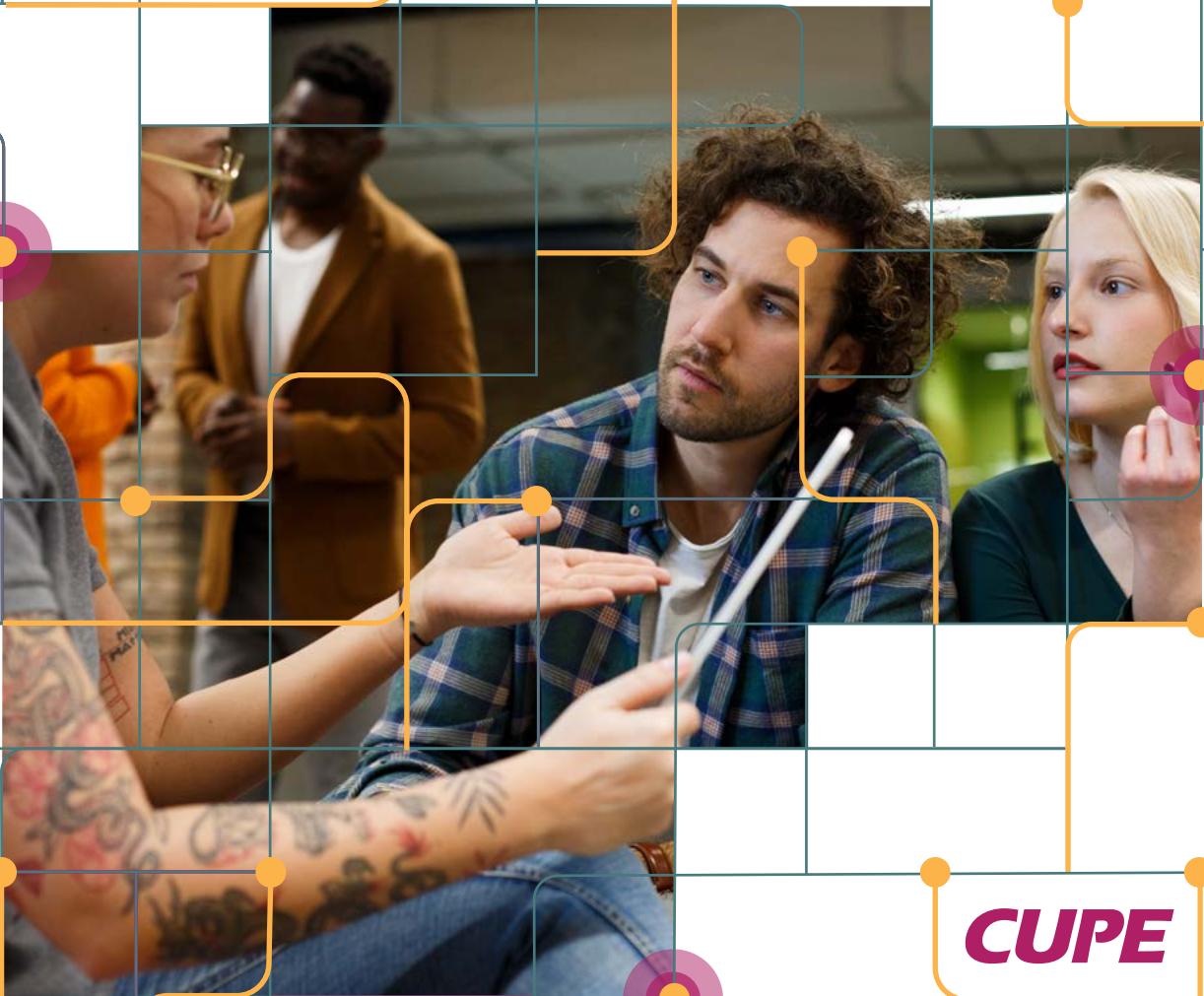


BARGAINING STRONG COLLECTIVE AGREEMENTS FOR THE DIGITAL AGE



CUPE

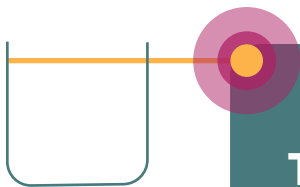


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BARGAINING STRONG COLLECTIVE AGREEMENTS FOR THE DIGITAL AGE

Our work world is changing faster than ever. The current wave of technological change is powered by artificial intelligence (AI) and other digital technology. Changes are affecting workers in every sector across many job classifications, including CUPE jobs and the public services our members deliver.

