

STATEMENT OF EMERGENCY
803 KAR 2:110E.

This emergency administrative regulation amends 803 KAR 2:110 Employer and employee representatives to clarify the representative(s) authorized by employees may be an employee of a third-party so that it mirrors and the United States Department of Labor, Occupational Safety and Health Administration (OSHA) final rule, Worker Walkaround Representative Designation Process, published in the April 1, 2024, Federal Register, codified in 29 Code of Federal Regulations ("C.F.R.") Part 1903. These clarifications aid workplace inspections by better enabling employees to select representative(s) of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring necessary information about worksite conditions and hazards are obtained and the amendment establishes that third-party employee representative(s) may accompany the Compliance Safety and Health Officer (CSHO) when, in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to aid in the inspection. OSHA's final rule clarifies that a third party may be reasonably necessary because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (Occupational Safety and Health ("OSH") Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require Kentucky OSH regulations to be as effective as the federal requirements. Furthermore, 29 C.F.R. 1953.5 mandates adoption of the final rule within six (6) months of the date of the April 1, 2024, promulgation. Therefore, Kentucky must adopt the rule no later than October 1, 2024. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JAMIE LINK, Chairman

EDUCATION AND LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:110E. Employer and employee representatives.

RELATES TO: KRS 338.111

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS.338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health 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.

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 safety and health officer shall be in charge of the inspection 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 she or he determines it aids 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 not interfere with the conduct of the inspection.
- (5) The compliance safety and health officer shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees.
- (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 representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- (7) The representative or representatives authorized by employees may be an employee of the employer or a third party.
- (8) If the authorized representative is not an employee of the employer, the representative may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).
- (9) A compliance safety and health officer may consult with employees concerning matters of occupational safety and health necessary for 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 she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance safety and health officer shall be authorized to deny accompaniment to any person whose conduct interferes with the inspection.

(12) Accompaniment in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to information classified by an agency of the United States government may accompany a compliance safety and health officer in areas containing information.

JAMIE LINK, Secretary

APPROVED BY AGENCY: September 30, 2024

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