



California Rural Legal Assistance, Inc.



April 1, 2026

Re: Adopting Section 331.8 Regulating The Process for Representatives of Employers and Authorized Representatives of Employees to Accompany the Division During Workplace Inspections.

Dear Silas Shawver,

We appreciate the opportunity to provide comments in response to the California Division of Occupational Safety and Health’s proposed Section 331.8, which governs the right of employer and employee representatives to accompany the Division during workplace inspections. The undersigned organizations have extensive experience in filing complaints with the Division. Our organizations also regularly assist Division inspectors in locating worksites, gathering information from workers about hazardous conditions, and communicating with workers who speak non-dominant languages, including Indigenous languages.

We commend the Division for undertaking this rulemaking and recognize the work of the stakeholders and agency personnel who contributed to the proposed text. We write in general support of the rule, which advances important worker protections. This rule will improve the Division’s ability to gather evidence of worksite hazards affecting vulnerable workers, particularly low-wage and immigrant workers who may be linguistically, culturally, and/or physically isolated and vulnerable to retaliation. We, therefore, offer the following comments to address specific provisions that, as currently drafted, may undermine the standard’s effectiveness and invite legal challenge.

I. The Division Should Accept Employee Designations of Third-Party Representatives at Face Value and Not Impose a “Reasonably Necessary” Gatekeeping Function.

We strongly support the Division’s proposal to broaden the federal rule so that collective bargaining representatives may accompany inspectors because they are assumed to have the knowledge and experience of the workforce and workplace and the ability to communicate with employees. However, proposed section 331.8(b) conditions a non-collective bargaining, third-party employee representative’s right to accompany the Division on a finding by the Chief or their representative that “good cause has been shown why their participation is *reasonably necessary* to the conduct of an effective and thorough physical inspection.” We urge the Division to reconsider this approach for non-collective bargaining, third-party employee representatives.

We recognize that the “reasonably necessary” standard mirrors the federal rule.¹ However, California is not required to stop there. The Occupational Safety and Health (OSH) Act establishes a floor, not a ceiling², which state plans must meet. California has a longstanding tradition of exceeding federal worker protection standards where the standard best serves California workers.

The “reasonably necessary” determination vests significant gatekeeping authority in the inspector, with no defined process, no appeal mechanism, and no meaningful check on inconsistent application. This standard will create substantial uncertainty among workers and their advocates about when third-party representation will be permitted. That uncertainty will likely result in a chilling effect. Low-wage and immigrant workers already face significant barriers to speaking up in the face of hazardous conditions. With this standard, workers who do lodge complaints without assurance as to whether their chosen representative will be approved, may forgo representation entirely, particularly in the absence of a union to navigate the complaint process on their behalf.

Furthermore, the undersigned organizations can attest that the linguistic barriers between inspectors and workers present ongoing obstacles in many workplaces. Participation of a respected, culturally, and linguistically competent representative—such as a legal aid, worker center, or community organization representative whom employees know and trust—is crucial to ensuring inspectors obtain the information needed for a complete and thorough inspection.

Therefore, we believe California should instead adopt a standard that accepts an employee’s designation of a representative at face value, subject only to the Chief’s authority. This approach is consistent with the statutory purpose of the walkaround rule, ensuring workers have a meaningful voice during inspections. Moreover, it better reflects California’s commitment to worker protection for all employees, regardless of union status and encourages workers to make complaints and actively participate in inspections with their chosen representative present.

¹ 29 C.F.R. §1903.8(c).

² 29 U.S. Code §667(c)(2).

II. The Rule Should Ensure That Workers, Including Especially Those Without Collective Bargaining Representation, are Fully Able to Designate an Employee Representative.

Proposed section 331.8(b) recognizes that an employee representative may be “an employee of the employer, a third party, or the collective bargaining representative.” We support this inclusive framing. Cal/OSHA should accept designated worker representatives, whether or not they are collective bargaining representatives, without imposing any further burden of proof.

However, the proposed rule is silent as to how employees, particularly those without collective bargaining representation, may nominate or designate their chosen representative prior to or during an inspection. We are concerned how employers may interpret this proposed rule and may even use it to intimidate employees out of selecting a representative for purposes of a Cal/OSHA inspection.

We urge the Division to adopt supplemental language allowing a straightforward, accessible process by which non-union employees may designate a representative in advance of or at the commencement of an inspection, including by allowing for employee complainants to designate a representative when filing their confidential complaint. This process should be simple and straightforward and should not supplant—but should run parallel to—existing processes to identify and notify collective bargaining representatives.³

Therefore, we urge the Division to specify that this rule is applied broadly, in the manner described above, to avoid employer or future unforeseen limitations placed on this rule. Specifying a straightforward, accessible process by which non-union employees may designate a representative in advance of or at the commencement of an inspection, in addition to usual processes to identify collective bargaining representatives, will allow Section 331.8(b) to be operational rather than theoretical.

III. Subsection (d)’s Trade Secret Provision Either Should be Removed or Replaced with the Complete Federal Framework In a Separate Rulemaking Proposal.

Proposed Section 331.8(d) provides that, upon an employer’s request, any authorized employee representative in an area containing trade secrets must be either an employee in that area or a representative authorized by the employer to enter that area. This language tracks with subsection (d) of the federal trade secret regulation.⁴ However, the proposed rule reproduces a single restrictive subsection in isolation, severed from the broader framework that makes the federal provision workable. As a result, Subsection (d) is a provision that is too broad and a source of confusion.

