



HEALTHIER WORKPLACES | A HEALTHIER WORLD

November 9, 2023

Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration

AIHA's Recommendations on OSHA's Proposed Rulemaking to Amend its Representatives of Employers and Employees Regulation

Agency/Docket Numbers: OSHA-2023-0008

RIN: 1218-AD45

Dear Assistant Secretary Parker:

AIHA, the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety (OEHS), appreciates the opportunity to provide feedback on the United States Occupational Health and Safety Administration's (OSHA) proposed rulemaking to amend its Representatives of Employers and Employees regulation. We hope you find our feedback useful and are happy to answer any questions you may have.

1. OSHA seeks input on whether to maintain the existing requirement in [29 CFR 1903.8\(c\)](#) for a third-party employee representative to be “reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace” given that Section 8(e) of the OSH Act more generally provides that employee representatives “shall be given an opportunity to accompany” the CSHO “during the physical inspection of any workplace . . . for the purpose of aiding such inspection.” [29 U.S.C. 657\(e\)](#)

We believe it should be up to the employer to determine who represents them during the physical inspection of their workplace. The CSHO should not make that

determination, and it should not be exclusive to an industrial hygienist or safety engineer.

2. Should OSHA defer to the employees' selection of a representative to aid the inspection when the representative is a third party (i.e., remove the requirement for third-party representatives to be reasonably necessary to the inspection)? Why or why not? Please provide any relevant information, examples, considerations, and/or data to support your position.

Yes, ultimately the employer is responsible for the health and safety of their workplace, so they should determine who will represent them during an OSHA inspection.

3. Should OSHA retain the language as proposed, but add a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace? Why or why not? Please provide any relevant information, examples, considerations and/or data to support your position.

No. A third-party representative may not be reasonably necessary for many companies. Therefore, we suggest it be kept simple – the accountable company determines who represents them during an inspection.

4. Should OSHA expand the criteria for an employees' representative that is a third party to participate in the inspection to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act? Why or why not? If so, should OSHA defer to employees' selection of a representative who would aid them in effectively exercising their rights?

No, it should not be up to the CSHO to determine what is or is not in the best interest of the employer. The employer should make that decision and be held accountable for said decision.

Conclusion

If you have any questions about AIHA's comments on this proposed rulemaking or other matters, please contact me at mames@aiha.org or (703) 846-0730. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Ames', with a stylized flourish underneath.

Mark Ames
Director, Government Relations
AIHA

About AIHA

AIHA is the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety in the workplace and community. Founded in 1939, we support our members with our expertise, networks, comprehensive education programs, and other products and services that help them maintain the highest professional and competency standards. More than half of AIHA's nearly 8,500 members are Certified Industrial Hygienists, and many hold other professional designations. AIHA serves as a resource for those employed across the public and private sectors as well as to the communities in which they work. For more information, please visit www.aiha.org.