



Can PAs and NPs Unionize in Urgent Care Settings?

Urgent message: Urgent care's workforce has changed from primarily emergency physicians to physician assistants and nurse practitioners now making up the bulk of providers. Whereas physicians historically have been excluded from joining a union, recent efforts to organize PAs and NPs have garnered media attention.

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While just over 10% of U.S. employees belonged to a union in 2019, a number of groups in industries that do not traditionally have a union presence have gone on strike or organized walkouts since the COVID-19 pandemic began.¹ There's also been the failure of high-profile attempts to organize employees at such "employee friendly" companies as Amazon and Tesla.²

In 2021, the number of wage and salary workers belonging to unions continued to decline (-241,000, to 14 million).³ Among healthcare practitioners and technical occupations, of a base of just over 9 million employees, about a million are union members, or roughly 11%.³

In fact, there have been a number of recent efforts to unionize PAs and NPs in health system ambulatory practices, including urgent care centers. Union organizers point to COVID as the catalyst for physicians and PAs/NPs to organize.¹ For example, the United Physicians Assistants of Michigan Medicine (UPAMM) gained official recognition from the University of Michigan in June 2020 and has been bargaining for their first contract since September. The contract will govern the working conditions for PAs, from how paid time off is earned and redeemed to how raises are allocated to the handling of grievances.⁴

A Conundrum in Urgent Care

Historically, physicians have been unable to organize because they're not "labor," but are "professionals." But as the workforce shifts to PAs and NPs, the question looms—are they "labor" or are they "professionals?"



The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards that impact employees in the private sector and in federal, state, and local governments.⁵ Under the FLSA, PAs can be classified as *either* salaried employees exempt from the protections of FLSA, or hourly (nonexempt) employees who are entitled to overtime of at least time-and-a-half for any hours over 40 worked in one week (or for hospital-employed PAs, 80 hours over 2 weeks).⁶ Thus, PAs and NPs have the ability to form a union.

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Unions Representing Healthcare Workers

The total number of unionized healthcare workers is difficult to ascertain. Chapters are organized on a local level and date back to the 1930s. However, workers (especially those in hospital food service and housekeeping) are counted as part of a larger non-healthcare union, such as AFSCME (American Federation of State County and Municipal Workers) or UFCW (United Food and Commercial Workers). The rise of unions targeting those delivering patient care is a phenomenon of the past 15 years.

1. SEIU United Healthcare East

SEIU East claims nearly 450,000 members in homecare, hospitals, nursing home industries, pharmacies, freestanding clinics, and other healthcare settings. SEIU East serves the states of New York, Massachusetts, New Jersey, Florida, Maryland, and the District of Columbia.

2. National Nurses United

Founded in 2009, NNU has close to 185,000 members across all 50 states, making it the largest union and professional association of registered nurses.

3. United Nurses Associations of California/Union of Health Care Professionals

Represents 32,000 registered nurses and healthcare workers in California.

4. National Union of Healthcare Workers

Claims more than 15,000 members, including medical technicians, clerical workers, psychologists, pharmacists, housekeepers, dietary workers, nurses, nursing assistants and drug rehabilitation counselors. The group was founded in 2009.

Source: Becker's Hospital Review.

What Is Collective Bargaining?

The term *collective bargaining* means the negotiation of employment terms between an employer and a group of workers.⁷ Employees are typically represented by a labor union during collective bargaining to negotiate working conditions, salaries and compensation, working hours, and benefits. The objective of the collective bargaining process is to come up with a binding agreement on all terms of employment through a written contract.⁷

Collective bargaining is frequently a long, drawn-out process that can take weeks or even months because the employer and labor union leaders go back and forth with employment terms.

The union leaders must update employees and put the terms to a vote. If employees vote to reject a contract, the negotiating process begins again. In addition, employees and employers may have to take time off

from work in order to negotiate, which can result in productivity losses.⁷

Also, most employees don't realize that they can't be required to become or remain a member of a union as a condition of employment. In Right to Work states,^{8,9} an employee's "right to refrain" means they need not pay union dues or even a reduced "financial core fee" to the union. In other states, however, union dues may still be taken from their paycheck even if they choose not to participate.

What Unionization Means for Employees

For employees, joining a union means they sign away the ability to negotiate with their employer to the union, which can hinder the employer-employee relationship.

If there is a conflict, a worker would seek the help of a union steward, rather than their Human Resources department. As a result, employees are not dealing with the company directly but instead are limited to the internal politics and procedures of the union, which may or may not take up their cause.

Likewise, a union's bylaws may require unyielding allegiance to the "labor movement." By joining a union, a worker is agreeing to be bound by the union's internal rules and regulations; moreover, most employees don't understand that the union's internal rules and regulations often provide the union with the power to: a) issue monetary fines against employees who don't toe the union line and b) sue those same employees in state court to collect those fines.^{12,13}

So, if the union decides it's beneficial to march at a political rally or donate money to a specific political candidate or interest group and a union member fails to comply or agree with the action, he or she can be tried in a union court, with possible fines deducted from their paycheck.

Management's Role

It's critical for owners and operators of urgent care centers to understand what actions and behavior are prohibited by employers with regard to employees exercising their rights in organizing, forming, joining, or assisting a labor organization for collective bargaining purposes, from working together to improve terms and conditions of employment, or refraining from any such activity.⁸ This is known as "protected concerted activity."^{14,15}

To that end, the National Labor Relations Act (NLRA) forbids employer conduct that violates the law. This includes:

“A workplace that fosters good relationships between management and employees and addresses employee concerns is much less likely to force employees to union representation for assistance.”

