

Workplace Rights

WHITE PAPER

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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/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”, temp workers or in the “gig” economy; and for many workers in other countries these rights do not exist or are not enforced.

The purpose of this White Paper is to serve as a guide for 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 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 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 tenant 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 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

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 Hazard Communication⁴ and Access to Medical and Exposure Records⁵ standards, as well as in OSHA 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

Training of workers about 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 Guidance¹⁰, ANSI Z10¹¹).

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 (HIPPA) of 1996 increased the privacy protections for medical information.¹² OSHA rules strictly limit the amount of medical information employers can receive about employees.¹³

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, e.g. 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 it turns out to be a false alarm.

6. RIGHT TO FILE A COMPLAINT REGARDING HEALTH AND SAFETY HAZARDS

The OSH Act establishes with 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.

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 Safety and Health Programs Guidance¹⁰ (Worker Participation). 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. Employee 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 non-governmental audits by third parties (e.g., insurance companies, consultants, etc.). 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/or 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 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 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 Guidance¹⁰.

9. RIGHTS OF INJURED WORKERS

Injured workers have the right to fair and timely compensation for their injuries, paid time off to recuperate until they are medically capable of returning to work, and safe return to work (which could include light or modified duty). Recently the U.S. 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 don't 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 help facilitate successful treatment and a safe return to work.

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 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, 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 opposes legislative and regulatory attempts that would undermine them.

References

1. Occupational Safety and Health Act Sections 4 (b)(1) and 3 (5).
2. Occupational Safety and Health Act Section 6 (b)(5).
3. David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done To Improve It*, Harvard University Press, 2014
4. 29 CFR 1910.1200 and 1926.59.
5. 29 CFR 1910.1020 and 1926.33.
6. 29 CFR 1094.
7. National Labor Relations Act Section 8 (a)(1).
8. See, e.g., 29 CFR 1926.1101 (f)(6) in the asbestos standard.
9. Cohen, A., and Colligan, M. *Assessing Occupational Safety and Health Training*, DHHS (NIOSH) 98-145, June 1998.
10. OSHA Recommended Practices for Safety and Health Programs- <https://www.osha.gov/shpguidelines/>
11. ANSI/AIHA Z10-2012 Occupational Health and Safety Management Systems
12. 45 CFR Part 160 and Subparts A and E of Part 164
13. OSHA Factsheet- Health Privacy and OSHA Whistleblower Complaints
14. 29 CFR 1977.12 (b)(2), and Supreme Court decision in *Whirlpool v. Marshall* 445 US 1, S. Ct. 883 L Ed 2d 154 (1980).
15. Occupational Safety and Health Act Section 8 (f) (2).
16. Occupational Safety and Health Act Section 8 (f)(1).
17. Occupational Safety and Health Act Sections 8 (e), (f)(2), 29 CFR 2200 Subpart B Rule 20 (Review Commission Rules of Procedure).
18. <https://www.osha.gov/laws-regs/standardinterpretations/2013-02-21>
19. Sweeney, K., *Building An Effective Labor-Management Health and Safety Committee*, American Center for Quality of Work Life, 1984.
20. Massachusetts Department of Public Health, *Opioid-Related Overdose Deaths in Massachusetts by Industry and Occupation 2011-2015*, July 2018