

Occupational Safety & Health Administration **We Can Help**[What's New](#) | [Offices](#)[Home](#)[Workers](#)[Regulations](#)[Enforcement](#)[Data & Statistics](#)[Training](#)[Publications](#)[Newsroom](#)[Small Business](#)[Standard Interpretations - Table of Contents](#)• **Standard Number:** [1903.8](#); [1903.11](#); [1952.10](#); [1903.20](#)

FEB 21 2013

Mr. Steve Sallman
Health and Safety Specialist
United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers International Union
Five Gateway Center
Pittsburgh, PA 15222

Dear Mr. Sallman:

Thank you for your December 18, 2012, letter to the Occupational Safety and Health Administration (OSHA). You ask whether workers at a workplace without a collective bargaining agreement may authorize a person who is affiliated with a union or a community organization to act as their representative under the Occupational Safety and Health Act (OSH Act). This would include "representing the employee(s) as a personal representative" and "accompanying the employee on an OSHA inspection" in a non-unionized workplace. You also inquire whether, under these circumstances, the individual who is filing an OSHA complaint on behalf of an employee could act as a "walkaround representative" during an OSHA inspection.

For clarity, we have paraphrased your inquiry as two questions.

Question # 1 – May one or more workers designate a person who is affiliated with a union without a collective bargaining agreement at their workplace or with a community organization to act as their "personal representative" for OSH Act purposes?

Yes. The OSH Act, the Secretary's regulations implementing it, and OSHA's Field Operations Manual (FOM) all recognize the role of an "employee representative," who may represent employees' interests in enforcement-related matters. For example, a representative may: (1) file complaints on behalf of an employee (29 U.S.C. § 657(f), 29 C.F.R. § 1903.11(a)); (2) request workplace inspections (29 U.S.C. § 657(f), 29 C.F.R. § 1952.10(a)); and (3) participate in informal conferences to discuss issues raised by citations (29 C.F.R. § 1903.20). An employee representative may also contest the abatement period in OSHA citations and participate in contest proceedings filed by an employer (29 U.S.C. § 659(c)). The Field Operations Manual explains that an employee representative may include any person acting in a bona fide representative capacity, including nonprofit groups or organizations (FOM Chapter 9, I.A),

Question # 2 – May workers at a worksite without a collective bargaining agreement designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative?

Yes. The OSH Act authorizes participation in the walkaround portion of an OSHA inspection by "a representative authorized by [the employer's] employees." 29 U.S.C. § 657(e). Therefore, a person affiliated with a union without a collective bargaining agreement or with a community representative can act on behalf of employees as a walkaround representative so long as the individual has been authorized by the employees to serve as their representative. This right, however, is qualified by the Secretary's regulations, which allow OSHA compliance officers (CSHOs) to exercise discretion over who participates in workplace inspections.

Section 8(e) of the OSH Act provides that, "[s]ubject to the Secretary's regulations, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace . . . for the purpose of aiding such inspection." 29 U.S.C. § 657(e). This language makes plain that, subject to the Secretary's regulations, where employees have chosen a representative, they have a right to have that representative accompany the CSHO during a workplace inspection. The Secretary's regulations, 29 C.F.R. § 1903.8, qualify the walkaround right somewhat, but only in order to allow OSHA to manage its inspections effectively. They allow the Secretary or her authorized representative (the compliance officer) conducting the inspection to determine who can participate in an inspection. See 29 C.F.R. §§ 1903.8(a)-(d).

The legislative history of section 8 of the OSH Act shows Congress' intent to involve employees in workplace inspections. The October 6, 1970 Senate Report declared that an authorized representative of employees would "aid the inspection" and "provide an appropriate degree of involvement of employees. . ." See S. REP. No. 91-1282, 91ST CONG., 2D SESS. (1970), reprinted in 1970 U.S.C.C.A.N. 5177, 5187. One of the bill's sponsors, Senator Harrison A. Williams of New Jersey, stated that "[t]he opportunity to have the working man himself and a representative of other working men accompanying inspectors is manifestly wise and fair . . ." SUBCOMM. ON LABOR OF THE SENATE COMM. ON LABOR AND PUBLIC WELFARE, 92D CONG., 1ST SESS., LEGISLATIVE HISTORY OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, at 430 (Comm. Print 1971).

The OSHA regulation implementing section 8, 29 C.F.R. § 1903.8, likewise recognizes the value of participation by employee representatives in OSHA inspections. Although the regulation acknowledges that most employee representatives will be employees of the employer being inspected, it also makes clear that there may be times when the presence of an employee representative who is not employed by that employer will allow a more effective inspection. Thus, section 1903.8(c) explicitly allows walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the OSHA compliance officer, such a representative is "reasonably necessary to the conduct of an effective and thorough physical inspection." It is OSHA's view that representatives are "reasonably necessary" when they will make a positive contribution to a thorough and effective inspection.

And, as you point out, there are numerous ways that an employee representative who is neither an employee of the employer being inspected nor a collective bargaining agent could make an important contribution to a thorough and effective inspection. This could be because of the representative's experience and skill, for example because of experience evaluating similar working conditions in a different

plant. There are also many instances where non-English speaking workers want a representative who is fluent in both their own language and English, something that will facilitate more useful interactions with the CSHO during the inspection. Finally, workers in some situations may feel uncomfortable talking to an OSHA CSHO without the trusted presence of a representative of their choosing.

OSHA recognizes that there has been some confusion about these issues arising from a March 7, 2003, OSHA letter to Milan Racic. Although this letter addressed an issue related to your inquiry, it is important to explain the distinction between the situation discussed in that letter and your letter. The Racic letter merely states that a non-employee who files a complaint does not necessarily have a right to participate in an inspection arising out of that complaint. It does not address the right of workers at a facility without a collective bargaining agreement to have a representative of their own choosing participate in an inspection. To the extent it has been interpreted to prohibit such a right, it is inconsistent with the OSH Act and with OSHA's regulations. Because of the confusion it has engendered, OSHA is withdrawing the Racic letter.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation only of the requirements discussed. To assure that you are using the correct information and guidance, please consult OSHA's website at <http://www.osha.gov>. If you have further questions, please contact the Directorate of Enforcement Programs at (202) 693-2100.

Sincerely,

Richard E. Fairfax
Deputy Assistant Secretary

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