

# Workers' Rights and the Power of Concerted Activity

Worker Justice Wisconsin: Robert Christl and Daniela Jaime

# Agenda

- I. Brief introduction of Worker Justice Wisconsin
- II. Overview of the benefits of an organized workforce
- III. Employment and labor laws in the United States today
- IV. The power of concerted activity
- V. Concerted activity as it applies to undocumented workers
- VI. How to get involved

# Argument

Worker Justice Wisconsin argues that...

1) Workplace organizing is the most effective and safest approach to ensure humane working conditions for all, including undocumented workers (who are not employed in agriculture or domestic services).

2) Despite the United States' profoundly inadequate employment and labor laws and hampered enforcement agencies, the right to concerted activity remains workers' most important tool for improving working conditions.

Worker  
Justice  
Wisconsin



# Who are we?

Worker Justice Wisconsin is a worker center and a faith-based labor advocacy organization.

Robert Christl—Worker Center Program Director

Daniela Jaime—Lead construction organizer

We are located in Madison, WI and focus mostly on Dane County (for now).

**Education:** We offer workshops on workers rights, how to organize and form a union, how to establish a worker cooperative, and deferred action for immigrant workers. We do this in English and Spanish.

**Organizing:** We organize workers at work and incubate cooperatives.

We want to **educate** and **empower** the working class to defend their rights in this country.





# Part 1: Overview of the benefits of an organized workforce

Who comes to the worker center? In 2022:

- 91% identified as Hispanic
- 52% identified as women
- 42% of cases dealt with wage & hour issues
- 13% of cases dealt with discrimination
- 13% of cases dealt with concerted activity

Our on-the-ground experience indicates that the construction, service, and food production industries are where we see most violations of employees' basic rights.



## Statistics by industry:

- According to the U.S. Bureau of Labor Statistics, the median weekly earning for non-unionized workers in housekeeping in 2022 was \$703, though at \$586, women in housekeeping earned significantly less.
- According to the Illinois Economic Policy Institute and the Midwest Policy Institute, about 14,500 construction workers, or 10% of the workforce, are misclassified every year in Wisconsin and, as a result, they earn \$23,500 less annually in wages and benefits than correctly classified workers.
- According to the UFCW, union members make on average 15% more than nonunion counterparts.



