

**Commission On Labor
Labor Bill of Rights
Draft 2012**

Preamble:

The City of Berkeley, California, has an interest in promoting human rights, peace, and justice. These rights are established by the U.S. Constitution's "Bill of Rights," by the United Nation's "Universal Declaration of Human Rights," the "International Covenant on Economic, Social and Cultural Rights" and the conventions (resolutions) of the International Labor Organization. Because inequality and the distribution of wealth continue to be issues of concern in our society, and because of the low status and influence given to workers in general, especially those belonging to historically underprivileged classes, these statutes will act as guidelines for the creation of just and humane city policies toward working people and labor organizations.

Chapter One: Job Creation and Retention

It is the City of Berkeley policy to promote full employment for Berkeley residents; to promote local investment and ownership of property and businesses by workers and Berkeley residents; to encourage union participation in the social and political processes that will determine the city's future; and to support creation and retention of high-quality jobs* for residents, especially historically underserved populations (e.g. youth and people of color).

*High-quality jobs would include: a living wage, health benefits, accrued vacation time, accrued sick time, flexible work schedule, holiday time and pay, a workplace rights organization (e.g. union), a written grievance procedure, a written progressive discipline policy, and worker assistance programs including mediation, counseling, and addiction assistance.

Chapter Two: Labor Education

The City shall encourage the Berkeley Unified School District to establish a developmentally appropriate Labor Education Curriculum to be used in throughout the Berkeley school system, including source-material program design and program funding. The curriculum should include labor history, labor culture (e.g. theatre, art, literature, and music), labor laws, and current events in management labor-management relations.

Chapter Three: Disability

It shall be the policy of the City of Berkeley that the disabled will have equal opportunities in hiring and promotion, and that the city shall take any steps necessary, where lawful and feasible with the city's resources, to prevent employment discrimination based on disability. It is the policy of the city of Berkeley, where lawful and feasible, to support development of a comprehensive plan for increasing job prospects for the disabled, drawing on the assistance of the ~~Laber~~ Commission On Labor, the Commission on Disability, and other appropriate public and community agencies. Objectives of such a comprehensive plan should include assistance to employers in making worksites accessible and barrier-free for disabled workers and consumers, as well as increasing the availability of supplementary services such as transportation and attendant care, which makes employment more feasible

Chapter Four: Childcare and Eldercare

It is the policy of the City of Berkeley to encourage employers and developers doing business in the city to plan for and develop childcare and eldercare options. It is the policy of the City of Berkeley to encourage employers to survey employees' childcare needs, and to develop a plan for meeting those needs. In order to help working parents to meet family responsibilities and continue to maintain employment and remain effective at work, the city shall encourage employers to adopt flex-time, staggered work hours, job-sharing, parental and family leave policies, and other such flexible family-friendly workplace policies. It is city policy to encourage employers to allow each employee to set aside a portion of the employee's pre-tax income to pay for childcare or for the care of elderly parents.

Chapter Five: Prevailing Wages on Construction Jobs

Prevailing wages and benefits must be paid to all employees on any construction project, including new construction and repair of any building, if such projects involve any ~~C~~city money or any contracts with the ~~C~~city, or if public bonds finance the project. The Community Workforce Agreement, enacted by City Council January 18, 2011, requires publicly funded construction projects whose contract estimate exceed an amount defined by council and the building trades, will utilize only union labor for those projects.

Chapter Six: ~~Strikes and Boycotts~~

The City of Berkeley shall, where lawful, boycott all businesses and products, and refuse to sign contracts with or use the products or services of any employer involved in an officially sanctioned management labor dispute or which appears on the AFL-CIO "Do Not Patronize" list, and shall encourage the ~~C~~city's citizens and employees to observe and support such boycotts.

Chapter Seven: ~~p~~Police Conduct in Management-Labor Disputes

The Berkeley Police Department and all its officers must ~~remain~~ take a neutral stance in any legal strike, management-labor dispute, picketing, ~~and or~~ demonstration. City police shall continue the present practice of not being used by management to break strikes by interfering with lawful picketing, or by physically attacking, harassing or intimidating strikers engaged in legally protected activity. Police shall not be used by management business owners or managers as private security guards to escort strikebreakers or "replacement workers" (scabs) across picket lines.

