



# Learn About the OSHA Worker Walkaround Final Rule

**ABC Members-Only Webinar**  
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# Presented By



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# Agenda

- History of Walkaround Rule
- What is the Rule?
- Why Is The Rule Concerning?
- Pitfalls and Solutions
- Recommended Practices



# History of the Walkaround Rule

# Fairfax Memo – Worker Representation

- Union involvement in OSHA inspection process?
- Other party involvement
- This new Walkaround Rule revived the Fairfax Memo

Standard Interpretations (Archived)

/ Whether workers at a workplace without a collective bargaining agreement may authorize a person who is affiliated with a union or a community organization to act as their representative under the Occupational Safety and Health Act (OSH Act).

• Standard Number: 1903.8 ; 1903.11 ; 1952.10 ; 1903.20

## OSHA ARCHIVE

**NOTICE:** This is an OSHA Archive Document, and may no longer represent OSHA Policy. It is presented here as historical content, for research and review purposes only.

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <https://www.osha.gov>.

FEB 21 2013

Mr. Steve Sallman  
Health and Safety Specialist  
United Steel, Paper and Forestry, Rubber, Manufacturing,  
Energy, Allied Industrial and Service Workers International Union  
Five Gateway Center  
Pittsburgh, PA 15222

Dear Mr. Sallman:

Thank you for your December 18, 2012, letter to the Occupational Safety and Health Administration (OSHA). You ask whether workers at a workplace without a collective bargaining agreement may authorize a person who is affiliated with a union or a community organization to act as their representative under the Occupational Safety and Health Act (OSH Act). This would include "representing the employee(s) as a personal representative" and "accompanying the employee on an OSHA inspection" in a non-unionized workplace. You also inquire whether, under these circumstances, the individual who is filing an OSHA complaint on behalf of an employee could act as a "walkaround representative" during an OSHA inspection.

For clarity, we have paraphrased your inquiry as two questions.

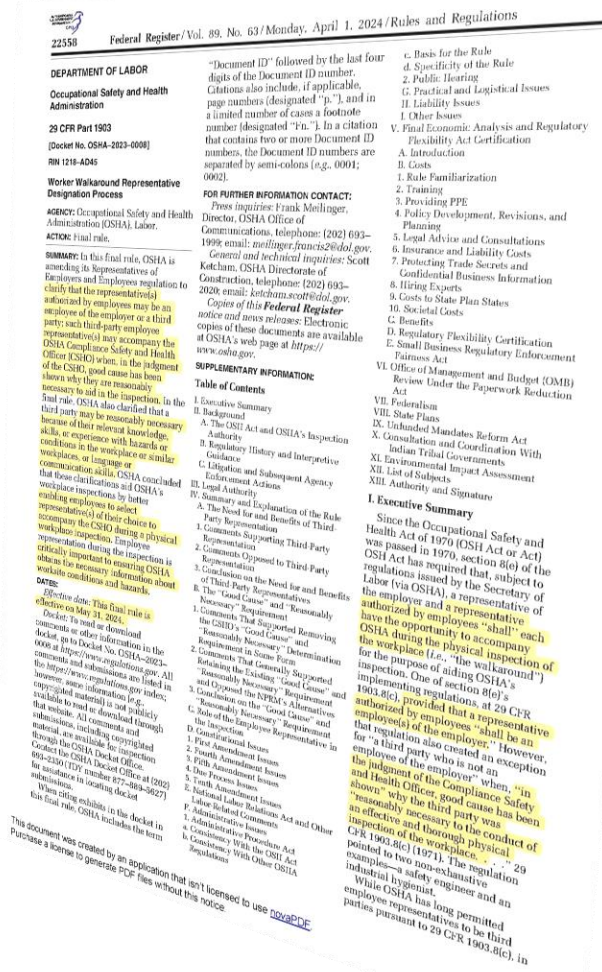
**Question # 1 - May one or more workers designate a person who is affiliated with a union without a collective bargaining agreement at their workplace or with a community organization to act as their "personal representative" for OSH Act purposes?**



# What Is The Rule?

# The Rule

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is no an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgement of the Compliance Safety and Health Officer, 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.





