

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

November 15, 2023

The Honorable Douglas L. Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
201 12th St. S. Suite 401
Arlington, VA 22202

Dear Assistant Secretary Parker:

The House Committee on Small Business (the Committee) writes to inquire about the recent proposed rule change to the Representatives of Employers and Employees regulation.¹ The proposed rule would revise regulations regarding who can be authorized by employees to act as their representative to accompany the Occupational Safety and Health Administration's (OSHA) compliance officers during physical workplace inspections.² While the rule will cause small entities to incur some additional costs, the most alarming aspect is the rule would allow third parties to access information otherwise not available to them, raising significant privacy concerns.³ The Committee writes to request further information about how the OSHA intends to ensure small entities and their workers are protected.

The proposed rule would expand the definition of what types of "third parties" may accompany the officers on the OSHA inspections. In practice, this would mean that third parties, such as union representatives and community activists, would gain access to non-organized private businesses on private property—access typically denied to unions.⁴ Consequently, this would likely lead to increased pressure on businesses to allow union organizing and pressure on workers to join unions and pay dues they may not be able to afford, while diminishing the privacy of business owners. Additionally, this proposed rule would insert unpredictability and instability into the OSHA inspection process.⁵ Businesses cannot be sure whether the inspection is going to be a regular OSHA walkaround focusing on workplace safety or whether they should be prepared to have hostile groups entering their property.

Further, the proposed rule states that a third party "may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and

¹ Representatives of Emp'r and Emp., 88 FR 59825 (2023) (to be codified at 29 C.F.R. §1903).

² *Id.*

³ John D. Surma and Savannah M. Selvaggio, *OSHA Proposes Rule to Allow Third Parties to Participate in Workplace Walkaround Inspections*, OGLETREE DEAKINS (Sept. 1, 2023).

⁴ Representatives of Emp'r and Emp., 88 FR 59825 (2023) (to be codified at 29 C.F.R. §1903).

⁵ John D. Surma and Savannah M. Selvaggio, *OSHA Proposes Rule to Allow Third Parties to Participate in Workplace Walkaround Inspections*, OGLETREE DEAKINS (Sept. 1, 2023).

Health Officer, *good cause* has been shown why their participation is *reasonably necessary* to the conduct of an effective and thorough physical inspection of the workplace.”⁶ These are vague phrases which will no doubt require small entities to hire compliance officers or legal counsel to ensure compliance.

It is important for agencies to examine the impacts their actions will have on small businesses, which make up 99.9 percent of all businesses in the United States, when passing any new rule. We therefore request the following information as soon as possible but no later than November 29, 2023:

1. The OSHA has determined that the proposed rule does not impose any costs on employers.⁷ Did the OSHA consider the time it takes to become familiar with the rule and the potential costs to hire a legal counsel to comply with the rule?
2. How does the OSHA define “good cause” and “reasonably necessary”?
3. How will the OSHA communicate those definitions to the affected entities?
4. What criteria, if any, are Compliance Safety and Health Officers required to use when judging whether the third party’s participation is reasonably necessary?
5. How does the OSHA intend to address the privacy concerns that this proposed rule raises?

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business

⁶ Representatives of Emp’r and Emp., 88 FR 59825 (2023) (to be codified at 29 C.F.R. §1903).

⁷ *Id.*