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A Labor Perspective on Workplace Reproductive Hazards: Past History, Current Concerns, and Positive Directions

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The Supreme Court's March 1991 ruling in *United Automobile Workers (UAW) versus Johnson Controls* barring corporate "fetal protection policies" was a major victory for women's employment rights and has health and safety implications for both sexes. However, 2 years after the Court's decision, the union's work is far from over. The UAW has yet to see what policy Johnson Controls will implement in place of the old one. Formulating solutions to the concerns of workers who are exposed daily to reproductive health hazards on the job will continue to be on labor's agenda. Preventing hazardous exposures is the first priority. This goal would be furthered by setting occupational health and safety standards designed to protect workers' general and reproductive health. Support for the Comprehensive Occupational Safety and Health Reform Act (COSHRA) would also positively affect health and safety in the workplace. Where hazards have not yet been abated, the framework of transfers and income protections for all workers with temporary job restrictions should be examined. The Legal/Labor Working Group convened at the Occupational and Environmental Reproductive Hazards Working Conference authored guidelines for developing a model reproductive hazards policy. These recommendations can serve as a guide for implementation of nondiscriminatory and health-protective policies by employers.

Introduction

The Supreme Court's March 1991 ruling in *United Automobile Workers (UAW) versus Johnson Controls* (*1*) was a major victory for women's employment rights and has health and safety implications for both men and women. The ruling struck down Johnson Controls' (*1*) "fetal protection policy" banning fertile women, regardless of age or plans to bear children, from working in certain areas of its lead battery plants. In theory, this Supreme Court decision clears the way for addressing reproductive health hazards affecting both sexes without fear that employers will simply exclude women from jobs while leaving men exposed to hazardous substances. However, it will take concerted vigilance on the part of labor to ensure that current practices and new policies are truly protective, just, and equitable.

Unfortunately, in the flurry of media attention following announcement of the Supreme Court decision, the central role played by labor was often lost in the shuffle. For example, this legal action was not the "Johnson Controls" case, as many called it, but the "UAW versus Johnson Controls" case. In 1984 the litigation was brought by the United Automobile Workers Union on behalf of all of its members, women and men alike, at UAW-represented Johnson Controls plants. One year after the Court's 1991 decision, the union's work is far from over. The UAW is back in court over remedies stemming from the original complaint and has yet to see what policy Johnson Controls, Inc. will implement in place of the old one.

The efforts of the American Civil Liberties Union, the American Public Health Association, numerous labor organizations, the Coalition for Occupational Safety and Health (COSH) groups, women's and reproductive rights organizations, and others who joined as supporters of the UAW in the case greatly contributed to raising public pressure and awareness about the reproductive health and rights of all workers.

One Union's Experience and a Word about Some Others

The UAW first confronted the issue of exclusionary reproductive hazards policies in 1976, when one employer

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announced a "fetal protection policy" for lead exposure. Although the policy pertained to only one company, the UAW's International Executive Board debated the response, knowing that it would affect the entire union and workers outside as well.

When scientific data were summarized by the UAW's technical staff, the entire UAW Board was surprised to learn how little was known about the risks of low-level lead exposure. Although lead has been known as a poison since antiquity, there are still few studies examining occupational exposure to lead and reproductive health effects. The clearest evidence in the mid-1970s concerned effects on male fertility. At the time, the UAW even called for a study by the National Institute for Occupational Safety and Health (NIOSH) on reproductive health effects of lead on men in a battery plant. The study took several years, and NIOSH asserted that the results were inconclusive. A decade later, NIOSH has neither published the final results nor repeated the study.

The UAW concluded in 1976 that exposure to lead at levels that then prevailed in the workplace posed a risk to both men and women workers for reproductive health problems and other illnesses. The union also determined that "fetal protection policies" were a form of discrimination. These conclusions were communicated to all union locals, and the solution called for was cleaning up the workplace. The UAW position was that any increase in blood lead above pre-employment levels consituted evidence of a hazardous exposure at work and warranted all possible additional protections.

The policy at Johnson Controls, Inc. and other battery manufacturers must be understood in the context of industry's strong opposition to the 1978 Occupational Safety and Health Administration's (OSHA) lead standard. The company testified against the proposed rule and, through an industry association, participated in a lawsuit up to the Supreme Court level. Only now has Johnson Controls, Inc. claimed abatement of pending violations of that decade-old standard. In their court papers, the company claimed special moral credit for installing control measures to reduce lead exposures, yet these controls were instituted only after OSHA fined the company and threatened additional penalties for noncompliance.

