

Publications

Walk Around Rule Crosses the Finish Line

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OSHA Final Rule Permits Non-Employee Representatives to Join Safety Inspections.

The Occupational Safety and Health Administration (OSHA) issued a **final rule** allowing employees to designate a third-party representative to accompany an OSHA inspector during workplace inspections. The new walk around rule will take effect on May 31, 2024.

OSHA's New Walk Around Rule: What Does it Mean?

Federal law already provides employers and employees the right to participate in OSHA workplace inspections. Under prior practice, employees were prohibited from identifying non-employees (for example, union business agents or union safety experts) to participate in an inspection. The final rule paves the way for third-party non-employee representatives, including such union employees, to enter employers' premises to accompany OSHA inspectors on federal safety workplace inspections. Importantly, this is the case even if a facility is not currently unionized. OSHA has stated that the new rule is not designed to assist unionizing activity, but the practical impact is clear.

Guidance on Authorized Representatives

Under the new standard, a third-party representative must be "reasonably necessary" to join the inspector on the walkthrough. This determination is largely within the discretion of the inspector, but the standard specifically provides that a third-party representative "may be reasonably necessary because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills."

OSHA has prepared a list of **FAQs** addressing a variety of practical issues.

What's Next?

The walk around rule will apply to federal OSHA inspections. States with their own federally approved safety programs will have six months to adopt a similar rule. It is expected that the new rule will be challenged in court, but for now it is set to go into effect on May 31, 2024.

In the meantime, employers should review their OSHA inspection protocols and determine a response strategy if employees request the participation of a third-party representative. Contact your Vorys lawyer if you have questions about OSHA inspections or compliance.