

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendments to California Code of Regulations

Title 8, Division 1, Chapter 3.2, Subchapter 1, Article 2.5, [Proposed] Section 331.8

**Subject Matter of Proposed Rulemaking: Employer Representative and
Representative Authorized by Employees During Workplace Inspections**

PUBLIC PROCEEDINGS: **NOTICE IS HEREBY GIVEN** that the Division of Occupational Safety and Health (DOSH or Cal/OSHA, also referred to as “the Division”) within the Department of Industrial Relations proposes to add Article 2.5 Section 331.8 to Title 8 of the California Code of Regulations (8 CCR § 331.8), which would explain and define the roles of the employer representative and the representative authorized by employees during a workplace inspection. The Division proposes to adopt proposed section 331.8, as described below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing has been scheduled to give all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed amendments, on the following date:

Date: April 1, 2026

Time: 10:00 a.m. Pacific Time (US and Canada)

Place: Please use the link below to join the Hearing:

<https://tkoworks.zoom.us/j/86289478639>

Or Attend by Telephone:

Dial:

+1 669 900 6833 US (direct)

When connected Enter Meeting ID: 862 8947 8639

Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for people with disabilities are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an Assistive Listening System or

Communication Access Realtime Translation should be made no later than five (5) days before the hearing.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed amendments described below in the Informative Digest. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished their presentation, or at 3:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit written comments relevant to the Proposed Rulemaking. Written comments, regardless of the method of transmittal, must be received by the Division by **11:59 p.m. on April 1, 2026**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: walkaroundrule@dir.ca.gov. It is requested that email transmissions of comments, particularly those with attachments, contain the regulation identifier "Employer Representative and Representative Authorized by Employees" in the subject line to facilitate timely identification and review of the comment.
2. By mail or hand-delivery to Silas Shawver, Staff Counsel, at Cal/OSHA Legal Unit, 1515 Clay Street, Suite 1901, Oakland, California 94612.

All comments, regardless of the method of transmittal, should include the commenter's name and U.S. Postal Service mailing address or e-mail address to enable the Division to provide the commenter with notice of any changes to the proposed amendments on which additional comments may be solicited.

AUTHORITY AND REFERENCE CITATIONS

[Proposed] Section 331.8

Authority cited: Sections 50.7, 54, 55, 59, and 6314, Labor Code. Reference: Section 6314, Labor Code; Section 1903.8, Title 29, Code of Federal Regulations.

NOTE: Under California Labor Code § 50.7, the Department of Industrial Relations is the state agency designated to administer the California Occupational Safety and Health Act of 1973. (Cal. Lab. Code § 6300 *et seq.*) Labor Code section 54 authorizes the Director to perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the Department of Industrial Relations (hereinafter “Department”), except as otherwise expressly provided by the Labor Code. Labor Code section 55 authorizes the Director, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, to make rules and regulations that are reasonably necessary to carry out the provisions of the statute governing Director’s and Department’s general powers and duties, and to effectuate its purposes. Labor Code section 59 requires the Department, through its officers, to administer and enforce all laws imposing any duty, power, or function upon the offices or officers of the Department. Section 6314 of the Labor Code addresses the inspection process, and subsection (d) establishes that representatives of the employer and employee shall have the opportunity to accompany the Division during a workplace inspection.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The federal Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq.*) covers most private sector employers and their employees in all 50 states either directly through the federal Occupational Safety and Health Administration (“OSHA”) or indirectly through a “state plan” approved by OSHA under 29 CFR 1902 *et seq.* A state plan is an OSHA-approved occupational safety and health program operated by an individual state instead of by OSHA. OSHA approves and monitors all state plans and provides funding for those plans. California is a state plan state under 29 CFR 1902 *et seq.* If OSHA establishes a new or revised standard, a state plan must adopt its own standard that is at least as effective as the new or revised federal standard within six months. (29 CFR 1953.5(a)(1).)

