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 are believed to be essential components of occupational health and safety systems and programs. These basic protections are rights that should be provided to every worker and essential ingredients of occupational health and safety systems.

These basic rights are largely embodied in law for many workers and employees in the United States, but unfortunately, not all workers enjoy them. 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 other workers are excluded from protection because they are considered independent contractors, temporary workers, or part of the gig economy. 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. And for workers in other countries, these rights may not exist or be enforced.

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 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 small businesses owners who have hands-on roles in daily business operations.

Employers must provide a safe and healthful work environment that includes 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
this obligation. The safety and health of temporary workers, who often fall through the cracks, should be a joint responsibility of both the staffing agency that hired them 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. This includes the necessity to protect vulnerable workers, which, during a pandemic, includes workers who are Black, indigenous, or other people of color, live with chronic diseases, and are elderly. Total Worker Health also means preventing working conditions from adversely affecting the health of workers’ families, which in the case of a 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's Hazard Communication⁴ and Access to Employee Exposure and Medical Records⁵ standards and OSHA’s recordkeeping regulations.⁶

In organized workplaces, these rights to health and safety information are essential to bargaining and embodied under the National Labor Relations Act.⁷ Employees having the ability 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 fully understand the risks and hazards they face, or they may unknowingly take risks without the proper precautions. Workers must be taught how to recognize hazardous situations and know the precautions they can take. They must also receive training on hazard controls, proper use of personal protective equipment, government regulations, and workers’ rights under those regulations.

Workers who understand the principles of hazard identification and control can be effective partners in controlling them. Training in hazard identification is required by the OSHA Hazard Communication Standard and considered an essential part of any occupational safety and health management system, such as OSHA’s Recommended Practices for Safety and Health Programs¹⁰ and ANSI Z10¹¹.

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

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 and other Records

Employees are often rightfully concerned about the parties that have access to their confidential information, 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 of 1996 (HIPAA) increased privacy protections for medical information. OSHA rules strictly limit the amount of medical information that employers can receive about employees. Now that wearable data sensors collect a large amount of potentially sensitive information from workers, access and use of such data should be restricted to protect workers from retaliation.

In particular, information obtained from testing and contact tracing for pandemic-related illnesses must be kept confidential. When someone tests positive for a virus such as SARS-CoV-2, their contacts should be informed without disclosing the person’s identity, unless the person who tested positive has given permission for their identity to be disclosed.

5. Right to Refuse to Perform Unsafe Work

When unsafe conditions present imminent dangers, workers are often the only people who can identify these dangers in time to prevent tragedies. In some cases, workers cannot wait to alert management or to call in government authorities but must act immediately to protect themselves. For this reason, workers have the right to refuse unsafe work in several jurisdictions. 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

The OSH Act establishes a worker’s right to complain to OSHA anonymously and without fear of discrimination if they suspect a violation of those standards has occurred. 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 and the right to effective and expeditious recourse if 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.
In a pandemic, workers’ 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 pandemics. **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 or close contact with people who may, but are not known, to be infected with SARS-CoV-2. This may particularly apply to meatpacking and fast food workplaces, where outbreaks have occurred. As of April 16, 2020, OSHA had completed investigations for only 2% of thousands of whistleblower complaints relating to COVID-19.

7. Right 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 The right to participate in inspections is also specified in consensus standards such as the ANSI Z10 Standard (section 3.2)11 and the Worker Participation section of the OSHA Recommended Practices for Safety and Health Programs guidance document.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 require protection against discrimination or discharge for engaging in safety and health activities.17 This right ensures that inspectors can receive input from both workers and management. Employees on the job can contribute valuable information essential to a comprehensive inspection. The employees’ 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 third party representatives participate in walk-arounds with OSHA inspectors;18 however, this right is needed to help ensure that these workers’ independent voices are heard.

Employees should also have the right to be informed of findings resulting from inspections or nongovernmental audits by third parties such as insurance companies and consultants. Workers’ participation in nongovernmental third party inspections is also 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 agreements between management and labor.

8. Right to Form and Serve on 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 when created through joint efforts between labor and management, have proven successful in many instances at resolving occupational hazards. Worker health and safety committees are particularly successful when workers can select their own representatives, serve without fear of employer retaliation, meet on company time, and have access to all the information necessary for committees to function effectively.19

Committee representatives must have sufficient training—generally more in-depth and specific training than received by the average worker—to allow them to do their jobs properly. The right to participate through safety and health committees is also an important part of consensus standards like ANSI Z10 (Section 3.2 and Appendix C)11 and OSHA’s Recommended Practices for Safety and Health Programs.10
9. Rights of Injured and Sick Workers

Injured workers have the rights to fair and timely compensation for their injuries, paid time off to recuperate, and a safe return to work when they are medically capable, which could require light or modified duties.

The United States is experiencing an opioid overdose epidemic, and 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. Those who go to work injured are more likely to rely on pain medications to get through the day, because they do not get paid if they miss a day of work.

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

During pandemics, 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 often 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 shutdown.

As an example, the federal government has provided emergency paid sick leave for COVID-19 illness as part of the Family First Coronavirus Response Act. However, the Act expired at the end of 2020 and has various limitations: it does not cover workplaces with more than 500 employees, allows workplaces with fewer than 50 employees to apply for exemptions, and covers full pay for a maximum of two weeks. It needs to be extended and expanded.

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

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

CONCLUSIONS

This white paper highlights employees’ rights and protections as essential elements for a safe and healthful workplace. A wide range of tools must be used, including but not limited to effective and science-based OSHA standards that focus on public health, management systems, public-private partnerships, beyond-compliance programs, government programs, and nongovernmental, third party audits. These approaches can be found in other AIHA publications.
References

2. OSH Act § 6 (b)(5).
6. 29 CFR 1094.
15. OSH Act § 8 (f)(2).
17. OSH Act §§ 8 (e), (f)(2); 29 CFR 2200.20.