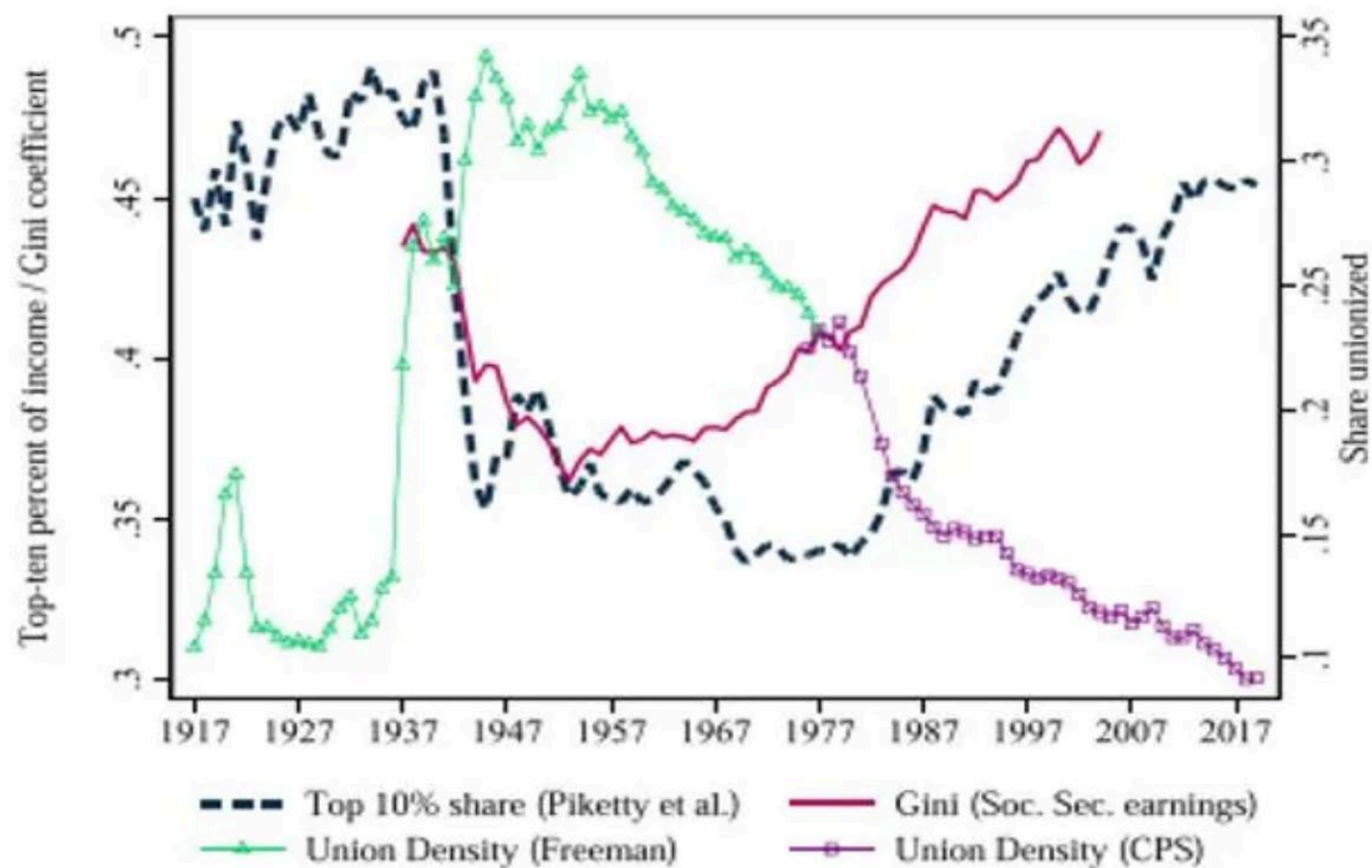


National statistics according to the EPI:

- An employee in a unionized workplace earns, on average, 10.2% more than their counterpart in a non-union workplace (everything else being equal).
- 95% of employees covered by a union contract have access to employer-sponsored health benefits. Only 69% of nonunion workers have access. And the quality in benefits is often significant.



**Figure 2: Union Density and Inequality Measures, 1917-2019**



Source: [Farber et al. 2021](#)



## Part 2: Employment and labor laws in the U.S. today

# What is the difference between employment and labor law?



Employment law: the set of laws and regulations that govern the rights and responsibilities of employees and employers.



Enforced by federal agencies such as Wage & Hour, OSHA, and the EEOC and state agencies such as DWD.



Labor law: the set of laws and regulations that govern industrial relations (i.e., the rules that oversee the processes through which labor unions gain legal recognition and unions and employers bargain a contract).