# What is the Rule

## Makes changes to 1903.8(c):

- Clarified that “authorized representatives” does not mean people who are an employee but can be third parties.
- CSHO can approve third parties that are determined to be “reasonably necessary” to improve the effectiveness of OSHA inspections and benefit employee’s health and safety.
- Reasonably necessary means they have:
  - Relevant knowledge or skill (including industry knowledge)
  - Experience with hazards or conditions in the workplace
  - Special language or communication skills
  - Provide cultural assistance

# How are representatives “authorized” under the Rule?

- No vote is required
- No minimum number of authorizations is required
- The Rule ultimately gives no explanation (see FR p. 22590)
- Numerous comments describe “chaos” likely, especially on non-union jobsites
- Possible proactive measures

# The Rule

It discusses that it is to help employees select their representative to accompany the CSHO during the physical workplace inspection.

CSHO still may deny the right if:

- It is determined that the individual will interfere with a fair and orderly inspection
- The requirement that the conduct of inspections preclude unreasonable disruption of operations of the employer's establishment
- Employer's right to limit entry of employee authorized representatives into areas of the workplace that contains trade secrets.

The Field Manual also still says under no circumstances can a CSHO become involved in a worksite dispute involving labor management issues or collective bargaining agreements.

Inspection still has to be fair and cannot result in unfair harm to the employer.

**Goes Into Effect May 31, 2024**

**Legal challenges likely  
ABC will play a role**





# Why Is The Rule Concerning?

# OSHA's position- The ABA

- Some employees do not trust the authorities in fear they may be arrested or culturally in their country “policing” is bad.
- Lack of the ability to communicate due to dialect issues
- Inspector lacks technical understanding of equipment
- Industry standard guidance for terminology or standard practices
- Lack of understanding of operations

# Expansion of OSHA- The NLRB and OSHA's Memo

- Shows there is an intent to cooperate between the agencies to encourage unionization and more union involvement to address safety concerns.
- Are unions coming in as neutral parties, or are they influencing the inspections?

# Expansion of OSHA- U and T Visas

- OSHA claims there are sometimes negative immigration issues
- Now U and T Visas may complicate the issue
- What if they are bringing non-OSHA agents to discuss U and T visas?
- Will that encourage employees to say the truth or fabricate employees for their visas?



# Multiple Parties During Inspections

- California has routinely tried to add the language designated representative and then add additional people from unions to conduct walkarounds.
- Could there be overload during walkarounds?
- What about in multi-employer worksites- how many people is too many?
- What if there are multiple employees that want different representatives?



# Pitfalls and Solutions

# Complaint based investigation

- What happens if we have a complaint based investigation and we don't know who the complainant is? Can the complainant ask the CSHO for a representative that he knows will try to influence the investigation?
- What about if the complaint is anonymous and the inspector shows up with a third party representative- can we ask which employee asked them to a representative?

# Pitfalls

- Biasness with the interpretation and assistance
- How do we know the person's qualifications?
- Who is handling the liability if they get injured?
- If we don't provide PPE, do we fall into a bigger issue?
- What if the person is not properly dressed- no safety shoes- can we deny entry?
- Are we going to see greater delays?
- Is it fair that employees know about the inspection (and can have their representative present) but employers do not have prior notice?