³ Inspection Procedures P&P C-1A, Division of Occupational Safety and Health Policy & Procedures Manual, (last visited March 29, 2026), <https://www.dir.ca.gov/DOSH/Pol/P&pc-1A.pdf>.

⁴ See 29 C.F.R. § 1903.9 (c).

Section 1903.9 is a comprehensive scheme. To illustrate, subsection (c) provides that an employer may identify areas as containing trade secrets at the commencement of an inspection, but that the compliance officer shall treat the designation as valid only if there is “no clear reason to question such identification.” This mechanism is necessary to prevent abuse because it expressly preserves the inspector’s authority to scrutinize and, where warranted, reject an employer’s trade secret claim. As a matter of law, trade secret designation should not preclude an agency’s enforcement procedures provided to it under law. Merely, an employer can designate what it believes to be a trade secret, which then an inspector must do its utmost efforts to preserve the confidentiality of information⁵, if the inspector has found “no clear reason to question such identification.”⁶ As proposed, Section 331.8(d) has the possibility to be interpreted too broadly. Resulting in employers potentially restricting access to any area they designate as a trade secret, with no standard governing adequacy of that designation and no authority granted to the Chief or their representative to question it.

By incorporating only a portion of this federal rule into the proposed walkaround rule, the Division adopts a rule that is broader than what case law or current regulations suggest would be appropriate trade secret protection. Simply declining to investigate an area because an employer asserts a trade secret protection allows for rampant abuse. The Division should spend time reviewing other agencies regulating enforcement like the EPA or Department of Toxic Substances – to understand how they do enforcement while keeping trade secret protections in mind.

Otherwise, if the Division is not interested in adopting a rule that critically reviews an employer’s assertion of trade secrets, then this provision should be removed. It is unnecessary, redundant, and causes confusion. Cal/OSHA is required to follow federal OSH regulations unless Cal/OSHA wants to provide a stronger regulation than what the federal regulation provides. Currently, federal regulations have a provision dedicated to trade secrets, 29 Code of Federal Regulations, section 1903.9.

Moreover, while trade secret protection is a legitimate employer interest, it is not an interest that has any nexus to health and safety. The two concerns exist to protect separate interests. Given the context of a workplace hazard complained about by workers and under active investigation by Cal/OSHA, the notional existence of a possible trade secret cannot be allowed to take precedence over workers’ right to a safe workplace. As drafted, this provision effectively establishes, as the default, a false presumption that workers are filing safety complaints in order to steal information from their employer, and it grants businesses veto power over the presence of employee representation in any area the employer designates as containing trade secrets.

Furthermore, adding a single subsection from the federal scheme without its surrounding context also creates interpretive confusion that an employer may broadly and strategically designate

⁵ 29 C.F.R. § 1903.9 (b).

⁶ 29 C.F.R. § 1903.9 (c).

areas as trade secret areas to exclude third-party or independent employee representatives from the most relevant portions of an inspection.

Therefore, we urge the Division to take one of two courses. If the Division wished to retain a trade secret provision, it should adopt the entirety of 29 C.F.R. § 1903.9 separately from this regulation. That way, the Division codifies a regulation that would restore the inspector's authority to evaluate trade secret designations on their merits. If the Division is not prepared to adopt the complete federal framework, this provision should be removed.

IV. The Rule Should Clarify that Existing Labor Code Retaliation Protections Apply.

The proposed rule is silent on retaliation. This omission is particularly consequential for non-union workers. Fear of employer retaliation is among the most significant barriers to worker participation in safety and health processes. A worker who nominates a third-party representative without any express protection against adverse employment action has little assurance that the right may be exercised without consequence.

While the Labor Code retaliation provisions apply as a whole to all occupational safety and health regulations in California, this is a particularly vulnerable situation in which a current employee may be identified and named. Therefore, an explicit reference to the Labor Code should be included so that employers, when reviewing their compliance with this standard, readily see the applicable requirements.

Therefore, we suggest the Division clarify in the regulatory text that existing Labor Code retaliation protections apply to the exercise of rights under this section.

V. Conclusion.

In closing, we appreciate your efforts to establish a strong and comprehensive walkaround rule and the opportunity to participate in the drafting process. Our comments above identify four areas where targeted amendments would strengthen the rule: (1) accepting employee designations of third-party representatives at face value; (2) establishing a clear designation process for workers without collective bargaining representation; (3) incorporating the complete federal trade secret framework; and (4) expressly referencing existing Labor Code retaliation protections. We urge the Division to adopt these proposed changes to ensure the final draft delivers comprehensive protection without the gaps and ambiguities that would undermine its effectiveness. If you have questions regarding this comment letter, please direct them to Worksafe's Jordan Uter (juter@worksafe.org). Thank you for your consideration.

Respectfully submitted,

Jordan Uter, Worksafe

Anne Katten, California Rural Legal Aid Foundation

Carmen Comsti, Government Relations Director, California Nurses Association/National Nurses United

Elmer Lizardi, California Federation of Labor Unions

Shane Gusman, Teamsters California

Shane Gusman, California Conference of Machinists

David Cremins, California Rural Legal Assistance, Inc.

Eddie Sanchez, Southern California Coalition for Occupational Safety and Health (SoCalCOSH)