

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:110. Employer and employee representatives.

RELATES TO: ~~[KRS 338.051]~~ KRS 338.111

STATUTORY AUTHORITY: KRS 338.051, 338.061 ~~[KRS Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS.338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health [by KRS 338.051, the following rules and] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes employer and employee representation during an inspection [are adopted concerning the employer and employee representatives who may accompany compliance safety and health officers during the course of the inspection].

Section 1. Definitions. (1) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections or investigations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. Representatives of Employers and Employees. (1) The compliance [Compliance] safety and health officer[officers] shall be in charge of the inspection [inspections] and questioning of persons.

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him **if/when** she or he [where he] determines it aids [that such additional representatives will further aid] the inspection.

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if it does [this will] not interfere with the conduct of the inspection.

(5) [(2)] The compliance [Compliance] safety and health officer[officers] shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees [for the purpose of this section].

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the [such] representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(7) [(3)] The representative[representative(s)] or representatives authorized by employees shall be an employee[employee(s)] of the employer.

(8) If, [However, if] in the judgment of the compliance safety and health officer, good cause is [has been] shown why accompaniment by a third party, such as a safety professional or industrial hygienist, who is not an employee of the employer [(such as an industrial hygienist or a safe-

~~ty engineer]~~ is reasonably necessary to ~~[the]~~ conduct ~~[of]~~ an effective and thorough ~~[physical]~~ inspection ~~[of the workplace]~~, ~~the~~ ~~[such]~~ third party may accompany the compliance safety and health officer during the inspection.

(9) A compliance ~~[(4) Compliance]~~ safety and health officer~~[officers]~~ may consult with employees concerning matters of occupational safety and health ~~[to the extent they deem]~~ necessary for ~~[the conduct of]~~ an effective and thorough inspection.

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 ~~that~~***which*** ~~she or he~~ has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance ~~[(5) Compliance]~~ safety and health officer ~~shall be/is~~***is***~~[officers are]~~ authorized to deny ~~[the right of]~~ accompaniment ~~[under this section]~~ to any person whose conduct interferes with ~~the~~ ~~[a fair and orderly]~~ inspection.

(12) Accompaniment ~~[The right of accompaniment]~~ in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to ~~[With regard to]~~ information classified by an agency of the United States Government ~~[in the interest of national security, only persons authorized to have access to such information]~~ may accompany a compliance safety and health officer in areas containing ***such*** information.

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