



U.S. Chamber of Commerce

OSHA's Proposed 'Walk-Around' Regulation Would Be Government-Imposed Trespassing

OSHA's proposed "walk around" regulation would result in OSHA-sanctioned trespassing.



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Imagine you are a company in the middle of a contentious labor union organizing campaign. One day, one of the union organizers, wearing a bold t-shirt promoting the union, approaches the front gate of your workplace. He asks to come in and wander around, talk to some employees, take some pictures, and generally get an inside view of how your workplace operates. You would naturally, and with various legal reasons on your side, prohibit him from entering your workplace. You might even call security to have him removed from the premises.

Now, imagine that the same person is selected by one of your employees (remember this is a non-union workplace) to be that employee's representative to accompany an OSHA inspector during a "walk around" inspection. Under a [proposed OSHA regulation](#), you would be powerless to prevent this union organizer from coming into your workplace or controlling where they go, what they wear, or what they do during the inspection.

The proposed OSHA regulation is even more problematic than just allowing union representatives. It sets no limits on how many employee representatives can accompany an OSHA inspector. So, an employee can claim that they want an anti-fossil fuels activist to accompany the OSHA inspector, a plaintiffs' attorney, or any other type of person with an agenda that would not be helpful to the employer and who would otherwise be prevented from entering if they just walked up and asked to come in. In fact, if more than one union is trying to organize that workplace, representatives from the different unions could be designated by different employees to accompany the OSHA inspector.

OSHA's current regulation is very clear that an employee's representative "shall be an employee of the employer," with narrow exceptions for specific expertise such as being a safety engineer or industrial hygienist. The proposed regulation would eliminate the requirement that the employee representative be employed by the employer and allow an employee to designate any third party, i.e., non-employee, to be their representative. The only backstop is that the OSHA inspector is to determine whether that person "is reasonably necessary to the conduct of an effective and thorough physical inspection."

Not only is the proposed regulation a radical change from the current regulation, but it also tramples on National Labor Relations Act requirements that a union representative is not permitted in a workplace that is not represented by that union. It also places the OSHA inspectors in the middle of workplace labor disputes—exactly what they are instructed to avoid in the OSHA Field Operations Manual.

The proposed regulation is another data point in the [Biden administration's plan to assist labor unions at every opportunity](#), as a recently released Chamber white paper captures in detail. The [Chamber's comments](#), submitted on November 13, make clear how this proposed regulation is inconsistent with the OSH Act, the NLRA, and sound workplace safety policy.

OSHA's proposed regulation would result in OSHA sanctioning trespassing—none of the third parties who will be able to come in with an OSHA inspector would be able to come in on their own.

About the authors



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Marc Freedman is vice president of workplace policy at the U.S. Chamber of Commerce. He develops and advocates the Chamber's response to OSHA matters; FLSA issues such as overtime, minimum wage, and independent contractors; paid leave issues; EEOC, and other labor and workplace issues.

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