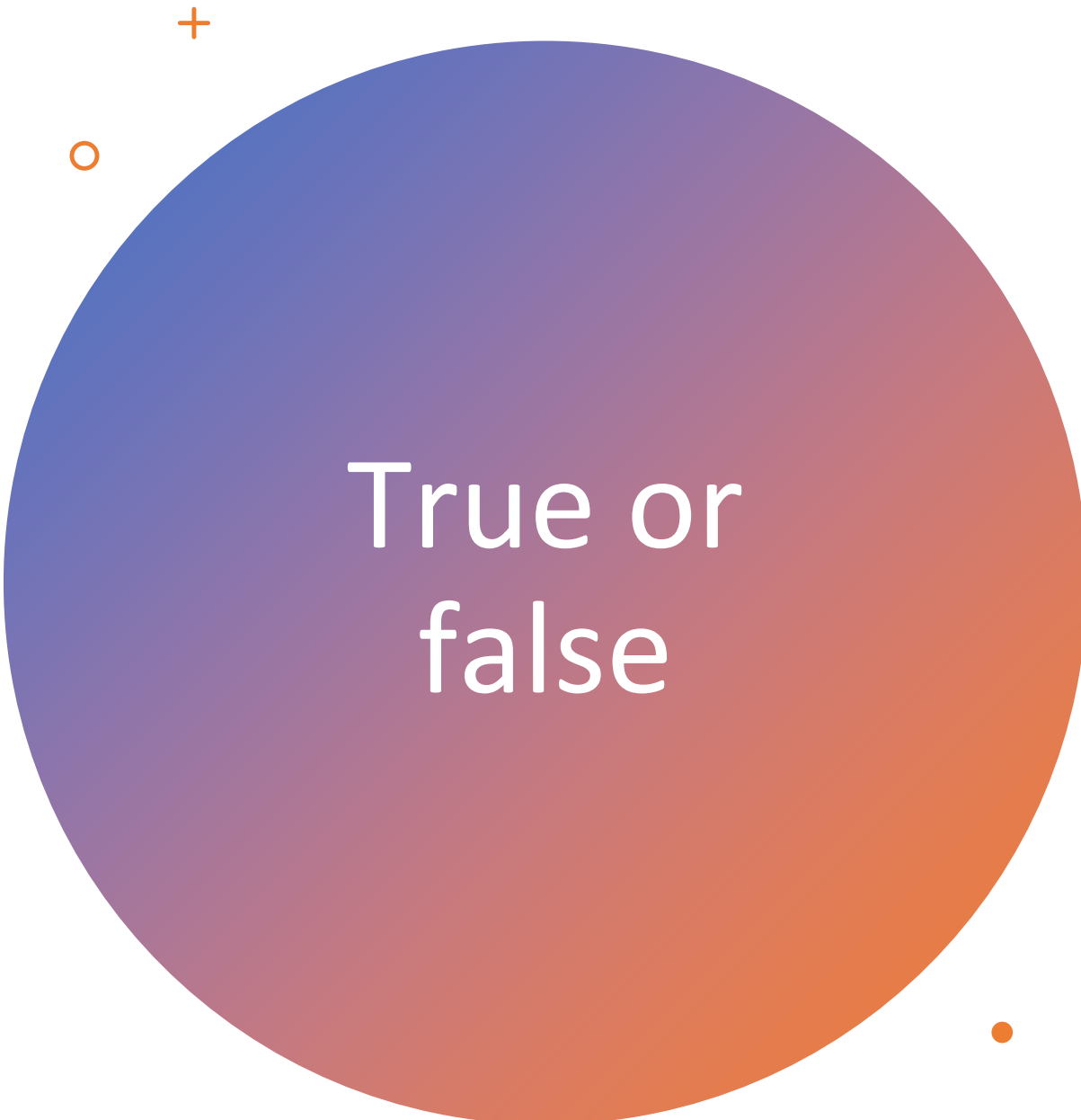


Enforced by the National Labor Relations Board for private sector employees and the Wisconsin Employment Relations Commission for public sector employees in Wisconsin.

You don't need legal recognition to be in a union. Anyone can be in a union. Legal recognition simply means that there is a process by which the employer is obligated by the state to bargain. There is no law "banning" unions. That would constitute a flagrant violation of one's basic human & constitutional rights.



A snapshot of U.S.  
employment laws

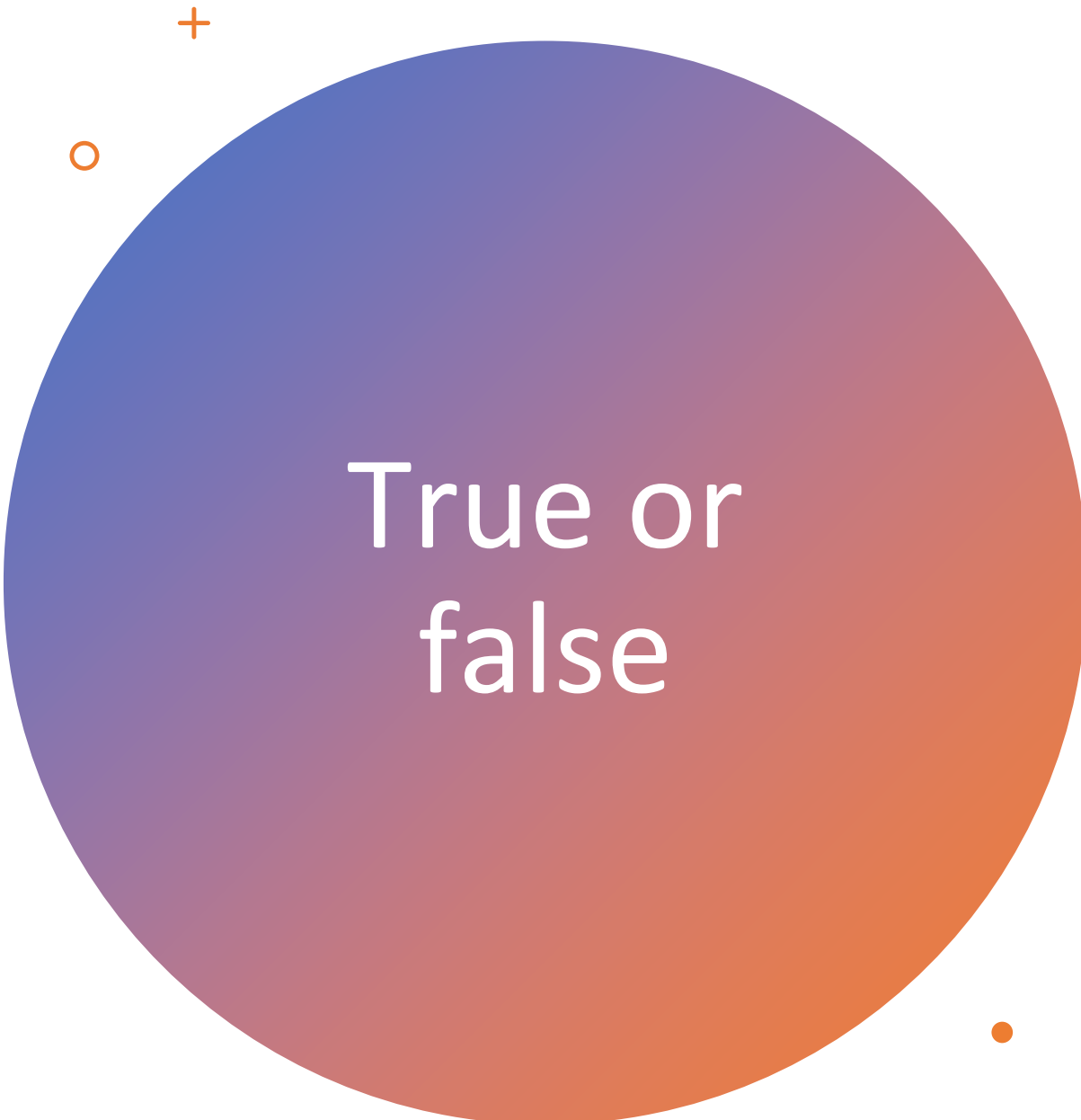


True or  
false

In a nonunion workplace,  
an employer can raise or  
reduce an employee's  
wage/salary whenever and  
however often they want.

