



U.S. Chamber of Commerce

# OSHA Prepares to Join Administration-Wide Effort to Aid Unions

OSHA has indicated it will push a labor agenda with an anticipated rulemaking that would allow union officials to join OSHA officials during walk-around inspections at non-union locations.



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Among the agencies at the U.S. Department of Labor, the Occupational Safety and Health Administration (OSHA), to some people's surprise, has been fairly quiet and not getting much attention. That will change, however, if OSHA moves forward with a new regulation that was listed in the "Fall 2022" regulatory agenda that was released in January 2023. OSHA has indicated it plans to conduct a rulemaking that will result in union officials being able to accompany OSHA inspectors on walk-around inspections at non-union locations. The agenda said this would be out by May, although agencies frequently miss their regulatory agenda targets.

Under President Obama, OSHA attempted to institute this policy by issuing a [letter of interpretation](#), requested by the United Steelworkers union, which was easily rescinded during the Trump administration. This would have represented a dramatic change in OSHA policy, going directly against regulations that made clear any third-party representative accompanying an OSHA inspector “shall be” an employee of the company, with limited exceptions for technical expertise such as an industrial hygienist or other safety specialist. A union representative, where the employees were *not represented by a union*, would have been anything but a safety related specialist.

At the time, one of the main arguments against OSHA’s action was that it was beyond the level of change that could be done through mere guidance such as a letter of interpretation—it substantively changed a regulation, which meant the only way to make this change would have been through a formal rulemaking. Put this in the “be careful what you wish for” bucket. Now comes the Biden administration signaling that that is precisely what they intend to do.

### **What would the impact of such a change mean?**

The presence of a union agent at a non-union workplace would immediately change the nature of the inspection from one focused on workplace safety to one driven by the union’s agenda. Unions already frequently use the OSHA complaint process as a weapon against employers, particularly in so-called corporate campaigns. Allowing the union agent into the workplace that is a union target would facilitate the union agent’s biased, non-workplace safety agenda, which is to find problems in the employer’s workplace that can be exploited for the purposes of organizing or pressuring the employer.

This would also inject OSHA into a labor dispute, something that OSHA’s Field Operations Manual advises against. OSHA should not take sides, or be perceived as taking sides, in promoting union organizing agendas to the detriment of management.

Such a regulatory change from OSHA would also run afoul of the National Labor Relations Act and requirements for employees to be part of a collective bargaining agreement before union representatives can be permitted on the premises, thereby violating the property rights of the employer. Also, the rights of employees who have not consented to be represented by a union would be ignored.

Furthermore, this new regulation would open the door to other parties with a grievance against the employer to be allowed in if an employee requested them—think environmental activists opposed to the use of fossil fuels seeking entry to a refinery.

Without question, if OSHA moves forward with this regulation, the agency will be making clear its agenda is no longer focused on improving workplace safety but on promoting organized labor.

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### **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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