Other international unions have been confronting the issue of workplace reproductive hazards and policies for many years as well. The Oil, Chemical and Atomic Workers (OCAW) played a central role in fighting American Cyanamid Corporation's policy excluding fertile women from lead pigment areas of its plant in Willow Island, West Virginia. A number of women from this plant underwent surgical sterilization in order to keep their jobs. The OCAW pursued a legal case claiming that policies pressuring women to be sterilized in order to keep their jobs constituted a violation of OSHA's "general duty clause," which entitles workers to safe and healthful workplaces. The U.S. Court of Appeals for the District of Columbia ruled against the Union and in favor of the company (*2*). Later, American Cyanamid closed down its lead pigments division, and the women who had been sterilized lost their higher-paying jobs in that division.

Representatives of the United Steelworkers of America (USWA) remember the ironic events spurred by the passage of the Pregnancy Discrimination Act of 1978. Before 1978, company doctors routinely determined that women working in steel mills who became pregnant were no longer fit to work, and these women were immediately placed on leave with no benefits. When the new law stated that pregnant workers must be treated similarly to other workers with disabilities (and therefore given disability benefits), company doctors were suddenly more likely to designate all pregnant women as "fit to work" through their eighth or ninth month.

Current Concerns: Exclusionary Policies

The National Institute for Occupational Safety and Health estimates that at least 20 million workers in the United States are currently exposed to chemicals and conditions on the job that could pose a risk to their reproductive health (*3*). The situation where women are forced out of their jobs because of a hazard to reproductive health is not the most common. No matter how important the *UAW versus Johnson Controls* case was, it did not deal with the circumstances faced by the majority of women workers. Most commonly, women workers would like protection from hazardous exposures when they are planning to, or do become, pregnant; there are many more who are exposed to hazards about which they have not been informed.

For the most part, exclusionary policies have been implemented in traditionally male industries where women have only recently made gains in employment. Because these jobs are often well paying, there is an ample supply of men readily available to replace women workers. Policies banning fertile women have seldom been implemented in traditionally female job sectors, despite numerous known or suspected reproductive health hazards on these jobs. Reproductive hazards faced by women employed as health care, day care, or clerical workers, flight attendants, or beauticians include anesthetic gases, ethylene oxide, viruses, solvents, ionizing and nonionizing radiation, ergonomic stressors, and others.

Due in part to discriminatory hiring patterns, workers of color are often placed at particular risk for hazardous exposures, including exposures to reproductive and developmental toxicants. These workers are frequently employed in the most dangerous jobs and occupations and receive the least pay and benefits. They often have the least access to information about workplace hazards, are not afforded adequate protections, and may have no options for moving into other jobs or occupations.

Formulating solutions for these concerns is currently on labor's agenda. By what process will decisions be made to determine which workers (facing what hazards, at what exposure levels, on which jobs, and in what industries) will be left exposed and which workers will be offered protections? What will be the role of management, of the com-

pany doctor, of OSHA, of the courts, and of labor in this decision-making process? Clearly, labor is not willing to leave these issues solely in the hands of management or company doctors. Labor has historically been involved in a tug-of-war with management over workplace health and safety. For years, labor has contested discriminatory practices affecting workers' employment opportunities and rights to job safety. Notwithstanding the importance of legal or legislative victories, this conflict is likely to continue for a long time to come.

Solutions and Nonsolutions

The best solution to the problem of workplace reproductive hazards is to eliminate or reduce hazardous exposures so there is no risk. This goal would be furthered by setting occupational health and safety standards designed to protect workers' general and reproductive health. Where hazards have not yet been abated, the framework of transfers and income protections for all workers with temporary job restrictions should be examined and improved to accommodate men or women who want to have children.

Preventing the hazardous exposure is the first priority. Setting occupational health standards that require protection against hazards to the reproductive health of both sexes is essential. However, there are currently many situations where the hazard is present now and abatement is months or years away. Labor and public health scientists have a long list of chemicals for which exposure limits are not sufficiently protective against reproductive risks, cancer, and other illnesses. The OSHA standard-setting process is lengthy and cumbersome, and OSHA has failed to update most standards to make them truly health-protective. In addition, the Reagan and Bush administrations have been hostile to setting new standards.

The use of temporary or permanent transfers until hazards have been eliminated has been the standard practice of industrial medicine. Transfers from one job to another and restrictions from certain tasks because of physical limitations or increased risk are also routine facts of working life. However, major problems arise when wage and benefit levels are not retained or when there are no jobs available as transfer options. Workers often fear that revealing symptoms of an illness will result in job loss. These issues frequently become components of union contracts. Some unions have negotiated independent medical opinion procedures to address problems of workers who cannot get into jobs because company doctors will not let them and those who want to transfer off jobs. The new Americans with Disabilities Act will require job modifications to permit people to work within their restrictions. It is not yet clear how this legislation will affect pregnant workers or workers exposed to reproductive hazards.