True

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True or  
false

An employer is required to give an employee at least one fifteen-minute rest break for every eight-hour shift.

False

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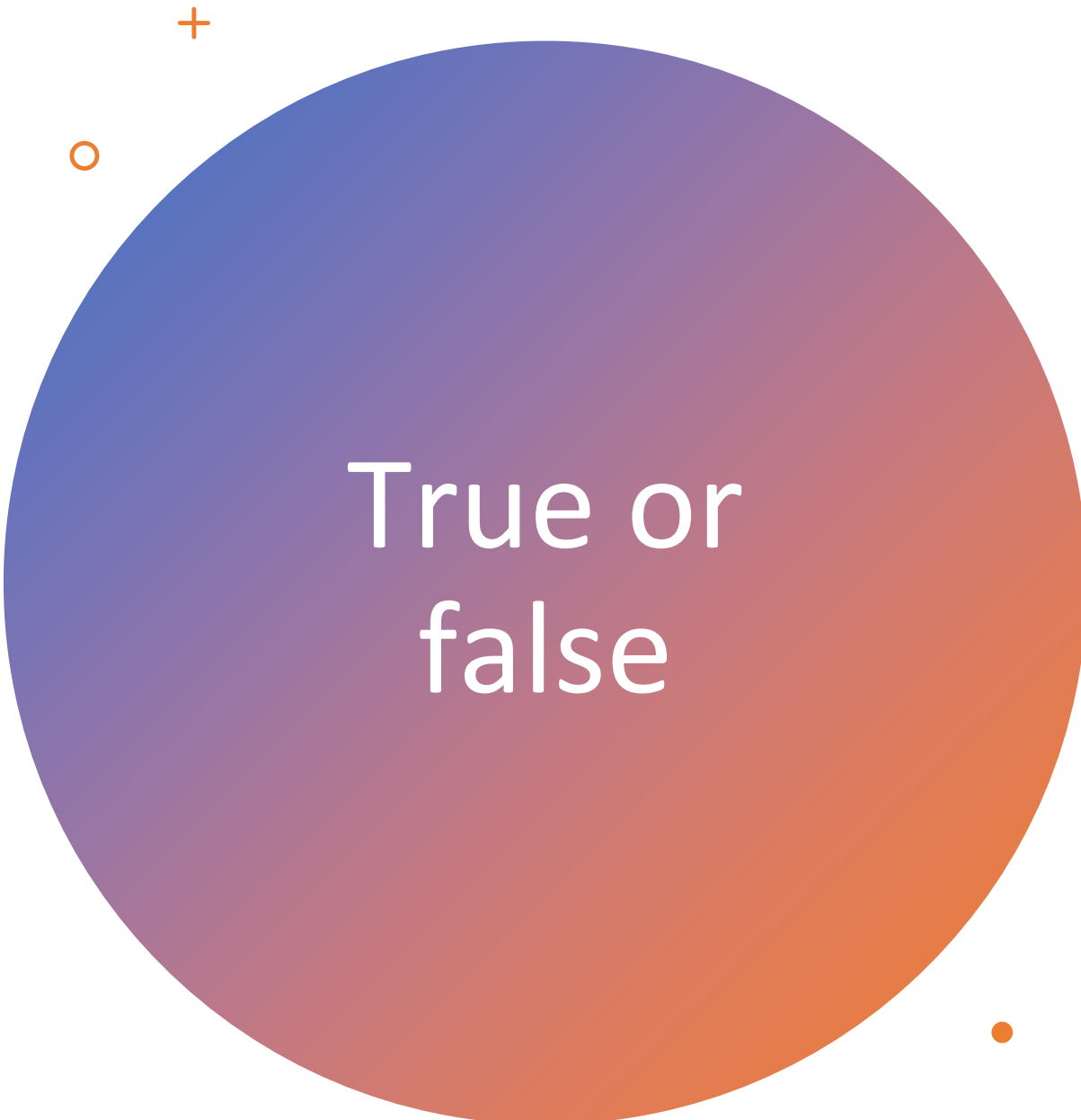
True or  
false

An employer can deduct  
the cost of broken  
equipment or poor work  
from an employee's wages.

False

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True or  
false

An employee has the right to receive proper training in a language that is accessible to them.

