

OSHA Clarifies Workers Inspections Walkaround Representative Designation Process

The Occupational Safety and Health Administration (OSHA) has finalized its regulation that amends the Representatives of Employers and Employees provisions, which will enter effect on May 31, 2024. This change, detailed in the Federal Register on April 1, 2024, signifies an important development in workplace safety inspection procedures and representation of employees. In Puerto Rico, the Puerto Rico Department of Labor has six months of the promulgation this amendment to adopt regulations that are identical to or “at least as effective” as this amended rule.

Key Highlights of the New Rule:

- **Third-Party Representatives:** Employees can now designate either a fellow employee or a third party as their representative during OSHA's safety and health inspections.
- **Expertise and Communication:** Third-party representatives, chosen for their relevant knowledge or communication skills, can accompany the OSHA Compliance Safety and Health Officer (CSHO) to facilitate a more effective and thorough inspection. The CSHO will determine on a case-by-case basis if there is good cause to find that a representative authorized by employees who is not an employee of the employer would aid in the inspection.

Implications for Employers and Employees:

With this new regulation Employees gain a broader choice in representation, potentially increasing the scope and potential citations as result of workplace safety inspections.

Employers, therefore, must adapt and prepare for the possibility of facing employee-designated third-party representatives during OSHA inspections and how to respond to these requests.

This new OSHA regulation has faced scrutiny and concerns from various stakeholders. A significant coalition, representing diverse industries, has raised concerns about the lack of clear justification and the potential legal, operational, and safety implications of the amendment.

Some Key Concerns:

- **Justification and Efficacy:** Critics argue that OSHA has not demonstrated how the existing regulation is inadequate or how the latest changes will improve workplace safety inspections. Instead, it allows third-party individuals access to the employer premises during OSHA inspections for potentially their own personal benefit, including union organizing, without any real safeguard for employers and employees.
- **Legal Conflicts:** The proposal potentially conflicts with aspects of the Occupational Safety and Health Act (OSH Act) and the National Labor Relations Act (NLRA), particularly in how representatives will be chosen and their role during inspections.
- **Operational Challenges:** The lack of clarity on the designation process for third-party representatives and the practical challenges of implementation could lead to logistical issues, potentially undermining the effectiveness of workplace inspections.
- **Risks and Burdens on Employers:** Introducing third-party representatives traditionally not permitted in the workplace could pose significant risks, including operational

disruptions, security threats, protection of confidential information and trade secrets, and increased liability for employers.

For any questions or inquiries regarding this topic do not hesitate to contact us at info@oneillborges.com or your prime contact attorney at O'Neill & Borges LLC. Please refer to www.oneillborges.com.