



HEALTHIER WORKPLACES | A HEALTHIER WORLD

Worker Rights

White Paper

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Sponsored by the Social Concerns Committee.

The American Industrial Hygiene Association (AIHA) is the largest association of industrial hygiene and occupational and environmental health professionals in the United States. Its members are dedicated to improving the health and safety of working people and communities in the United States and abroad.

This White Paper presents and supports workplace protections that AIHA believes are essential components of occupational health and safety systems and programs. AIHA believes these basic protections are worker rights, as well as an essential ingredient of occupational health and safety systems.

These protections are already largely embodied in law for many workers and employees in the United States, but unfortunately, not all workers enjoy these basic rights. In the United States, public employees in approximately half the states are not covered by the U.S. Occupational Safety and Health Administration (OSHA)¹ and have very limited health and safety protection, many workers are excluded from protection because they are considered independent contractors, temporary workers, or part of the gig economy. For many workers in other countries these rights do not exist or are not enforced. For example, immigrant workers who may be undocumented are particularly at risk as they may be afraid to speak up about hazards on the job due to their status and fear of deportation.

The purpose of this white paper is to guide AIHA in developing its public policy advocacy positions on legislative and regulatory issues and in its international work. The association will support efforts to extend these rights and protections to all workers in the United States and will oppose legislation or regulatory action that would compromise or eliminate them.

Because the scope of AIHA's public policy work is primarily domestic, the United States is the main focus of this document. Many of the principles underlying the rights described in this white paper, however, also apply outside the United States. Therefore, the document also seeks to enhance the adoption of these protections in other countries, always in a manner that is cognizant of their socioeconomic, political, and cultural characteristics.

The words "worker" and "employee" are used interchangeably throughout this document to emphasize that a safe and healthful workplace is important to all who may be exposed to potential workplace hazards, including line employees, supervisors, managers, and many hands-on owners of small businesses.

AIHA believes employers must provide a safe and healthful work environment, including the following nine protections:

1. Right to a Safe and Healthful Workplace

In the United States, employers must provide a safe and healthful workplace under the mandate of the Occupational Safety and Health Act (OSH Act) of 1970. The goal is that no worker will suffer from material impairment of health, even if exposed to a hazard for a working lifetime.² This tenet is based on the simple principle that workers should go home from work at least as healthy as they arrived. This fundamental obligation is the basis of all effective safety and health programs and should never be abrogated. Reclassifying workers as "independent contractors" denies workers these protections and should never be used to evade



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this obligation. The safety and health of temp workers, who often fall through the cracks, should be a joint responsibility of both the temp agency and the employer they are temporarily working for.³

NIOSH has specified that promoting Total Worker Health is an important aspect of the mandate to provide safe workplaces (see: <https://www.cdc.gov/niosh/twh/totalhealth.html>) This includes the necessity to protect vulnerable workers, which in terms of the COVID pandemic includes workers who are black, indigenous or people of color, as well as those with chronic diseases and the elderly. Total Worker Health also means preventing working conditions from adversely affecting the health of the worker's family, which in the case of the COVID pandemic means preventing workers from getting infected at work and putting their families at risk.

2. Right of Access to Information About Workplace Health and Safety

For workers to effectively participate in the pursuit of a safe and healthful workplace, they must be knowledgeable about the hazards they may encounter in their jobs through effective access to information and training. In the United States, these protections are currently embodied in the OSHA Hazard Communication standard⁴ and Access to Employee Exposure and Medical Records⁵ standards, as well as in OSHA's Recordkeeping Regulations.⁶

In organized workplaces, these rights to health and safety information are essential to bargaining and embodied under the law promulgated by the National Labor Relations Act.⁷ The ability of employees to understand and assess the accuracy of the information they receive is fundamental to these protections. Workers should have the right to independently verify the information they receive. As an example, OSHA standards allow workers or their representatives the right to observe sampling done by the employer to ensure it is properly executed.⁸

3. Right to Receive Training About Workplace Safety and Health

The training of workers regarding health and safety is an essential component of a safe and healthful workplace.⁹ Employees must be able to fully understand the risks and hazards they face, or they may unknowingly take risks without the proper precautions. Workers encountering job hazards must be taught how to recognize hazardous situations and the precautions that can be taken. They must also be trained on hazard controls, personal protective equipment, government regulations, and workers' rights under the regulations.