True

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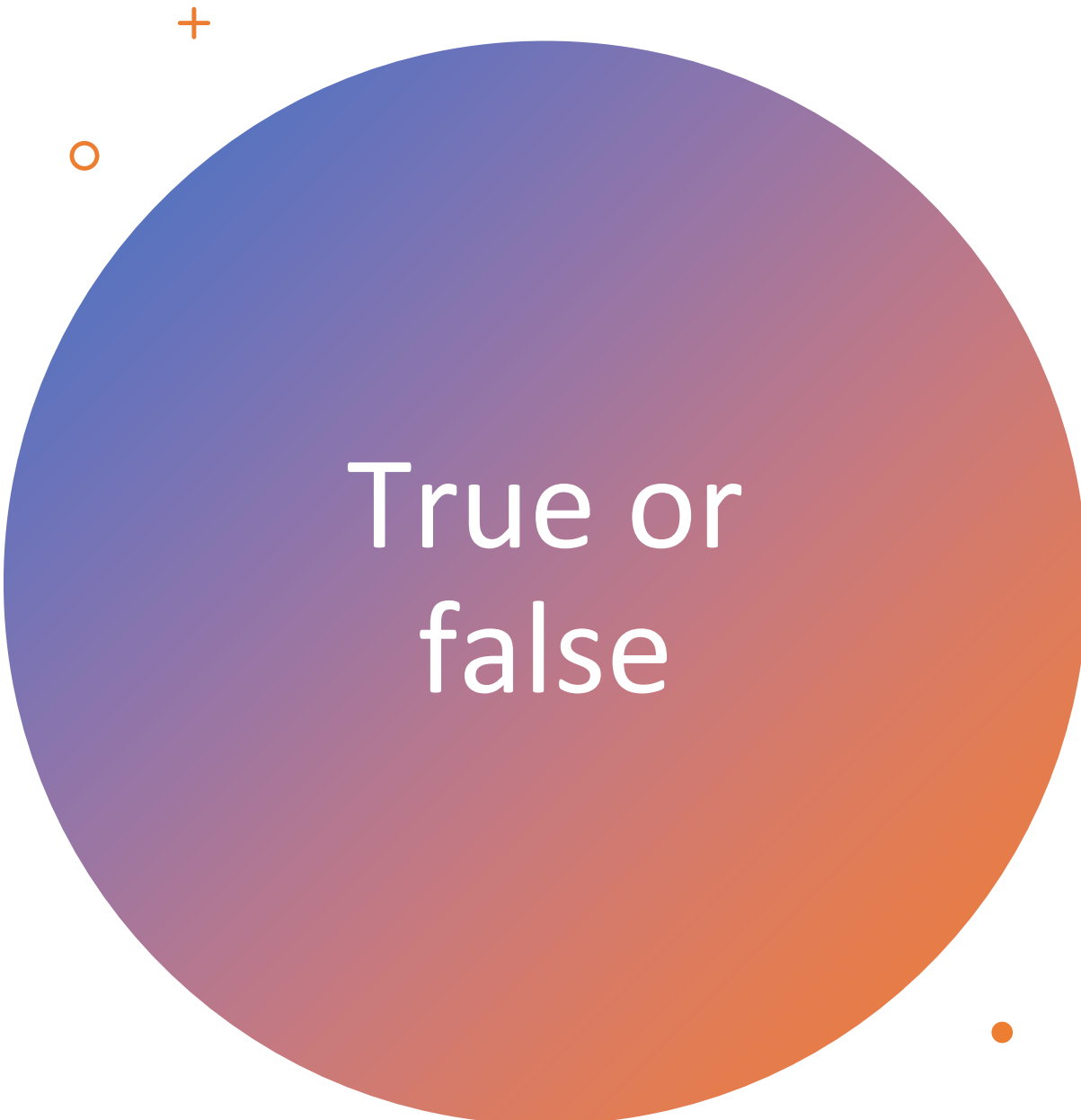


True or  
false

The minimum wage for waiters in Wisconsin is \$2.33/hour (plus tips).

True

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True or  
false

All workers have the right  
to take unpaid sick/family  
leave.

False

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True or  
false

An employer can fire a worker because the worker cheers for the wrong football team.

True

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According to U.S. employment law, it is illegal for an employer to...

#### Commit wage theft

- Rounding down hours worked
- Erase hours from a punch card
- Deduct money from a worker's wages without consent (excluding taxes)
- Require workers to punch out for a break lasting less than 30 minutes

#### Discriminate against an employee

- For an action to be discriminatory, it must have an adverse effect on the employee and be motivated by the employee's belonging to a protected class (depending on the business' location)

#### Impose unsafe working conditions

- Not provide adequate or accessible training
- Not provide adequate protective equipment

According to  
U.S.  
employment  
law, it is 100%  
legal for an  
employer to...

Pay a worker the same wages  
forever.

Hire insufficient staff and overwork  
employees.

Never provide a break for an  
employee who is 18 or older.

