



September 27, 2023

The Honorable Kevin Kiley
Chair
Subcommittee on Workforce Protections
House Education and the Workforce Committee
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chair Kiley:

The Coalition for Workplace Safety (CWS) and the 40 undersigned organizations write to thank the Subcommittee for its commitment to Congressional oversight concerning the actions of the Occupational Safety and Health Administration (OSHA) under the current administration. This hearing is an important part of this process, and we applaud your efforts and leadership as subcommittee Chair. One issue of particular concern for CWS members is OSHA’s recent publication of its “Worker Walkaround Representative Designation Process” proposed rulemaking¹ and the politicization of the agency that the rulemaking exemplifies. For the reasons expressed below, CWS and the undersigned organizations are opposed to this unfounded and potentially dangerous rule.

CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The CWS believes that workplace safety is everyone’s concern. Improving safety can only happen when all parties – employers, employees, and OSHA – have a strong working relationship.

On August 30, 2023, OSHA proposed a rule that would empower OSHA inspectors to allow union organizers, community activists, or other third parties to accompany OSHA on an inspection of a workplace if an employee requests the inspector do so.² There is no restriction on the number of different third-party representatives that may be present for a single inspection nor on how many employees may request different representatives. It also gives no guidance on how an inspector should prioritize, approve, or manage these requests. This new policy contradicts the plain language of OSHA’s governing regulations, longstanding agency guidance, and past interpretations of the Occupational Safety and Health (OSH) Act and could very likely result in unmanageable OSHA inspections with many different third-party representatives.

¹ 88 FR 59825, August 30, 2023, available at <https://www.federalregister.gov/documents/2023/08/30/2023-18695/worker-walkaround-representative-designation-process>.

² OSHA modelled the proposal after its 2013 letter of interpretation that asserted the OSH Act and implementing regulations allowed nonemployee union organizers or representatives of a community organization to accompany OSHA inspectors. A court struck down the letter for procedural reasons.



While OSHA’s regulations have long permitted an employee to accompany the agency’s officers on inspections, third parties have only been allowed to accompany an inspector when “good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.”³ This longstanding interpretation is consistent with the underlying statute, common sense, and applicable regulatory history. It permits OSHA to balance access to outside expertise when necessary and employer property rights, including the right to protect proprietary and confidential information that could be exposed during facility inspections. OSHA’s proposed rule abandons this balance with no justification and no explanation as to how the change would increase workplace safety.

OSHA’s proposal is part of the Biden administration’s “all-of-government” approach to promoting unions and collective bargaining at all costs. By allowing union organizers access to employer property, the proposal would bypass the National Labor Relations Act (NLRA) and state property laws, which normally regulate such access. The proposal would also bypass the NLRA’s procedures for establishing union representation, which require unions to demonstrate that a majority of the employees support representation before an employer can recognize the union (or another organization) as the employees’ representative. Under OSHA’s proposal, one employee can designate an outside entity as the representative for the entire workplace as it pertains to an OSHA inspection. It also has no limiting principles as to how many employees could request a third-party representative, leaving the door open to employees requesting representatives from competing unions. The proposal places OSHA inspectors in the middle of disputes between employers and unions or other third parties, which OSHA’s Field Operations Manual specifically advises against. OSHA’s proposed rule thus conflicts with the NLRA, is contrary to the principles of workplace democracy, and may be contrary to the wishes of a majority of the workers at the facility.

Furthermore, the proposal would interfere with, dilute, and undermine OSHA’s sole and only Congressionally mandated purpose, which is to uphold federal standards for workplace health and safety. OSHA’s inspections would instead provide opportunities for individuals with grievances against the employer to further their own agenda, which could be union organizing, media campaigns against the company, efforts to obtain or exploit employers’ proprietary information, or efforts to target the workers themselves for any number of reasons.

Lastly, OSHA has not provided answers with respect to who will be responsible for these individuals while they are in the workplace. Is OSHA ready and willing to be liable for their actions if they act inappropriately, deviate from the mission of the inspection, or harm persons or property? Will OSHA be able to rein in unscrupulous or dangerous behavior that exposes the employer – and potentially OSHA – to liability? Will OSHA provide these third parties with personal protective equipment and be responsible for their safety? Would an employer be required to cover a hostile, non-invited guest under their workers’ compensation program?

³ 29 C.F.R. § 1903.8(c)



Congress has not granted authority to OSHA to include non-employee union organizers or other third-party individuals on walkarounds at employers' private property. The administration is attempting to politicize the agency to achieve its goal of increasing union density at all costs, and the Committee should continue its oversight efforts to rein in these misguided policies and use of resources.

Thank you for your attention to this issue.

Sincerely,

The Coalition for Workplace Safety
Air Conditioning Contractors of America
American Bakers Association
American Coke and Coal Chemicals Institute
American Foundry Society
American Hotel & Lodging Association
American Pipeline Contractors Association
American Road & Transportation Builders Association (ARTBA)
American Subcontractors Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America (AGC)
Associated Wire Rope Fabricators
Distribution Contractors Association
FMI – The Food Industry Association
Global Cold Chain Alliance
HR Policy Association
Independent Electrical Contractors
Industrial Fasteners Institute
Manufactured Housing Institute
Mason Contractors Association of America
MEMA, The Vehicle Suppliers Association
National Association of Chemical Distributors
National Association of Convenience Stores
National Association of Home Builders
National Association of Wholesaler-Distributors (NAW)
National Council of Chain Restaurants
National Federation of Independent Business
National Public Employer Labor Relations Association
National Ready Mixed Concrete Association
National Retail Federation
National Tooling and Machining Association
National Utility Contractors Association



Non-Ferrous Founders' Society
North American Meat Institute
Plastics Pipe Institute
Power & Communication Contractors Association
Precision Machined Products Association
Precision Metalforming Association
Small Business & Entrepreneurship Council
U.S. Chamber of Commerce