Our collective agreements can help manage this change. There is no single “AI clause.” Locals must review their whole collective agreement to address AI’s opportunities and challenges. Strong collective agreements will include provisions on technology that work together to protect workers. You can build on your existing foundation in every round of negotiations.

Local bargaining committees should work with their national representatives to follow these steps when developing bargaining priorities on AI and digital technology:

1. Ask your members if AI is already in your workplace. Identify the potential risks this technology poses for your workplace.
2. Review your collective agreement language for clauses related to technology like AI.
3. Choose bargaining language that best addresses the risks of AI and digital technology and adapt to your local’s needs as necessary.

Contact your national representative to access a detailed AI bargaining guide. To learn more about AI and digital technology, check out *Understanding artificial intelligence: A guide for CUPE members* at cupe.ca/understanding-ai.

AI WORKPLACE SCAN

Technology is rapidly changing, and your employer may already be using artificial intelligence. These questions will help you and your members spot AI in your workplace.

- ☐ Does your workplace use chatbots?
- ☐ Is your work schedule determined by a computer system, not a person?
- ☐ Have you been asked to proofread a text more than once, where the language of the text changed a little bit each time? (This could be a sign you're "training" an AI system.)
- ☐ Is your everyday task list generated by an automatic computer system?
- ☐ Is a computer system diagnosing workplace conditions for you?
- ☐ Do you use your personal cell phone to access mandatory work programs, sites, and applications?
- ☐ Is your work vehicle equipped with a Global Positioning System (GPS) tracking system?
- ☐ Do you have to log your work performance in a computer program?
- ☐ Do you use computer software that makes recommendations about how to do your job?

If you answered YES to any of these questions, AI may already be in your workplace. AI systems usually rely on data that's gathered as workers do their jobs.

COLLECTIVE AGREEMENT PROTECTIONS ON AI AND DIGITAL TECHNOLOGY

Use this checklist to negotiate collective agreement provisions that set up guardrails for the use of AI and digital technology in your workplace. CUPE members must have a say in how these systems are used. It's the only way to ensure AI improves working conditions and work quality without compromising workers' data or privacy.

PREPARING FOR DIGITALIZATION

Employers will likely introduce new and updated digital technologies and change how data is used on a regular basis. Collective agreement provisions should require ongoing information sharing and transparency.

Locals should aim for language that provides them with notice about the introduction of new technologies as well as the right to shape how these technologies are implemented in the workplace.

The introduction of any new technologies in the workplace must be thoughtfully planned. Employers should be required to consider the implications and risks of new technologies and to create a plan to mitigate any associated risks.

Here are the key areas to cover with new collective agreement language.

Transparency and the right to information

Negotiate language requiring the employer to:

- ☐ Provide the union with an annual list of digital technology used and personal data collected.
- ☐ Provide advance notice of the introduction of technologies or data collection.
- ☐ Ensure digital technology is transparent and explainable.
- ☐ Ensure workers raising concerns about technology or data use do not face retaliation or discipline.
- ☐ Guarantee that technology or data contracts with third parties conform to the collective agreement.

Technology committee

Negotiate language establishing a technology committee, covering the following points:

- ☐ The union and employer will establish a technology committee to consider, monitor, analyze and make recommendations about the introduction and use of technology.
- ☐ The committee's purpose is to facilitate ongoing dialogue that helps avoid problems related to AI implementation or other digital technology.
- ☐ The committee will consider issues such as workload, work intensity, diversification of tasks and training needs.

Impact assessments

Negotiate language requiring the employer to conduct impact assessments that:

- ☐ Explain how the employer will use the technology or data.
- ☐ Outline the purpose of any technology or data use and whether the purpose can be achieved in another way.
- ☐ Identify any risks and measures that will address risks.
- ☐ Identify the person or department responsible.
- ☐ Provide the location of servers where data is stored, the length of time data is to be held, and the timelines and process for data to be destroyed.
- ☐ Require assessments to be conducted before the introduction of new technology or data use and annually afterward.