Chapter Eight: Drug Testing

The city opposes drug testing of employees in absence of: (1) reasonable grounds to believe that the employee's faculties are impaired on the job as a result of the influence of drugs or alcohol; (2) evidence that the employees thereby present a clear and present danger to the safety of themselves or others; and (3) the tests are performed in state-licensed facilities and employees are afforded an opportunity to explain or rebut the results. ~~Drug testing of employees shall be prohibited, were lawful, within the city limits, as this~~ ~~Otherwise~~ Mandatory testing presupposes an employee's guilt until proven innocent and violates an employee's constitutionally guaranteed right to privacy. This ban includes drug screening as a condition for employment as well as any type of random drug screening at the discretion of the employer or supervisor.

Chapter Nine: Plant Closure Guidelines

~~Unannounced plant closure or closing on short notice have worked a severe hardship on working people throughout the nation. It is the policy of the City of Berkeley that when lawful and feasible, major employers must be required to notify the city, the affected employees, and employee organizations or union of decisions or plans to relocate, close, or substantially reduce operations at least twelve months prior to anticipated date of closing, relocation or reduction in operations. The employer should be required to shall file a report with the city justifying the loss of these jobs and stating how much tax revenue will be lost as a result of such closures explaining the reasons for the loss of these jobs and the impacts of that loss. The employer should meet with city officials or staff, as well as with any affected employees, their union or organization, to discuss alternatives to avoid such job loss—such as modernization, changes in product line, possible city assistance, etc.~~

Chapter Ten: Workplace Bullies

It shall be city policy to reaffirm that every worker has a right to a safe workplace free from intimidation and harassment and that the city will support, if appropriate, statewide or national legislation adopting protection for the targets of workplace bullying and will support opportunities to educate employers, perpetrators, and especially targets so as to protect themselves from bullies in the workplace.

Chapter Eleven: Sweatshop-Free Labor

It shall be city policy to purchase all goods and services, where lawful and feasible, from reputable businesses, giving preference to local producers and producers who ensure (by contracting with a monitoring agency) their facilities follow all applicable labor laws and pay a living wage and offer high-quality jobs free from coercion or intimidation.

Chapter Twelve: Wages

It shall be city policy that all minimum and living wages shall be adhered to and, when feasible, increased or expanded.

Chapter Thirteen: Equal Benefits and Non-Discrimination

It shall be city policy that equal benefits shall be granted in hiring, salary, benefits, advancement, discipline, termination, or retirement - on the basis of actual or perceived gender, race, religion or creed, age, mental or physical disability, sexual orientation, nationality, political opinion, marital status, medical condition, pregnancy, or social or ethnic origin, or any physical or other attributes unrelated to job requirements.

Chapter Fourteen: Healthcare

It shall be city policy to explore ways that health care can be expanded and improved for all Berkeley residents. Where feasible and lawful , initiatives to expand and improve health care should be supported and/or funded by the City of Berkeley.

Chapter Fifteen: Alternate Economic Models for For-Profit and Non-Profit Businesses

It shall be city policy to recognize that for-profit and non-profit businesses exist to fulfill distinct rationales. Where feasible, the City of Berkeley shall create distinct ways to support both for-profit and non-profit businesses while refraining from a one-size-fits-all solution.

Chapter Sixteen: Strikes

The city shall recognize the right to strike as a fundamental human right, important to the establishment of worker organizations as truly representative of the collective will of the majority of the members.

Chapter Seventeen: Contracting Out and Privatization

It shall be city policy to avoid excessive contracting out of city work or otherwise privatize public sector jobs.

Chapter Eighteen: Berkeley as an Employer

It shall be city policy to promote harmonious relations with labor and bargain in good faith with labor organizations. In addition, the city shall have a preferential hiring policy for Berkeley residents in all city jobs and encourage city employees to both live and work here.