Workers who understand the principles of hazard identification and control can be effective partners in controlling them. Training is required by the OSHA Hazard Communication standard and considered an essential part of any occupational safety and health management system (e.g. the OSHA S&H Program Guidance,¹⁰ ANSI Z10¹¹).

Training must be provided in a language that workers can understand, with appropriate attention to the needs of non-English speaking workers. Training must include the assessment that workers have comprehended and can apply the information that has been presented.



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OSH professionals also need to be trained in workers' rights to ensure they understand and respect these rights in their practice.

4. Right of Confidentiality of Medical Records

Employees are often rightfully concerned about access to confidential information about them, especially their medical records. If medical records are not held in confidence, workers may be afraid to report medical problems and will fail to receive early treatment. The overall integrity and effectiveness of a health and safety program is compromised by such a sequence of events.

Confidentiality of medical records is fundamental to a safe and healthful workplace. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 increased the privacy protections for medical information.¹² OSHA rules strictly limit the amount of medical information that employers can receive about employees.¹³ Wearable data sensors now collect a large amount of potentially sensitive information on workers. Access to such data and its use should be restricted to protect workers from retaliation.

Information obtained from testing and contact tracing for COVID-19 must be kept confidential. When someone tests positive for the virus, their contacts should be informed without disclosing the identity of the person, unless the person testing positive has given permission for their identity to be disclosed.

5. Right to Refuse to Perform Unsafe Work

When unsafe conditions present an imminent danger, workers are often the only persons who can identify these dangers in time to prevent a tragedy. Workers cannot wait, in some cases, to alert management or to call in government authorities but must act expeditiously to protect themselves. For this reason, workers have the right to refuse unsafe work in several jurisdictions.¹⁴ Knowledgeable workers who can accurately assess risks and hazardous conditions will rarely err in refusing unsafe work.

Even when workers are expressly given this right, for example, in union contracts, they are often reluctant to exercise it. Therefore, employers must do all they can to encourage workers to exercise this right and reward workers who do, even if the situation turns out to be a false alarm.

6. Right to File a Complaint Regarding Health and Safety Hazards

The OSH Act establishes the right of workers to complain to OSHA anonymously, and without fear of discrimination if they suspect a violation of those standards has occurred.¹⁵ There can be cases where workers and management differ regarding the need for hazard control, or where controls are delayed or ineffective.

In these and similar circumstances, employees must have the right to file anonymous complaints, as well as the right to effective and expeditious recourse should they suffer discrimination because of exercising the right to complain. OSHA recently emphasized the need to protect whistleblowers and created a Whistleblower Protection Advisory Committee. Protections for whistleblowers need to be strengthened to ensure that workers are not reluctant to exercise this right.



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In the COVID-19 pandemic worker rights to refuse unsafe work and to call attention to unsafe conditions without fear of retaliation are especially important because

- There is no OSHA standard that specifically addresses workplace conditions that are unsafe with respect to COVID-19.
- OSHA has stated that it will not normally inspect COVID-19 hazards, in response to complaints relating to “medium risk” workplaces, including those with frequent and/or close contact with people who may be (but are not known to be infected with SARS-CoV2). (see: <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>). For example, this may apply to meatpacking and fast-food workplaces, where outbreaks have occurred (see: https://gazette.com/business/mcdonalds-among-3-more-coronavirus-outbreaks-reported-in-el-paso-county/article_33347fb0-9a05-11ea-a284-a772e8599596.html)
- OSHA’s protection for whistle-blowers is ineffective. As of May 14, 2020, OSHA had completed investigations for only 2% of thousands of whistleblower complaints relating to COVID-19. (see: <https://www.washingtonpost.com/business/2020/04/16/osha-coronavirus-complaints/>)

7. Right of Workers to Participate in the Inspection and Appeals Process

Workers have the right to participate fully in the compliance inspection process under the OSH Act.¹⁶ This right to participate in inspections is also specified in consensus standards such as the ANSI Z10 standard (section 3.2)¹¹ and the OSHA Recommended Practices for Safety and Health Programs guidance (Worker Participation).¹⁰ This includes the right to meet privately and participate in conferences with inspectors, to be informed of the results of inspections, and to challenge the results through judicial review.