The best approach to this problem is to establish procedures that accommodate all health problems, risks, or other reasons for restriction and then to fit the specific situation of exposure to reproductive hazards within that broader framework. As we examine each aspect of the so-called "fetal protection" controversy, it is evident that the solution lies in general protective programs, not a "narrow fix."

Unfortunately, in the aftermath of the Supreme Court decision, some employers have had a number of disturbing responses that stray far from reducing hazardous exposures and cleaning up the workplace. These responses have included statements claiming that employers will now be "forced" to expose women to harmful substances; threats to "shut down," "move overseas," or "bring in robots"; requiring workers to sign waivers that release employers from damages resulting from future lawsuits brought by damaged offspring; and drafting legislation that would limit tort rights of workers' offspring injured as a result of parental exposure to hazardous chemicals or conditions.

Labor will vigorously oppose all attempts by employers or employer organizations that focus activities away from cleaning up the workplace, attempt to shift assumption of risk back on individual workers, and/or allow employers to shirk their responsibility to provide safe workplaces by limiting their liability for adverse reproductive outcomes. At the same time, labor will be vigorously promoting legislation introduced in August 1991 by Senators Kennedy and Metzenbaum and Congressman Ford that would reform and strengthen OSHA. The Comprehensive Occupational Safety and Health Reform Act (COSHRA) has numerous features that would positively affect health and safety in the workplace (*4*). The Act would do the following: *a*) Require employers to establish a program to reduce or eliminate hazards and prevent work-related injuries and illnesses. This program would include providing health and safety training and education to employees and health and safety committee members. *b*) Require employers of 11 or more employees to establish joint labor-management health and safety committees composed of an equal number of employee and employer representatives. These committees would review employer policies, conduct inspections, and make recommendations for hazard control. In unionized settings, the union would select their committee representatives; otherwise, employees would elect their representatives by secret ballot. *c*) Enhance worker/union rights in OSHA enforcement activities and proceedings. *d*) Enhance worker rights to refuse hazardous work. *e*) Enhance antidiscrimination provisions ("whistleblower" protections) for workers who report unsafe or unhealthy conditions and/or refuse hazardous work. *f*) Expedite standard-setting procedures. *g*) Provide for stronger government enforcement. *h*) Improve collection of data for surveillance of work-related injuries and illnesses and for researching health and safety hazards. *i*) Expand full OSHA coverage to Federal, state, county, and municipal government workers and others not now afforded full protection under the Occupational Safety and Health Act (OSH Act). All organizations and individuals who are concerned with workplace health and safety, including occupational exposure to reproductive hazards, should join with labor in support of this most important legislation.

Tough, Unanswered Questions

There is still much that needs to change on the shop/office/hospital/job-site floor to make lofty ideals, model policies, and ultimate goals a reality. The ultimate goal of eliminating all hazardous exposures for all workers is just that: an ultimate goal. For those workers planning or experiencing pregnancy who are concerned about exposure to known or suspected reproductive hazards, the option of job transfers without loss of pay, seniority, or benefits may also be a long way off. In the meantime, interim goals and incremental steps must be implemented that protect the health and rights of workers. Determining what these steps are, how they are formulated, and how they are attained are immediate tasks for the labor movement. This endeavor remains part of labor's role in helping to secure safe and healthful work environments for all workers.

Specific Recommendations

Recommendations for Employers

The Legal/Labor Working Group convened at the Occupational and Environmental Reproductive Hazards Working Conference, composed of attorneys, occupational health professionals, and labor representatives, authored the following guidelines for developing a model reproductive hazards policy. These recommendations can serve to guide implementation of nondiscriminatory and health-protective policies by employers.