On April 1, 2024, OSHA issued a final rule amending Section 1903.8(c), which addresses the workplace inspection process. It is well established under state and federal law that a representative of the employer and a representative authorized by the employees shall be given the opportunity to accompany the Division’s inspector during an inspection. (Labor Code §6314(d); 29 U.S.C. §657(e).) The amendment to the federal rule clarifies who may be considered a representative authorized by the employees when that representative is not an employee of the employer subject to the inspection. Under the amended rule, a third party may be deemed a representative authorized by employees when, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why their presence is reasonably necessary for an effective and thorough inspection. The rule describes that a third party’s presence may

be reasonably necessary based on their “relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills.” 29 CFR § 1903.8(c). The new federal rule went into effect on May 31, 2024.

There is no California regulation that defines the term “representative authorized by ... employees,” found in Labor Code Section 6314. The proposed rule adopts the same definition as the one in the federal rule found in 29 CFR § 1903.8.

§ 331.8 Representatives during the Inspection

Proposed Section 331.8 would establish rules for the conduct of the Division’s workplace inspections, consistent with the amended federal rule found in 29 CFR § 1903.8. The rule contains four subsections.

a) 8 CCR Section 331.8 subsection (a) is added, to allow both a representative of the employer and a representative authorized by employees to accompany the Cal/OSHA inspector during the inspection of the worksite, consistent with Labor Code section 6314 subsection d. Subsection (a) authorizes the Cal/OSHA inspector to allow multiple representative for employer and employee and authorizes the inspector to resolve any disputes as to who the representatives are.

These provisions are consistent with federal provisions governing workplace inspections. (29 CFR § 1903.8(a)(b).) Subsection (a) promotes an efficient and clear workplace inspection process by allowing the inspector leeway to permit more than one representative for the employer or the employee and to resolve any dispute as to the number of representative or their identities. The employer or employee representative may object to someone’s participation in the workplace inspection, and the inspector is authorized to make a final and immediate decision to avoid delays or interference with the inspection process.

b) 8 CCR Section 331.8 subsection (b) establishes who may be designated as the representative authorized by employees for purposes of accompanying the inspection. Where the employee representative is an employee of the company or the collective bargaining (union) representative, they will be allowed to accompany the inspector. If the authorized representative of employees is someone other than an employee or collective bargaining representative, it must be shown that their accompaniment is reasonably necessary for an effective and thorough inspection. There may be various reasons why the third-party representative’s participation may be reasonably necessary, including their knowledge of the workplace, the industry, the hazards involved, or their ability to communicate with hard-to-reach employees in the workplace. The inspector will make the determination as to whether the third-party representative may accompany the inspection.

This subsection incorporates the primary feature of the amended federal rule, which is to broaden the definition of a third-party representative authorized by employees. Unless the third-party is the collective bargaining representative for the employees at the worksite, the third-party will be allowed to join the inspection only if they show that they are likely to make it more effective. The effectiveness and thoroughness of the workplace inspection is paramount in determining whether a third-party representative authorized by employees may accompany the inspection. Unlike the federal rule, the proposed rule does not require the collective bargaining representative to make a showing that they are likely to aid in the inspection. The employee's union representative is assumed to have the necessary knowledge and experience of the workforce and workplace, as well as the ability to communicate with employees about workplace matters.

c) 8 CCR Section 331.8(c) is added to establish the inspector's authority to lead the inspection and make sure that the conduct of the representatives who participate does not interfere with the effectiveness of the workplace inspection. This subsection allows the inspector to limit the representatives interactions, such as arguments, with each other, and even to remove a representative from the inspection process if their conduct interviews with the inspection.