# Questions to ask to survive the Pitfalls

- If the person is there for language issues
  - Are they a certified interpreter?
  - Do they offer general assistance or assistance with a specific dialect?
  - Can we avoid it by offering someone internally (another employee) to translate instead of the third party?
  - Can we agree to a third party service to translate if we believe there is an issue with potential biasness in the translation?
- Disclaimers
- Nondisclosures for non-union third parties
- Proprietary/Trade Secret Agreements with OSHA
- Liability waivers



# Recommended Practices

# Recommended Practices

- Ask the right questions- why is this person here?
- Find out which employee(s) have asked for them to a representative- this cannot be CSHO driven
- Question the third party if they are there for a specific purpose- make sure they can translate in the right dialect, confirm they are there as a neutral party, ask them about their technical expertise, ask for a CV, etc.
- Question- what are they really adding for the inspector and if this is something the inspector should have technical experience in, challenge why it is reasonably necessary to have multiple experts.
- If they are from the union, ask them what they are going to bring to the table and question if it is something more than what can be internally offered
- Even with a union, have a group of employees who are elected as representatives (like in safety committees) that have a good understanding of operations and hazards in the workplace.
- Refrain from providing consent for third party if there is no validity that their participation in the walkaround is “reasonably necessary” but consent for the inspection without the third party.
- If there are any grounds to believe the person is not neutral, object to the involvement of the third party and raise a concern of overall biasness by OSHA. The inspection has to be neutral.

# Recommended Practices

- Don't forget about the narrow scope of the inspection.
- Have a Playbook on what to do. It should address if you are a union shop, non-union shop, have people from multiple cultures or backgrounds, language barriers, and what to do depending on the person who shows up.
- Train your managers on the playbook on what to do if OSHA comes knocking.
- Call your resources to get help.





# Resources

- ABC Newsline on the OSHA Worker Walkaround final rule:  
<https://www.abc.org/News-Media/Newsline/abc-opposes-worker-walkaround-representative-designation-process>
- ABC press release opposing the final rule:  
<https://www.abc.org/News-Media/News-Releases/abc-final-osha-worker-walkaround-rule-is-bad-policy-does-not-prioritize-workplace-safety>
- Littler analysis of the final rule:  
<https://www.littler.com/publication-press/publication/no-april-foolin-osha-updates-its-worker-walkaround-representative>
- ABC comments urging DOL to withdraw the proposed rule:  
[Link](#)
- OSHA FAQs on the final rule:  
<https://www.osha.gov/worker-walkaround/final-rule/faq>

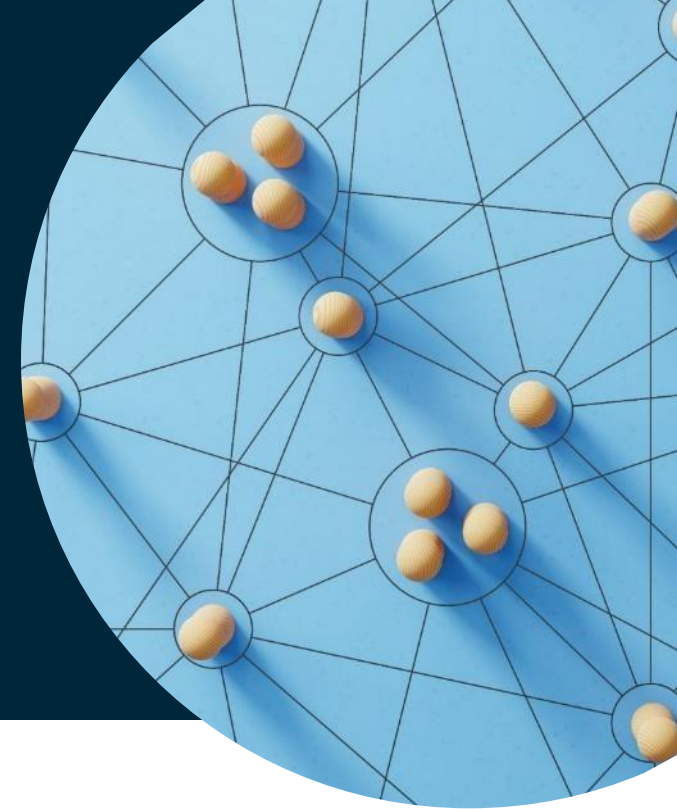
Learn more at ABC's Regulatory Roundup at [www.abc.org/regroundup](http://www.abc.org/regroundup)



# Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.

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# Thank You

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