Never provide vacation days, paid  
or unpaid.

Never provide paid sick leave.

Create a toxic/unfriendly  
workplace environment.

Change employees' schedules on  
a whim.

Change the job description on a  
whim.

Reduce a workers' wages if the  
employee is informed ahead of  
time (continuing to work after  
being informed is legally  
construed as consent to lower  
pay).

Fire an employee with or  
without cause (so long as it's not  
discriminatory).

The list goes on...



What can an employee do if their employment rights have been violated?

They can file a charge with the relevant state agency.

Filing a charge with a state agency is protected from retaliation.





# But what are the drawbacks of filing a charge with a state agency?

Getting justice through the state is a very slow process.

In most cases, violating an employee's employment rights is *not* a crime. E.g., wage theft is *not* a criminal offense. It is a civil offense.

Individual charges have no guarantee of correcting an employer's bad behavior.

Individual charges cannot expand an employee's rights and benefits in the workplace.



Individual charges will not get workers:

Regular and predictable pay raises

Better wages/salaries

Paid vacation

Paid sick leave

A retirement plan with a pension

Control over their schedules

And many other benefits

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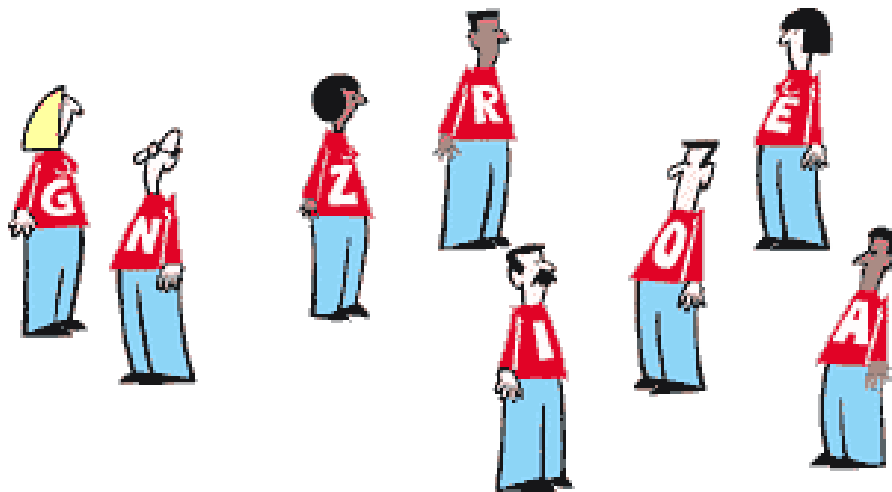
Only through workplace organizing can employees acquire these and many other benefits in the United States.

A union contract is better protection than the state.

## Labor organizing targets the fundamental imbalance of power that is inherent to the labor market.

The individual employee, who depends on the employer for their income, has little power to pressure the employer to improve working conditions. Even highly skilled employees are replaceable.

But a united workforce, on whom the employer depends for their profit, has immense power to pressure the employer to improve working conditions.



A snapshot of U.S.  
labor law



The National Labor Relations Act (NLRA) is the regulatory framework that governs labor law.

The NLRA states: “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other **CONCERTED ACTIVITIES** for the purpose of collective bargaining or other mutual aid or protection...”.

Any violation of this right is called an **unfair labor practice**.



According to U.S. labor law, it is illegal for an employer to...

- Interfere with, restrain, or coerce employees in the exercise of the rights
- Dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it
- Discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization
- Refuse to bargain collectively with a legally recognized union



## In layperson's terms...

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Any retaliation by an employer against employees who are in the process of organizing is illegal. Lost wages, benefits, or jobs as a result of retaliation will be restored by the National Labor Relations Board following an investigation of an unfair labor practice.







# Important Information About NLRB Investigations for Immigrant Workers



The National Labor Relations Act (NLRA) protects most private-sector employees, regardless of their immigration status. The NLRA gives employees the right to:

- Form, join, or assist a union to negotiate concerning wages and other working conditions.
- Discuss wages and other working conditions with coworkers, a union, a worker center, a government agency, the media, or the public.
- Take collective action with coworkers to try to improve wages and other working conditions.
- Choose not to take part in any of these actions.

**Below is important information for you to know about our confidential investigation process:**

- Because immigration status is not relevant as to whether there has been a violation of the NLRA:
  - We will **NOT** ask you about your immigration status.
  - You **DO NOT** need to share any information with us about your immigration status.
  - You **DO NOT** need to share information about the status of your current/former coworkers.
- We only enforce the NLRA and have **NO** involvement with the enforcement of immigration laws.
- We will **NOT** share any information about you with the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE), or any other immigration authorities, unless you request that we share your information to assist you with seeking immigration relief, as described in the last bulleted point of this document.



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## We still need the PRO Act to strengthen labor law


The NLRA is outdated and organizing is still unreasonably hard.

