

U.S. Department of Labor

Office of the Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210



November 18, 2015

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections
U.S. House of Representatives

Dear Chairman Kline and Chairman Walberg:

I am writing in response to your October 13, 2015, letter to Department of Labor Secretary Thomas E. Perez regarding the efforts of the Occupational Safety and Health Administration (OSHA) to ensure safe and healthful working conditions. The Department appreciates the opportunity to clarify how OSHA continues to pursue its public safety mission and to assure you that OSHA has not changed its approach to determining whether there is joint responsibility for worker health and safety at a particular workplace.

Your letter references what you believe is “guidance to OSHA inspectors to enforce a new multiemployer citation standard.” OSHA has not adopted a new multiemployer citation standard, and the draft list of investigatory questions that you reference creates no such standard.

As noted in your letter, OSHA’s mission is “to assure safe and healthful working conditions for working men and women.” Under the Occupational Safety and Health Act of 1970, OSHA is authorized to conduct workplace inspections and investigations to determine whether employers are complying with workplace safety and health standards. Workplace inspections are conducted by OSHA compliance safety and health officers (CSHOs). To ensure that CSHOs apply OSHA standards consistently during the inspection or investigatory process, particularly when investigations raise complex issues, OSHA may provide CSHOs with suggested questions to ask or evidence to obtain. The draft list that your letter references is an investigatory tool based on established legal principles, and is consistent with OSHA’s practice of providing such investigatory tools to help ensure CSHOs consistently and appropriately apply OSHA’s policies and obtain the relevant facts. This draft list does not create new policy.

OSHA, along with the Occupational Safety and Health Review Commission, an independent federal agency that provides administrative trial and appellate review of OSHA citations and penalties, as well as the courts, have dealt with the issue of joint employment for over three decades. For example, in *Sam Hall & Sons, Inc.*, a case decided by the Commission in 1980, the Secretary cited a company for violating a trenching standard. The company had leased equipment to a city in Georgia and supplied two workers to operate that equipment. The Commission, relying on the common law test for establishing an employment relationship, upheld the citation against Sam Hall, finding that the company shared responsibilities with the city and that either party could have stopped the workers from conducting dangerous activity.¹

¹ 8 BNA OSHC 2176 (No. 76-4988, 1980).

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This early decision, as well as later ones, recognize that more than one employer can control workplace safety and health for a single worker, group of workers, or workplace. The facts of each case determine whether two or more employers bear joint responsibility for worker safety. Sometimes, as in *Sam Hall*, more than one employer bears responsibility for the same aspect of workplace safety. In other cases, different employers may have responsibility for discrete aspects of safety. For example, in cases where a temporary staffing agency provides workers to healthcare settings, OSHA has cited the healthcare employer for failing to have appropriate infection control equipment and practices, and also cited the staffing agency for failing to provide basic training in infection control and required vaccines.

Over the past year OSHA has received several complaints that raised complex questions about joint responsibility for worker safety in the context of a franchise structure. Thus, in June of this year, OSHA provided its CSHOs with the draft list of questions referred to in your letter in order to help them obtain the facts necessary to decide whether both the franchisor and franchisee bear responsibility for worker safety at a specific site, and, if so, which one is responsible for particular hazards identified during an investigation.

Finally, you asked about the relationship between OSHA's use of the list of questions and the actions related to the National Labor Relations Board (Board) to expand joint employer liability. The Department did not coordinate with the Board in drafting the tool provided to CSHOs.

OSHA will continue to vigorously pursue its core mission "to assure safe and healthful working conditions for working men and women." If you have any remaining questions, please contact Kate Garza, Senior Counselor for the Office of Congressional and Intergovernmental Affairs, U.S. Department of Labor. She may be reached at (202) 693-4600.

Sincerely,



Adri Jayaratne
Acting Assistant Secretary

cc: The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce

The Honorable Frederica S. Wilson
Ranking Member
Subcommittee on Workforce Protections