- Threatening employees with the loss of their position or benefits if they join or vote for a union or engage in protected concerted activity
- Threatening to close the office if employees select a union to represent them
- Questioning employees about their union sympathies or activities in situations that tend to interfere with, restrain, or coerce employees in the exercise of their rights under the NLRA
- Promising benefits to employees to discourage their support of a union
- Transferring, laying off, terminating, or assigning employees more difficult work or otherwise punishing employees because they engaged in union or protected concerted activity
- Transferring, laying off, terminating, assigning employees more difficult work, or otherwise punishing employees because they filed unfair labor practice charges or participated in an investigation conducted by NLRB⁸

Prohibited Labor Organization Conduct

Note that labor organizations themselves also may not restrain or coerce employees in the exercise of these rights.¹⁶

Some examples of labor organization conduct that violates the law include the following:

- Threatening employees with job loss unless they support the union
- Seeking the suspension, discharge, or other punishment of an employee for not being a union member even if the employee has paid or offered to pay a lawful initiation fee and periodic fees thereafter
- Refusing to process a grievance because an employee has criticized union officials or because they aren't a member of the union in states where union security clauses aren't permitted
- Fining employees who have validly resigned from the union for engaging in protected concerted activities following their resignation or for crossing an unlawful picket line
- Engaging in picket line misconduct (eg, threatening, assaulting, or barring non-strikers from the employer's premises)

Differentiated Treatment of Union and Non-Union Employees in Sexual Harassment Allegations

Companies in the past 30 years have made significant efforts in strengthening relationships with employees, assuring a diverse, fair and equitable workplace. Intense competition for labor has pushed up wages and led to a focus on culture and employee experience to attract and retain employees. This is frequently cited as the reason that private sector union membership has declined or why, after years of activism, only 400 of 260,000 employees at Google have unionized.¹⁰

Many people who sign a union card expecting better wages and benefits don't understand what *rights* they're signing away. Typical verbiage is “I hereby authorize the [union] to represent me and in my behalf to negotiate and conclude all agreement as to hours of labor, wages, and *all other conditions of employment.*”

Consider a case of alleged sexual harassment. Without a union, an employee would report the incident to their human resources department who would handle it according to their employee handbook. If HR fails to respond appropriately, the employee may be able to sue the employer under Title VII of the federal Civil Rights Act.

When a union is present, however, Title VII doesn't apply. The employee will be told by human resources to “take it up with your union steward.” That's because harassment of co-workers is covered under the union's Code of Conduct. Before exercising any rights in federal court, a union employee will be required to fully exhaust the union's internal grievance process. This can delay relief for months or years wearing down the “victim” emotionally, physically, and financially.

Depending on the current internal politics of the union, the employee's relationship with the union leaders, the union's relationship with the employer...the victim may get a cold shoulder from the union. Especially if the union doesn't believe the victim or the alleged perpetrator has standing with the union's leadership. In extreme cases, not only has the union not assisted the victim, but it has perpetrated a smear campaign against the victim.¹¹ That's because, ultimately, it's the union's job to protect the harasser's employment. Even when a company wants to fire an alleged harasser, unions have been known to step in an ask for lesser penalties.

(Adapted from Eisenberg & Baum, LLP. Whose side are they on: unions in sexual harassment claims. August 22, 2019. Available at: <https://www.eandblaw.com/employment-discrimination-blog/2019/08/22/unions-in-sexual-harassment-claims/>. Accessed February 13, 2022.)

- Striking over issues unrelated to employment terms and conditions or coercively engaging neutrals into a labor dispute

“Regardless of what it promises, a union has no ability to offer employees better pay, benefits, or working conditions. That’s because the union is not the employer. It is merely an intermediary between the employee and employer with its own bureaucracy, budget, rules, and procedures.”

Union membership looks appealing when employees become dissatisfied with how management treats them and begin to hope the union will make the workplace better. In fact, an organizing campaign typically begins when a small number of disgruntled employees¹⁷ start to influence and turn coworkers against management.

According to the Society for Human Resource Management (SHRM), “while pay and benefits are hot topics in union organizing tactics, employees are most influenced to join a union when the company is perceived to be unfair, unresponsive, or offering substandard working conditions to employees. Employers that minimize employee dissatisfaction can also minimize employees’ desire for union representation.”¹⁸

According to SHRM, strategies that help discourage union acceptance are:

- Fair and consistent policies and practices
- Open-door management policies
- Competitive pay and benefits
- Employee trust and recognition

A workplace that fosters good relationships between management and employees and addresses employee concerns is much less likely to force employees to union representation for assistance.

Takeaway

Unions and labor law is a complex subject. Awareness and understanding are crucial, and the best defense is to cultivate a fair and inclusive workplace with a culture that employees find engaging and satisfying. Urgent care owners and operators should consult with an experienced labor law attorney and familiarize themselves with the FLSA, the NLRA, Right to Work, and prohibited employer practices concerning unions. ■

Summary

- Because PAs can be classified as either salaried employees who are exempt from protections of the Fair Labor Standards Act or as hourly nonexempt employees who are entitled to overtime, PAs and NPs are considered fair game for unionization.
- The "right to refrain" in a Right to Work state means an employee does not have to pay union dues if they decide not to join the union.
- Urgent care operators can ethically and legally discourage unionization by ensuring fair and consistent policies and practices; open-door management policies; competitive pay and benefits; and employee trust and recognition.

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