Despite these protections, employers can often draw out the process by committing ULPs. Again, ULPs are not crimes. They are civil offenses.

They can also misinform employees about unions through a captive audience meeting.

The Protect our Right to Organize Act would:

- Exclude employers from setting union election procedures
- Prohibit captive audience meetings
- Require the NLRB to reinstate workers fired for organizing immediately
- Enforce civil penalties and hold corporate officials personally liable for violations
- Ban class action waivers
- Bans employers from permanently replacing striking workers, lockouts, and removes prohibitions on secondary activity.



Let's do some more true/false scenarios but with the lens of concerted activity.



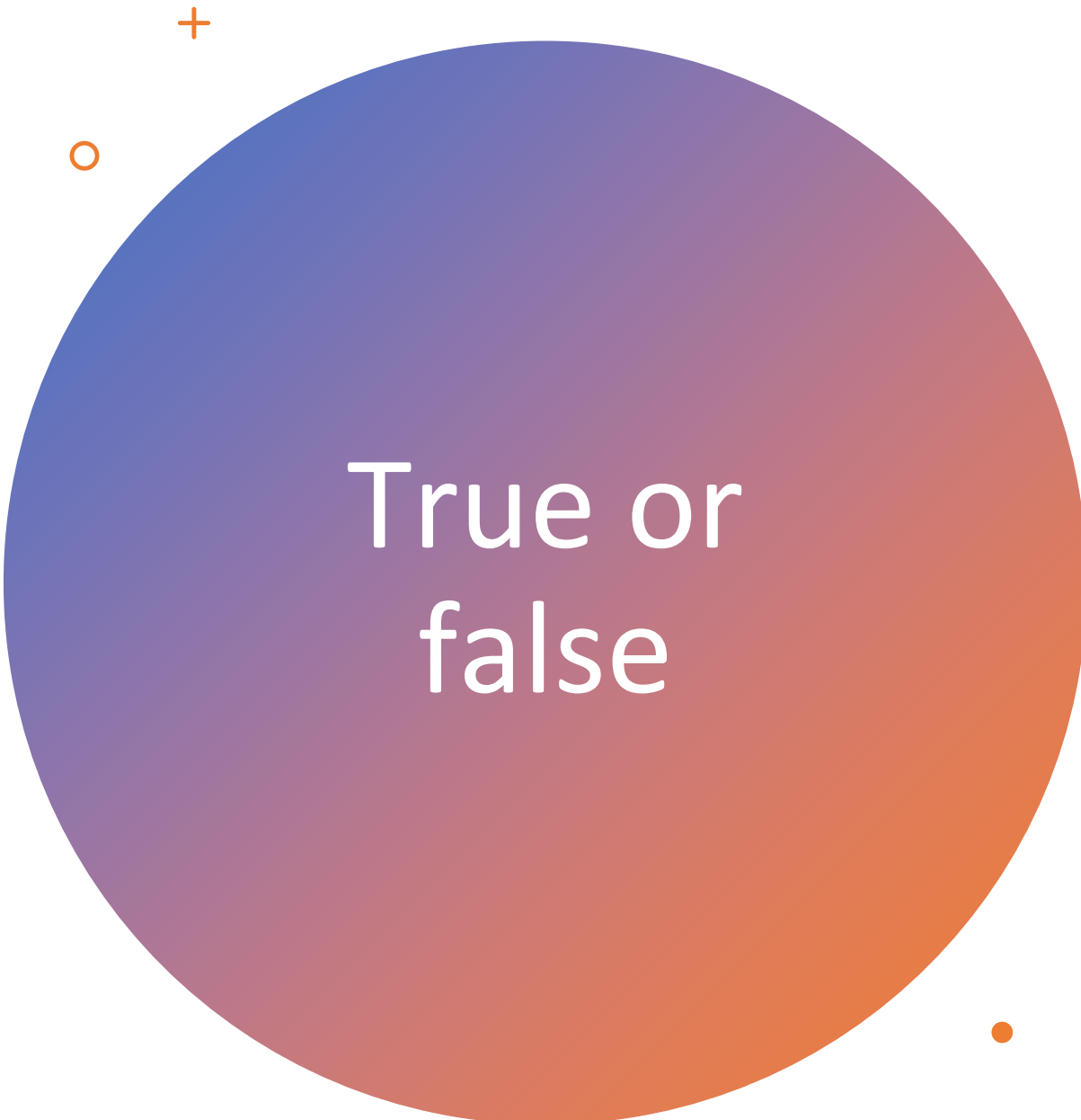


True or  
false

An employer can dismiss an employee who asks for a raise.

True

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True or  
false

An employer can dismiss a group of employees (2 or more) who ask for a raise.

False

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True or  
false

An employer can dismiss an employee for asking for a better work schedule.

True

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True or  
false

An employer can discipline employees for writing and signing a petition that asks for a better work-life balance.