This subsection provides the inspectors tools which they can employ to make sure that the accompaniment process serves its purposes of aiding an effective inspection. The workplace inspection is not an opportunity for employer and employee representatives to advocate with each other or address issues that are not germane to the inspection. This subsection authorizes the inspector to enforce reasonable rules to make sure that the inspection goes smoothly and even to bar a person from the inspection if their conduct interferes with the inspection.

d) 8 CCR Section 331.8(d) is added to allow the employer to protect trade secrets, as defined by the Code of Civil Procedure, by requiring that any employee representative in an area containing trade secrets be an employee of the company. If this requirement results in excluding the only available employee representative, then the inspector will be required to interview employees who work in the area as part of the inspection.

This subsection is consistent with federal regulation and current state practices to protect trade secrets from unauthorized disclosure.

By incorporating both new and longstanding federal provisions as to workplace inspections, the Division will ensure that the proposed rule is interpreted and operated in a similar manner to the federal rule.

Anticipated Benefits of the Proposed Rulemaking:

The proposed rulemaking will enhance the Division's ability to conduct effective workplace inspections by permitting an array of experts, broadly defined, to serve as employee representatives and to accompany the CSHO during a workplace inspection when they are needed. The proposed rule would mirror the federal rule and would grant the Division the same authority to rely on a broader array of employee representatives.

There is also a benefit to codifying the provision regarding employer and employee representatives in Title 8. Some employers refuse to consent to the Division's inspection of their workplace. These denials may become even more common if the employer objects to the presence of the authorized representative of the employees. When an employer refuses access to the Division, the Division must seek a search warrant from the Superior Court. In codifying these rules, the Division will have stronger grounds for obtaining search warrants that allow for access with the necessary representatives. Without a rule that defines the representative authorized by employees, some courts may be reluctant to issue a warrant which would permit the Division's representative and a third-party representative of the employees to access a workplace for purposes of conducting an inspection.

Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State Regulations: The Division has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. After conducting a search for any regulations that would relate to or affect this area, the Division concluded that no other state regulations address the issue of accompaniment in a workplace inspection.

Explanation of Substantial Differences Between the Proposed Regulations and Comparable Federal Regulations or Statutes: Proposed Section 331.8 would make California's regulations substantially similar to corresponding federal regulations, specifically 29 CFR § 1903.8, being implemented by federal OSHA.

Forms Incorporated by Reference: None.

MANDATED BY FEDERAL REGULATIONS

Proposed Section 331.8 is compatible with 29 CFR § 1903.8. Because California's occupational safety and health standards are enforced under a state plan as set forth in 29 CFR, Part 1902, the proposed section is mandated by federal law, which requires that California's inspection rights and procedures be "as effective as" those provided under federal law. (See 29 U.S.C. § 667(c)(3).) The federal inspection rule was recently

amended to clarify the definition of representative authorized by employees for purposes of accompanying the Agency's compliance officer during a worksite inspection. The proposed amendment ensures that California's inspection procedures follow and are at least as effective as the federal procedures.

OTHER STATUTORY REQUIREMENTS

There are no other statutory requirements that are specific to the Division or this type of regulation.

LOCAL MANDATE

The Division has determined that the proposal does not impose a mandate on local agencies or school districts requiring reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposal does not constitute a "new program or higher level of service of an existing program" within the meaning of Section 6 of Article XIII B of the California Constitution.

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require any local agency to carry out the governmental function of providing services to the public, nor do they impose unique requirements on local governments that do not apply generally to all entities in the state.

Furthermore, if there were any new costs associated with the employer and employee representative rule, the costs are mandated by the federal government. As such, even if the proposed amendment were held to constitute a "new program or higher level of service of an existing program" under Section 6 of Article XIII B of the California Constitution, any associated costs would not be considered costs mandated by the state. (See Cal. Gov. Code § 17556(c).)

FISCAL IMPACT

Costs or Savings to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:
None.

Costs or savings to any state agency:

There will be no costs or savings to any state agency to comply with the proposal.

Other nondiscretionary costs or savings imposed on local agencies:

There will be no costs or savings to any state agency to comply with the proposal.