Guidelines for Developing a Model Reproductive Hazards Policy. PRINCIPLES OF A REPRODUCTIVE HAZARDS POLICY MODEL. *a)* It is understood that workplace chemical, biological, and physical hazards may affect all stages and aspects of reproductive function, including preconception damage to the male and female reproductive systems; interference with fertilization, implantation, and the capacity to carry pregnancy to term; developmental or structural damage to offspring; interference with sexual function; and endocrine system effects as they affect reproductive function. *b)* Hazards to reproductive health require special attention because they have either been ignored or addressed by employers in ways that discriminate against or penalize workers. An adequate reproductive health policy must be set in the context of a comprehensive occupational health program that addresses other hazards and risks in a comparable manner. *c)* Reproductive health policies must be applied equally and without discrimination to women and men and offer protection to the future children of both. *d)* As with other health policies, reproductive health policies must be designed to protect the most vulnerable segment of the workforce, consistent with the OSHA mandate that workplaces be made safe for all men and women. It is not permissible to exclude or penalize any segment of the workforce to achieve these goals. *e)* Controlling exposure to reproductive hazards is necessary but not sufficient to fully promote worker, fetal, and/or child health. Workers are also entitled to full health insurance, adequate family and medical leave, adequate pay, job security, and child care. *f)* While the need for this model reproductive health policy arises from a history of sex discrimination in the workplace, there are other important forms of discrimination at work that must be eliminated. These include, but are not limited to, the placement of workers of color in the lowest-paid and most hazardous jobs.

FEATURES OF A REPRODUCTIVE HAZARDS POLICY MODEL. *a) Hazard determination:* The employer, with active employee participation, will periodically review all chemicals, biological agents, and physical conditions in the workplace and determine which ones are known or suspected to cause reproductive or developmental harm, including damage to sexual or endocrine function. Determination of risk does not require scientific certainty but may rely on reasonably suggestive evidence. Employee participation shall be ensured through the establishment and functioning of ongoing joint labor-management health and safety committees. Each employer shall establish a safety and health committee at each worksite of the employer. The number of management representatives may not exceed the number of employee representatives. Employee representatives shall be selected by the union(s) representing them; if there is no union, employees shall elect their representatives in an election. The employer shall permit members of the health and safety committee to take such time from work as is reasonably necessary to exercise the rights and duties of the committee, without suffering any loss of pay or benefits for time spent on duties of the committee. Such training as necessary shall be made available to the health and safety committee. It is never appropriate to require employees to sign release forms, waivers, or indemnity agreements that imply or state that an employee is aware that she/he is being exposed to a health risk and that she/he will assume the risk for that exposure, waive rights to bring lawsuits, hold the employer harmless, and/or indemnify the employer in the event of a lawsuit.

b) Hazard elimination: The employer, immediately upon determining or learning of known or suspected exposure to reproductive hazards, will take steps to reduce these hazards, with the goal of elimination. Methods to accomplish this objective include changes in materials, processes, engineering controls or work organization. Whenever possible, this control strategy should include reduced use of toxic materials and redesign of jobs to permit employees to work safely.

During the period before the elimination of hazards, employers will offer voluntary temporary transfers from jobs that involve exposure to known or suspected reproductive hazards. These transfers must be available to both women and men and include full pay, benefits, and protection of status and seniority. If transfer is infeasible, medical removal protection with full pay, benefits, status, and seniority must be provided.

The employer will work with employees and employee organizations in an effort to remove barriers to the use of transfer policies such as conflicts with existing collective bargaining agreements, threats to confidentiality, discrimination or other retaliation against workers who use the policy, and loss of job opportunities.

Recommendations for Government

The following are recommendations made by the Legal/Labor Working Group for actions to be undertaken by government that will promote jobs and workplaces that are safe for the health, including the reproductive health, of all workers: *a)* Appraise reproductive and developmental risks of workplace exposures in all standard-setting activities and set standards that eliminate those risks. *b)* Encourage and fund research on the reproductive and developmental risks of chemicals and conditions encountered in the workplace. *c)* Mandate the reduction of toxic substances and provide assistance to employers for their "toxics use reduction" efforts. *d)* Develop and provide information about reproductive hazards to employers and employees. This would include the addition of reproductive risks to the adverse health effects section of NIOSH's *Pocket Guide to Chemical Hazards* (*5*). *e)* Issue a statement proclaiming that where an employer has had an exclusionary (fetal protection) policy in effect, or has required employees to sign waivers abrogating their rights to bring lawsuits in cases of reproductive harm, that employer has recognized a reproductive and/or developmental risk and must take immediate action to remove that risk. The Occupational Safety and Health Administration would then cite employers who fail to comply under section 5(a)(1) (the "general duty clause") of the OSH Act (*4*).

f) Enact the Comprehensive Occupational Safety and Health Reform Act, with additional language giving employees rights of private action and prohibiting the use of waivers. *g)* Defend existing laws that provide compensation for offspring injury or death resulting from employer negligence or inadequate warnings regarding workplace reproductive hazards. *h)* Examine and amend existing workers compensation systems to provide adequate compensation to workers for occupational diseases and reproductive disorders, including loss of sexual function. *i)* Enact reforms that will protect the health of workers and their families such as adequate health insurance for all workers, parenting leaves, and equal employment opportunities for women and workers of color.