Limitations on high-risk systems

Negotiate language that:

- ☐ Prohibits the employer from collecting or using biometric data, emotion recognition tools, facial recognition tools, or any human behaviour manipulation tool.
- ☐ Mandates that AI systems are controlled by humans.
- ☐ Ensures employees will not be subject to decisions based only on automated processing, including profiling.
- ☐ Ensures employees have the right to a full explanation of any decision made about them by an AI system or based on their personal data.

RESPONSIBLE TECHNOLOGY GUARDRAILS

New digital technologies, including AI, need vast amounts of data, including information that can be collected from workers. Locals must ensure that workers' data is protected. Collective agreements must put limits on any data collection and use, and restrict surveillance and monitoring of workers.

Algorithmic management tools can be used to track, evaluate, monitor, and aid in discipline. These tools, and any data collected through workplace monitoring and surveillance, should never be used to discipline or terminate workers. Employers must also not use new technologies to capture communication between workers and their union.

Locals must strengthen existing technological change provisions to ensure an expansive definition of tech change, long notice periods, access to grievance arbitration, as well as the right to training and to job and wage protection.

Here are the key areas to cover with new or updated collective agreement language.

Surveillance and monitoring

Negotiate language that limits the collection and use of workers' data. Make sure you cover the following key points:

No data collection

- ☐ No surveillance, electronic monitoring, or other data will be collected from employees.

Right to privacy

- ☐ Employees have the right to privacy.
- ☐ Data collected on employees will only be used for reasons listed in the collective agreement.

Acceptable uses

- ☐ The employer will not share, trade, or sell any employee data.
- ☐ Employee data will be stored on servers in Canada and subject to Canadian laws.

Retention period

- ☐ Digital data will only be kept for a set timeframe and reason and then properly destroyed.

Data review

- ☐ Employees have access to their personal data and the right to correct their data.
- ☐ Employees have the right to a human review and a plain language explanation of decisions made by an algorithm.

Discipline, discharge and personnel records

Algorithmic management systems track, evaluate, monitor, and aid in discipline. Negotiate language that sets limits and rules for these systems. Make sure you cover the following key points:

- ☐ AI systems will not be used in any discipline or discharge.
- ☐ The employer will not use digital data from the workplace for discipline or discharge.
- ☐ Electronic monitoring and surveillance will not be used for individual work measurement.
- ☐ The employer will not engage in electronic tracking or monitoring of employees, work output, or attendance. Tracking or monitoring will not be used for the purpose of random surveillance, audits, assessments, or discipline.

Technological change

Negotiate language requiring the employer to provide notice of technological change, consult, and negotiate with workers. This clause should also establish training rights and job and wage protection. Make sure you cover the following key points (changes to standard contract language are in **bold**):

- ☐ Update tech change definition to cover the introduction, **update or change in deployment** of equipment, material, **or technology, including any digital system.**
- ☐ Improve timelines for advanced notice and expand the information that must be provided.
- ☐ Add timelines for meetings, strengthen the purpose of consultation and ensure referral to arbitration is included.
- ☐ Add the right to training or increase the length of training offered.
- ☐ Specify that affected employees will not have their earnings reduced and will remain employed in a position covered by the collective agreement.

Union communication

Negotiate language ensuring members can communicate with their union without employer monitoring. Make sure you cover the following key point:

- ☐ The employer is prohibited from accessing and using any communication with or from the union.

PROTECTING WORKERS

Some digital technologies using AI perpetuate systemic discrimination against equity-deserving workers or members of the public. Locals must strengthen their no-discrimination collective agreement language so they can stop the use of any technology suspected of being biased.

New technologies also come with psychological and physical health and safety risks. Ensure your collective agreement can address existing or potential hazards with strong health and safety language.

In addition, locals should negotiate regular access to training for workers to learn new skills and work methods.

Locals should also bargain language that protects workers from new risks arising from technologies, including provisions on the right to disconnect and protections around working from home.

Here are the key areas to cover with new or updated collective agreement language.

No discrimination

Most collective agreements include no discrimination clauses. Negotiate language that can help ensure workplace technology is free from bias and discrimination:

- ☐ The employer must prevent and eliminate discrimination perpetuated by workplace technologies on the basis of any of the prohibited grounds.
- ☐ If systemic bias is suspected in any technology, the union can submit a grievance. The employer will immediately stop using the system until an arbitrator determines that the technology is not discriminatory.