False

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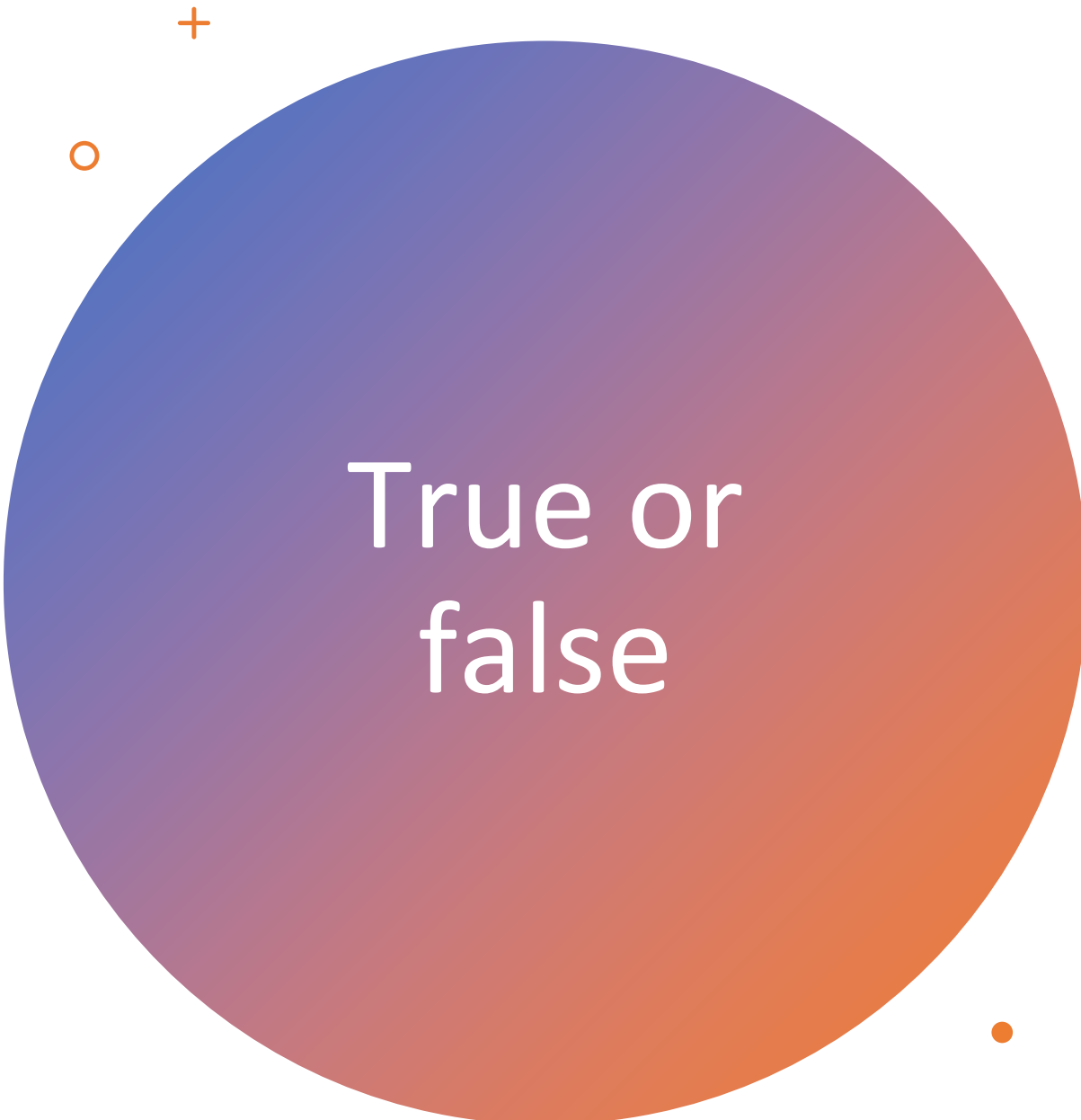
True or  
false

An employer can discipline or dismiss workers who are in the process of organizing a union.

False

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True or  
false

If an employer agrees to the demands of their nonunion workforce, they can later go back and change the agreement whenever they want.

True

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Concerted activity protects our right as employees to engage in a wide array of collective actions to improve working conditions such as petitions, joining a union, striking, and other direct actions to name a few.

One's citizenship status does not matter. All workers in the U.S.—whether a citizen, an immigrant with papers, or without them—have the same labor rights.

But workers have to be educated about the legal rights they do and don't have. **Fear** is the biggest obstacle we encounter, and only by educating workers can we overcome it.



# How to support the work of Worker Justice Wisconsin

- Invite a WJW organizer to give a training to members of the community that your organization serves.
- Inform members of the community that they have employment and labor rights.
- Learn about the PRO Act and pressure elected officials to pass it.
- Help make employment and labor rights subject of political discourse.
- Connect workers in South-Central Wisconsin experiencing workplace issues with WJW.
- Donate to our Solidarity Fund.