Costs or savings in federal funding to the State: None.

HOUSING COSTS

The proposal will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Division has made an initial determination that this proposed rule will not have a significant statewide adverse economic impact. The Division anticipates that the proposal will have no effect on the ability of California businesses to compete with businesses in other states because the proposal is consistent with the federal rule. Other state plan states will have to adopt substantially similar inspection procedures if they have not done so already.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs Within California: The Division concludes that it is unlikely that the proposal will either create or eliminate jobs within California.

Creation of New Business, Elimination of Existing Businesses, or Expansion of Businesses Currently Doing Business in California: The Division concludes that it is unlikely that the proposed amendment will: (1) create new businesses in California; (2) eliminate any existing businesses in California; or (3) result in the expansion of businesses currently doing business in California.

Benefits of the Proposed Amendments to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposal will promote worker safety and health in California by permitting broader participation of experts and other skilled and experienced individuals to assist during the workplace inspection process when needed. The proposed rule provides a broader array of tools to the Division to conduct effective and thorough workplace inspections when faced with novel technical issues, communication and cultural barriers, and other obstacles.

The proposals will not otherwise significantly benefit the health and welfare of California's residents and will not likely benefit California's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

This proposed rule imposes only a minimal burden on employers (time familiarizing themselves with the new rule) and does not require them to take any action to comply. In adopting its proposed rule, federal OSHA determined that the federal rule would not impose additional costs on employers by virtue of the possibility that an additional person may accompany the inspector during a workplace inspection.

BUSINESS REPORT

The proposed regulation does not require any business to make a report.

SMALL BUSINESS DETERMINATION

The Division has determined that the proposed rule does not have a significant impact on small business as the proposed regulation would not impose any additional obligations or burdens on employers to comply.

ALTERNATIVES STATEMENT: In accordance with Government Code section 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Division would be more effective in carrying out the purpose for which the regulation is proposed, or would be at least as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The proposed amendments are mandated by and compatible with 29 CFR § 1903.8.

The Division invites interested people to present statements or arguments with respect to alternatives to the proposed amendments at the scheduled hearing or during the written comment period. Please note that any alternative must be compatible with and at least as effective 29 CFR § 1903.8.

CONTACTS: Non-substantive inquiries concerning the proposal or this rulemaking, such as requests for copies of the text of the proposed amendments and the location of public records, may be directed to Madison Kneedler at (510) 286-7348 or mkneedler@dir.ca.gov. Inquiries regarding the substance of the proposed amendments may be directed to Silas Shawver at (510) 286-7348 or walkaroundrule@dir.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The full text of the proposals, and all information upon which the proposed rulemaking is based, are available upon request to Madison Kneedler at (510) 286-7348 or mkneedler@dir.ca.gov.

As of the date of publication of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic and Fiscal Impact Statement (Form 399), the side by side comparison between the amended federal rule and the proposed rule, and a copy of the document titled "Federal Register, Vol. 88, No. 139, July 21, 2023, pp. 47254-47349." As public comments are received during the rulemaking process, they will be added to the rulemaking file.

The Division's rulemaking file is available for inspection and copying throughout the rulemaking process, Monday through Friday, from 9:00 a.m. to 5:00 p.m., at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The full text of the proposal, and the principal documents upon which the proposed rulemaking is based, may also be accessed through the agency's Internet website at www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

After considering all timely and relevant comments received, the Division may adopt the proposed amendments substantially as described in this Notice. If the Division makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the amendments as revised. Any such modifications will also be posted on the Division's website.

Please send requests for copies of any modified amendments to the attention of Omar Robles at the above telephone number or e-mail address. The Division will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Madison Kneedler at the above telephone number or e-mail address. The Final Statement of Reasons may also be accessed on the Division's website at: www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html.

If adopted, the Proposed Rulemaking will appear in Title 8, California Code of Regulations, Article 2.5, Section 331.8.