Health and safety

Negotiate new or updated collective agreement language to protect workers' health and safety in the face of new technologies, covering these key areas:

- ☐ The employer will perform a Risk Assessment to assess hazards associated with new, emerging and changing technology, including AI.
- ☐ This assessment will be done with the Joint Occupational Health and Safety Committee.
- ☐ The Risk Assessment will consider all impacts of technology on the biological, psychological and social safety of employees, including employees in precarious employment.
- ☐ Using the Hierarchy of Controls, the employer will immediately address all hazards associated with technologies, including AI.

Training

Negotiate language requiring the employer to provide regular training for workers:

- ☐ The employer must provide training to newly hired employees, employees who change positions or who are assigned new duties, and employees who move to a new classification.
- ☐ Employees have access to five working days each year for training and professional development.
- ☐ Training will be during work time.
- ☐ The employer will pay the cost of training.

Hours of work

Negotiate language to protect hours of work from the impacts of new technologies:

- ☐ Employees have the right to disconnect at the end of work hours and during breaks.
- ☐ Employees are not required to answer work-related communications outside work hours.
- ☐ The employer must respect maximum daily and weekly working hours to safeguard workers' health and safety.

Work from home

Negotiate comprehensive language to protect workers who work from home:

- ☐ Acknowledge that working from home is voluntary.
- ☐ Ensure the protection of all collective agreement rights, including the duty to accommodate.
- ☐ Establish clear rules on scheduling and costs, as well as ownership and maintenance of work equipment.

SECURING OUR JOBS

AI and other new digital technologies are likely to transform some job classifications and sectors. In many cases, specific tasks will be automated. This can trigger work reorganization and lead to changes in job classifications. In other cases, the employer may try to eliminate entire job classifications because of technological change.

Job change and wage protection language ensures the union has a say when the employer modifies jobs or sets pay rates for new job classifications.

A no contracting out provision can protect bargaining unit work if your employer tries to contract out bargaining unit work to AI systems. Other protections include language about staffing levels, layoff and recall, and inclusion of new jobs in the bargaining unit.

Here are the key areas to cover with new or updated collective agreement language.

Job change and wage protection

Bargain language that pay rates will be negotiated when:

- ☐ the duties or requirements of any classification are changed or increased;
- ☐ the union or an employee feels the employee is unfairly or incorrectly classified; or
- ☐ any new position is established.

If the union and employer can't agree on the reclassification and/or pay rate, the dispute will move to grievance and arbitration.

Wage protection for job evaluation and classification systems

Locals with job evaluation and classification systems should negotiate job change and wage protection language described above, as well as the language below.

Negotiate the union's role in job descriptions:

- ☐ The employer will prepare a job description if a job is established or changed.
- ☐ All job descriptions will include a job title, listing of core duties and qualifications required for the job.
- ☐ All job descriptions will be provided to the union.
- ☐ The union can object to the job description within 30 days.
- ☐ Disputes will be addressed through the grievance procedure.

No contracting out

Protect bargaining unit work with strong contracting out provisions (update to standard contract language is in **bold**):

- ☐ Negotiate language that ensures work or services performed by bargaining unit employees will not be contracted out, in whole or in part, to any other plant, person, **company**, or non-unit employee.

Minimum staffing levels

Protect members' jobs by negotiating minimum staffing levels:

- ☐ Negotiate language requiring the employer to maintain a minimum number of full-time permanent employees in the workforce.

Layoff and recall

Negotiate language to protect workers, ranging from:

- ☐ A guarantee that no employee will be laid off.
- ☐ Alternatives to layoffs such as redeployment and retraining.
- ☐ Measures that discourage layoffs such as advance notice, layoffs taking place in reverse order of seniority, or employer-paid benefit coverage during layoff.

Recognition

New jobs created by the introduction of AI and digital systems should be in the bargaining unit. Reach out to your national representative to discuss this further.

READY FOR THE DIGITAL AGE

This guide gives an overview of the ways our collective agreements can ensure consultation and negotiation, stop discriminatory technology, protect workers' health and safety, and secure our members' jobs and wages.

Support is available to negotiate collective agreements that give workers a strong voice in any new technology, and the protections we need to navigate our transforming workplaces.

Locals should contact their national representative for more information about bargaining provisions on technological change, data rights and AI use.

To learn more about artificial intelligence, visit cupe.ca/ai.

Bargaining
strong collective
agreements for
the digital age