Recommendations for Scientific Research on Reproductive Hazards

With increased focus on research into the effects of workplace chemicals and conditions on the reproductive health of men and women, it is essential that this scientific research be carried out in ways that maximize its potential usefulness and minimize its intrusiveness and possible negative consequences. Subjects in this research must be informed of all study results; workers and unions must be involved in all aspects of this research, including participating in decisions about what is to be studied as well as how it is to be studied.

The United Steelworkers of America have guidelines governing their participation in research when the union is contacted by scientists seeking its cooperation. These guidelines are offered below as a model for all researchers seeking the cooperation of any union or group of workers in their scientific research.

Guidelines Governing USWA Cooperation with Medical Research

These principles are intended to govern situations where researchers seek the Union's cooperation. Of course, the final decision on cooperation should be made by the District Director and the Local Union, based in part on a recommendation from the International Safety and Health Department. The Department's recommendation will in turn be based on the researchers' willingness to comply with the following procedures: *a)* The researcher must supply the Safety and Health Department with a written protocol for the study. *b)* Union approval of the protocol will be based on the following factors: the study design should be consistent with accepted principles of scientific research; the definition and size of the study population should minimize the risk of a false negative or positive conclusion due to small numbers, insufficient latency, selection bias, or inappropriate assignment to exposed or control groups; confidence limits should be reported for the results; and research into the effects of toxic substances on the reproductive system should consider both sexes. *c)* The researcher must agree to rigid ethical principles with respect to confidentiality, human experimentation, and the necessity and usefulness of invasive tests. *d)* The researcher must supply the Safety and Health Department with sample copies of consent forms and notification letters to be used in the study. *e)* The researcher must agree to meet with local union officers and the workers to be studied. In most cases, two meetings will be necessary: one before the study commences to explain the tests, and one after the research is completed to explain the results. This second meeting should take place before the results are published or reported to the general public. Additional meetings may be necessary in special circumstances. *f)* The researcher must agree to report individual medical results to the workers within 60 days, unless the Union and the researcher agree on a longer period in advance. Study results must be reported within a reasonable time, to be determined by the Union and the researcher in advance. *g)* The Union does not seek the right to modify or forbid publication of the results. Neither will the Union cooperate with any study where the company is granted that right. Of course, the specific applications of these guidelines to particular cases are negotiable as circumstances warrant.

Conclusion

Labor has received much support from public health, legal, and other allies over the last decades in fights for safe and healthful workplace environments and equal employment opportunities. These alliances are vital to the success of labor's efforts. Recent media coverage brought public attention to an often-overlooked public health problem: safety and health in the workplace, and specifically,

the issue of damage to workers' reproductive health from chemicals and conditions on the job.

The camera lights have now shifted to other "hot" issues. Two years after the Supreme Court's decision in *UAW versus Johnson Conrols*, it is not clear what has changed for workers in the United States exposed daily to reproductive hazards. It is also uncertain what, if any, imperatives employers are feeling that will compel them to provide workplaces free of reproductive risk or what legal mechanisms are in place to mandate that they do so. These reservations are not meant to downplay the importance of the Supreme Court decision, but to highlight the tremendous battle that lies ahead to secure safe workplaces for all.

When discussions about this topic move away from academic, legal, or medical circles and into the workplace, there is often less optimism. A cartoon circulated after the Supreme Court ruling showed a woman on the telephone receiving the news of the *UAW versus Johnson Controls* decision and reporting to her husband: "The good news is that I can go back to work at the toxics plant, and the bad news is that I can go back to work at the toxics plant."

The central players in this arena are workers themselves, and their perspectives are essential to ongoing discussions about workplace reproductive hazards and policies. These discussions must be based upon the experiences of these workers and focus on the reality of the workplace. The "front lines" of these battles have been, and will continue to be, in the workplace. Labor's voice must guide discussions and actions concerning workplace policies, hazard control measures, legislative efforts, research, training, education, and all other areas pertinent to workplace health and safety in general, and workplace reproductive hazards in particular.

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REFERENCES

1. *International Union (UAW) versus Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991).
2. *Oil, Chemical and Atomic Workers International Union versus American Cyanamid Company*, 741 F. 2d 444, (D.C. Cir. 1984).
3. National Institute for Occupational Safety and Health. Leading work-related diseases and injuries – United States. MMWR 34: 537–544 (1987).
4. U.S. Congress Comprehensive Occupational Safety and Health Reform Act. S.1622, H.R. 3160.
5. NIOSH. NIOSH Pocket Guide to Chemical Hazards. DHHS (NIOSH) Publication No. 90-117, National Institute of Occupational Safety and Health, Cincinnati, OH, 1990.