

OSHA Announces Proposed Rule Change Expanding Authorized Employee Representation During Workplace Inspection to Include Union Officials and Other Non-Employees

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On August 30, 2023, the U.S. Occupational Safety and Health Administration (OSHA) published a notice of proposed rulemaking (NPRM) to amend its regulations regarding who employees may authorize to act as their representative and accompany the Compliance Safety and Health Officer (CSHO) during physical workplace inspections. Under the NPRM, the employees may designate an employee of the employer or a non-employee third party whose relevant experience with particular hazards or conditions or language skills are deemed reasonably necessary to conduct an effective and thorough inspection by the CSHO. Specifically, the NPRM clarifies that these non-employees may include interpreters, officials with advocacy groups or local safety counsels, and union representatives.

Section 8(e) of the Occupational Safety and Health Act of 1970 (the Act) allows a representative of the employer and a representative authorized by the employees to accompany CSHOs during a physical workplace inspection. The Act's implementing regulation, 29 CFR 1903.8(c) (the Regulation), currently provides that any representative selected by the employee must be another employee unless the CSHO determines that a third-party representative, such as an industrial hygienist or a safety engineer, is "reasonably necessary" to conduct an effective and thorough physical inspection. In order to better reflect the Act's purpose of ensuring healthful and safe working conditions, the NPRM proposes to revise the Regulation by deleting the examples of "industrial hygienist or a safety engineer" such that the list of individuals authorized to participate in workplace inspections is non-exhaustive.

If enacted, the NPRM would not only authorize union representatives or other officials to act as employee representatives but also allow for the participation of union agents in physical workplace inspections *regardless*

of whether the employee is represented by a union. This change could result in markedly greater union access to nonunion facilities and potentially lead to unionizing efforts. To this end, the implications of this NPRM are far-reaching, as business operations may be affected beyond the scope of the physical inspection for which the union agent was initially called upon to attend.

OSHA is accepting public comments on all aspects of the NPRM until October 30, 2023. [View OSHA's announcement of the NPRM.](#) [View the NPRM.](#)

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