Employees also have, and need, protection against discrimination or discharge for engaging in safety and health activities.¹⁷ These rights ensure that inspectors can receive input from both workers and management. Employees on the job can contribute valuable information essential to a comprehensive inspection. The employee’s right to participate in the inspection process is necessary to ensure a safe and healthful workplace. In April 2017, OSHA rescinded a memo allowing workers who are unorganized to have a third-party representative walk-around with OSHA inspectors.¹⁸ Such a right is needed to help ensure that their independent voice is heard.

Employees should also have the right to be informed of findings resulting from inspections or nongovernmental audits by third parties (e.g., insurance companies and consultants). Participation of workers in non-governmental third-party inspections would also be valuable and should be considered by employers. The manner and extent of such participation, however, should be at the discretion of management, or consistent with existing management-labor agreements.

8. Right to Participate in a Health and Safety Committee

Employees have the right to form and serve on health and safety committees in their workplaces. Health and safety committees, especially joint efforts between labor and management, have proven successful in many



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instances. This is particularly true where workers select their own representatives and serve without fear of employer retaliation, meet on company time, and have access to all the information necessary to function effectively.¹⁹

Committee representatives must also have sufficient training to allow them to do their jobs properly, generally more in-depth and specific training than what the average worker receives. The right to participate through safety and health committees is also an important part of consensus standards like the ANSI Z10 (Section 3.2 and Appendix C)¹¹ and the OSHA Safety and Health Programs guidance.¹⁰

9. Rights of Injured and Sick Workers

Injured workers have the right to fair and timely compensation for their injuries, to paid time off to recuperate until they are medically capable of returning to work, and to safe return to work (which could include light or modified duty).

Recently the United States has been in the midst of an epidemic of opioid overdoses. Opioids are taken for pain relief. Recent studies have shown the risk of opioid overdoses is significantly higher among workers who do not have paid sick leave, such as construction workers, farmers, and fishermen.²⁰ Those who go to work injured are more likely to medicate for pain to get them through the day, because they don't get paid if they miss a day of work.

Paid sick leave should be an essential right of workers to help prevent opioid overuse. Preventing work-related pain through injury prevention and ergonomics programs will proactively address one of the root causes of this epidemic. Appropriate implementation of modified duty, in combination with paid medical leave for injury rehabilitation, can facilitate successful treatment and a safe return to work.

During the COVID-19 pandemic, it is even more critical that workers have paid sick leave. No employer should expect or want workers to come to work if they are sick. Yet workers without paid sick leave will necessarily report to work because many are living paycheck to paycheck and cannot afford to miss work. By providing paid sick leave, employers can protect other workers at the facility from sick coworkers and stop the virus from spreading throughout the workplace, possibly resulting in a shut down.

The federal government has provided emergency paid sick leave for COVID related illness as part of the Family First Coronavirus Response Act; however this expires at the end of 2020 and has various limitations: It does not cover workplaces with more than 500 employees, allows workplaces with under 50 employees to apply for exemptions, and covers full pay for a maximum of two weeks.²¹ It needs to be extended and expanded.

The lack of paid sick leave strongly affects people of color, who disproportionately get sick and die from COVID-19 and who in order to provide for their families, often must report to work regardless of their health condition.

Alongside these worker rights, AIHA also believes employers have the right to expect employees to comply with rules and requirements necessary to provide a safe and healthful workplace. These rules may include



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the use of prescribed work practices, protective equipment, and similar components of a health and safety program.

Conclusions

AIHA supports the use of a wide range of tools to ensure safe and healthful workplaces, including an effective OSHA, science-based standards with a public health focus; management systems; public-private partnerships; beyond-compliance programs; government programs; and non-governmental, third-party audits. AIHA views regarding these approaches can be found in other association white papers and documents. This white paper highlights employee rights or protections that AIHA considers essential elements to ensure a safe and healthful workplace.

For the reasons outlined in this white paper, AIHA supports workplace standards and guidelines, legislation, and regulatory approaches that embody these basic protections for workers in all workplaces and it opposes legislative and regulatory attempts that would undermine them.

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