Shortcuts**

Humans are notoriously lazy, so taking shortcuts is a rather common practice in all walks of life, not necessarily work alone. However, when employees take shortcuts at work, especially when they are working around dangerous machinery or lethal chemicals, they are only exposing themselves to a potential catastrophe. Simply put, shortcuts that are taken on the job may actually increase your risk of injury, or worse, death.

- **Overconfidence**

Confidence is a great thing to have, but there is also such a thing as too much confidence. When employees walk into work every day with the attitude that, "It will never happen to me," they are setting an attitude that leads to incorrect procedures, methods, and tools while working. Be confident, but remember that you are not invincible.

- **Poor, or Lack of Housekeeping**

Whenever someone walks through your workplace, they can get a pretty good idea of your attitude towards workplace safety by just looking at how well you've kept up your area. Housekeeping is one of the most accurate indicators of the company's attitude towards production, quality, and employee safety. A poorly kept up area leads to hazards and threats everywhere. Not only does good housekeeping lead to heightened safety, but it also sets a good standard for everyone in the workplace to follow.

- **Starting a Task Before Getting All Necessary Information**

The quickest way to get a job is to do it right the first time. To do it right the first time, you need to make sure that you have any and all pertinent information relating to the task you will be performing. When you begin a job with just half the information, or half the instructions, you are essentially doing the job while blind. Remember it's not stupid to ask questions, it's stupid not to.

- **Neglecting Safety Procedures**

This is probably the worst thing that an employee can do. Deliberately neglecting set safety procedures in the workplace doesn't just endanger yourself, but it endangers the co-workers around you, as well as the company as a whole.

- **Mental Distractions**

Everyone has a life outside of the workplace, and sometimes life can take dips and turns that affect your emotions and your mood negatively. However, as harsh as it sounds, employees cannot let mental distractions from their personal lives affect their performance at work. Not only will they become less aware of their surroundings and less safe, but they will also become less productive, costing the employer time and money.

- **Lack of Preparation**

You may have heard of something called Job Hazard Analysis (JHA). JHA's are an effective method of figuring out the best way to work safely and efficiently. When employees begin a task without thinking through the process beforehand, or hastily start without any type of planning, they are setting themselves up for failure. Make sure you plan your work, then work your plan.



# UPSEU Local 1222 Shop Talk



## The Steward's Toolkit

- Notebook and a pen
- Calendar
- Copy of your union contract
- Copy of your employer's worker handbook, if any
- Grievance forms
- Grievance fact sheets
- List of unit members and contact information
- Seniority lists, as appropriate
- List of non members
- Union membership sign-up forms
- Copies of your local newsletter
- Names and contact information for unit officers
- Employee Assistance Program information, if any
- Listing of member benefit programs

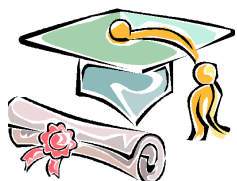
## Ward off Heart Attacks: Take a Vacation

With summer almost here, it's time to put vacation days on your calendar. A 20 year study shows that men who took frequent vacations were a third less likely to die of heart attacks. Women cut their risk of heart attack in half just by taking two vacations a year.

### Here's how to slow down and take a vacation this year:

1. REMEMBER: Skipping on vacation won't boost your career.  
If you're a steward or officer, it's especially important that you lead by example and take time off. You and those around you will see the payoff: **rejuvenation**.
2. SQUEEZE IN SHORTER, MORE FREQUENT GETAWAYS.  
If your workload is at its peak, schedule a handful of three or four day weekends.
3. NAIL IT DOWN: WRITE IT DOWN.  
Many members find that if they don't plan a vacation at the beginning of the year, it won't happen. If you must postpone a planned vacation because of urgent work, set another date for the holiday immediately and write it on your calendar.
4. GET PASSIONATE ABOUT SOMETHING THAT'S NOT WORK.  
You're more likely to take time off if you have an interest outside the office.

*Adapted from "A Healthy New Year's Resolution: Take a Vacation," by Anne Fisher*



**July 1st in the Deadline**  
**for UPSEU Local 1222 Scholarship Applications!**  
Applications are available on our website  
at [www.local1222.org](http://www.local1222.org)

*If you are registered on our website, you may fill in the application online.*