



September 29, 2023

Via Email

Office of the Majority
House Subcommittee on Workforce
Protections
2176 Rayburn House Office Building
Washington, D.C. 20515

Office of the Minority
House Subcommittee on Workforce
Protections
2101 Rayburn House Office Building
Washington, D.C. 20515

RE: United Steelworkers strongly supports the Department of Labor’s recently proposed rule on the Worker Walkaround Representative Designation Process (Docket No. OSHA–2023–0008).

Dear Chair Kiley and Ranking Member Adams:

On behalf of the 850,000 active members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), I want to express my strong support for the Department of Labor’s (DOL) recently proposed rule on the Worker Walkaround Representative Designation Process.

Background

By way of a brief history, this proposed rule is the result—in part—of a letter written back in February 2013 by DOL’s Occupational Safety and Health Administration (OSHA) to USW’s current Director of Health, Safety, and Environment, Steve Sallman. In that letter (also known as the “Sallman Letter”¹), then-OSHA Deputy Assistant Secretary Richard E. Fairfax informed Mr. Sallman that it was OSHA’s interpretation that under the Occupational Safety and Health Act (OSH Act) workers at a worksite without a collective bargaining agreement could “designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative.”²

This interpretation was not an official OSHA requirement, which must be made by statute, standard, and/or regulation. Nor was the letter creating an additional employer obligation. Rather, the Sallman Letter represented OSHA’s interpretation of existing requirements under the OSH Act.

¹ <https://www.osha.gov/laws-regs/standardinterpretations/2013-02-21>

² Ibid.

Then, in April 2017, the Trump Administration acted quickly to reverse this position, with Thomas Galassi—Director of Enforcement Programs at the time—issuing a Memorandum to Regional Administrators (MRA) that withdrew the Sallman Letter.³ Although Mr. Galassi claimed that such action was intended to return to “the express guidance in the statute and the applicable regulation,”⁴ the result was to cause more confusion among employers, workers, and unions about who was eligible to participate as a walkaround representative.

The lack of clarity that has resulted from these conflicting administrative actions is why we need formal regulatory action. USW commends OSHA for taking such formal action through its Proposed Rulemaking regarding the Worker Walkaround Representative Designation Process.

Why We Need this Rule

The recently proposed rule from OSHA (Docket No. OSHA–2023–0008) not only clarifies OSHA’s formal position on the Worker Walkaround Representative Designation Process, but also—in our union’s view—adopts the correct position. Part of the original reason for Mr. Sallman’s inquiry to OSHA back in 2013 was because he had been denied entry to a USW represented workplace with a Compliance Safety & Health Officer, and he was also working with a group of workers at a non-unionized facility that had requested a USW health and safety representative serve as their personal representative during an OSHA inspection process. This latter group of workers were primarily non-native English speakers, and they did not have expertise in workplace health and safety protections.

The reason these workers made such a request was because in their situation, as is often the case, employers had the upper hand going into the inspection process. Under the prior precedent, workers in non-unionized settings were unable to bring in outside help (e.g., health and safety experts, workers compensation lawyers, community partners for language translation assistance, etc.), whereas employers would often bring internal and external counsel, technical experts, and other representatives to the inspection—resulting in a wholly uneven playing field if workers and employers disagreed on the relative safety of a certain aspect of the facility.

With this uneven representation, OSHA inspections often prove less effective. OSHA inspectors can—and do—catch many hazards during these inspections, but they cannot see or know everything about every workplace and industry. Without union representatives as eligible to be present during these inspections in non-unionized facilities, workers understandably have less confidence in their ability to freely speak out about safety and health concerns in their workplace without fear of retaliation. Moreover, most workers are not experienced in OSHA’s processes and therefore are at an inherent disadvantage without third

³ https://www.littler.com/files/osha_mra_-_25_april_2017_-_revised-sallman-memo_-_no_non-representative_union_walkaround.pdf

⁴ Ibid.

party assistance. This expertise in workers' rights as well as health and safety is precisely why union representatives, like Mr. Sallman, are often sought out by non-unionized workers. Under the proposed rule, union representatives could participate in these walkarounds, remedying the situation by reducing the likelihood that employers retaliate against their employees and providing relevant health and safety expertise.


Opponents of the proposed rule claim that it is an attempt by unions to covertly conduct organizing drives under the guise of a health and safety inspection. However, this could not be further from the truth. Under the proposed rule, third party representatives would be able to participate in the inspections only if they have shown "good cause" as to "why their participation is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace."⁵ Clearly, the purpose of this rule is not to get union organizers into these facilities. Rather, the rule is scoped such that only individuals with relevant experience and expertise in health and safety, some of which are union representatives, can be designated as non-union workers' representative during an inspection.

Finally, it is worth noting that this proposed rule not only allows union representatives to be designated as a workers' representative during walkaround, but also enables workers to choose several types of third parties as their representatives—such as non-union health and safety experts or non-union worker compensation lawyers. While employers have lawyers as well as health and safety experts with them to defend against every claim of a hazard throughout the inspection, non-unionized workers are currently left without a voice and without a representative to point out all of the relevant hazards in the workplace or to assist workers with OSHA's processes.

Conclusion

In closing, USW strongly supports all efforts—whether legislative, or in this case, regulatory—to clarify once and for all how employers, workers, and unions ought to interpret Section 8 of the OSH Act as it relates to the Worker Walkaround Representative Designation Process. We believe this proposed rule represents a proper interpretation of the Act's original intention, which is why we strongly commend the recent regulatory actions taken by OSHA.

Sincerely,



Anna Fendley
Director of Regulatory and State Policy

⁵ <https://www.govinfo.gov/content/pkg/FR-2023-08-30/pdf/2023-18695.pdf>