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OSHA's Final Walkaround Rule: Welcome, Workplace Visitors!?

Labor & Employment Workforce Watch

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On April 1, 2024, the federal Occupational Safety and Health Administration (“OSHA”) published its long-awaited [Final Rule](#) (the “Final Walkaround Rule”), which amends 29 C.F.R. 1903.8(c) – the agency’s regulation that protects the rights of employees to authorize a representative to accompany an OSHA Compliance Officer (“CSHO”) during an inspection of the employees’ workplace.

Under the previous walkaround rule, OSHA required the employees’ representative to be an employee of the employer or a third-party who “is reasonably necessary,” i.e., an individual with formal credentials and expertise in health and safety. Effective May 31, 2024, however, the Final Walkaround Rule will give CSHOs discretion to allow **almost any** third-party to observe and participate in an OSHA inspection, including a union representative.

The Final Walkaround Rule – What Changed?

Under Section 8(e) of the Occupational Safety and Health Act of 1970 (the “OSH Act”), employees and employers have the right to have a representative accompany CSHOs during physical inspections of worksites for the purpose of aiding such inspections. According to OSHA, in [National Federation of Independent Business v. Dougherty](#), a court found that OSHA’s practice of permitting third parties to be employee walkaround representatives was a valid interpretation of the OSH Act but that practice was inconsistent with the current regulation. Accordingly, OSHA issued the Final Walkaround Rule to “reinstate its longstanding practice to permit third parties to be employee walkaround representatives” in order to “improve OSHA inspections and benefit employee safety and health.”

The Final Walkaround Rule provides:

1. The representative(s) authorized by employees may be an employee of the employer or a third-party;
2. Employees’ options for third-party representation during OSHA inspections are not limited to persons with formal credentials (e.g., industrial hygienists or safety engineers); and
3. When a representative authorized by employees is not an employee of the employer, they may accompany the CSHO during the inspection if, in the judgment of the CSHO, good cause has been shown why accompaniment by a third-party is reasonably necessary to the conduct of 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).

The Final Walkaround Rule designates authority to the CSHO to determine whether a third-party is authorized to be a walkaround representative. Although OSHA indicated that CSHOs will “inquire about the [proposed] representative’s knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or any relevant language or communication skills” when determining whether the representative will make a positive contribution to a thorough and effective inspection, the Final Walkaround Rule is broad enough to cover virtually any third-party. OSHA has stated that the third-party must only be someone who will aid the inspection, and CSHOs have discretion to determine whether “good cause” exists to deem the individual one who is “reasonably necessary” to the inspection.

Key Takeaways and Next Steps

Despite the changes in the Final Walkaround Rule, employers still may limit entry of employee authorized representatives into workplace areas that contain trade secrets.

Additionally, employers can refuse to permit any third-party access to the workplace. Unfortunately, this approach is unlikely to permanently restrict the access of a third-party representative. Instead, OSHA could follow its existing guidelines to obtain a warrant before conducting the inspection.

Even if CSHOs require third-party representatives to comply with an employer’s existing safety protocols and workplace policies, the presence of third parties in the workplace can present significant safety risks in workplaces with dangerous machinery. Additionally, the Final Walkaround Rule could allow non-employees access to a workplace for purposes of union organizing, political activity and campaigning, or even unlawful competition if a direct competitor gains access to the workplace.

Notably, OSHA appears to have contemplated an increase in union organizing as a result of its Final Walkaround Rule. Among its various [Frequently Asked Questions](#), OSHA discussed whether a representative can wear clothing promoting a union. OSHA stated that it does not place limitations on representatives’ clothing; however, if an employer objects to a third-party representative’s clothing on the basis that it disrupts or interferes with the inspection, OSHA will attempt to resolve the issue, and directs the CSHO to contact the Area Director or designee if a disruption of interference occurs.

To prepare for OSHA’s implementation of the Final Walkaround Rule, employers should review and update existing policies and procedures regarding handling OSHA workplace inspections, including addressing any requests to allow third parties to observe inspections. In addition, employers should review and update policies that apply to *any* visitors in the workplace to ensure that sufficient safety procedures are in place before non-employees access the workplace. Finally, employers should continue training their managers on these evolving issues and how to interact with CSHOs.

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