Chapter Nineteen: Workplace Safety

It shall be city policy that workplace safety shall assume the utmost importance and consideration by all employers within the City of Berkeley. Every attempt should be made to monitor and correct any code violations that create a breach in workplace safety.

Chapter Twenty: Day Laborers

It shall be city policy that the humanity of day laborers shall be recognized and further that they shall be recognized in part as possible economic refugees affected by a foreign policy driven by the needs of global capital as opposed to human needs. Every attempt shall be made to offer them needed services and the rights and protections due to anyone under our constitution and laws, especially labor laws.

Chapter Twenty-One: Workforce Development

It shall be city policy to morally and, where feasible and lawful, economically support nonprofit organizations and businesses that participate in mentoring, job training and job placement programs. Those programs shall design and implement programs that provide training and placement that meet the needs of employers, minimize duplicative services, and demonstrate accountability through utilizing common measures and positive outcomes.

Appendix I

Relevant excerpts from United Nations resolutions

Universal Declaration of Human Rights, Resolution 217A (III), passed in 1948

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

International Covenant on Economic, Social and Cultural Rights Resolution 2200A (XXI), passed in 1966

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

International Labor Organization's Conventions (International Labor Standards)

C154 Collective Bargaining Convention, 1981

PART I. SCOPE AND DEFINITIONS

Article 2

For the purpose of this Convention the term **collective bargaining** extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

PART III. PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining

214. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) presented a complaint of violations of trade union rights against the Government of the United States of America in a communication dated 19 February 1988. It submitted additional information in support of its complaint in a letter dated 9 March 1988. The Government supplied its observations in a communication of 27 April 1988.

215. The United States has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) or the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

Appendix II: Justification for each chapter in the “Labor Bill of Rights”

Justification for Chapter 3: Disability

Approximately 8–10% [number tk] percent of Berkeley residents are disabled. The Berkeley’s Commission on Disability has testified that employment and under-employment are serious problems faced by the disabled community of our city. Only one-third of disabled residents are employed in paid jobs, part-time or full-time.

Justification for Chapter Four: Childcare and eldercare

Lack of affordable childcare is a major obstacle to the full participation of women in all levels of the labor force. Primary responsibility for the care of dependent children, as well as the care of elderly parents, has prevented women from achieving career and economic equality with men in the workplace. Adequate childcare facilities, as well as adult day health care centers and other services to assist workers in caring for dependent family members, are essential to full employment for women.

Justification for Chapter Five: Prevailing wages on construction jobs

This statement of policy concurs with the city of Oakland Port and Redevelopment Agency Prevailing Wage Ordinance, adopted in 1986. It complements existing City of Berkeley policy, which calls for affirmative action provisions of 40% percent women and minority hiring as well as preferential hiring of Berkeley residents.

Justification for Chapter Nine: Plant closure guidelines

Plant closures or mass layoff of workers shall adhere to state regulations to inform workers and local officials. The affected businesses shall work with local workforce development programs to ensure workers have access to services for dislocated workers.

Chapter Ten: Workplace Bullying

Bullying in the workplace is defined as the repeated, hurtful interpersonal mistreatment of a person (the target) by a cruel perpetrator (the bully). Forty percent of Americans report their job is “very” or “extremely” stressful. Twenty-five percent of workers view their jobs as the number one stressor in their lives. Eighteen percent have experienced some sort of threat or verbal intimidation at work in the past year. Financial costs to employers and employees is substantial, including: loss of productivity through workplace disruption and employee sick time, and disruption to family life. The existing standards for workplace bullying (harassment) protection in the workplace are based on “protected classes” like race, gender, ethnicity, or protected activities like union organizing, but there are to date no legal protections for harassment by a coworker, supervisor, or employer when the target is not in a protected class. Workplace bullying (general harassment) is far more prevalent than these other destructive behaviors covered by existing legislation.

Chapter Nineteen: Berkeley as an employer

The people of the City of Berkeley have a fundamental interest in the development of harmonious and cooperative labor relations between the city and the workers hired to serve the city.