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OSHA's New Inspection Rule Takes Effect

When the Occupational Safety and Health Administration (OSHA) conducts a workplace inspection, the agency's long-standing rule (known as "the walk-around rule") has been that employees can designate a representative to accompany the inspector, but the representative must be a current employee. No longer. As of May 31, 2024, the agency will now allow employees to designate an outsider to be their representative on the inspection.

According to the new rule, not only may employees select a third-party to represent them on the inspection, but that third-party is not required to have any particular safety or industrial hygiene expertise. According to the new regulation, the third-party could be "anyone with a variety of skills, knowledge or experience" that might assist the inspection. The not-so-veiled implication of the new rule is that employees could designate a union representative (even if the employees are not currently represented) or other community activist to participate in the inspection. The only gatekeeper will be the OSHA inspector.

OSHA inspections usually happen with little or no notice and correspondingly little time to prepare. As the new rule opens your doors to union organizers and potentially puts trade secrets and confidential information on display, it is critical that you prepare now. Decide who will be responsible for managing the inspection. Make sure that all who will likely come into contact with the inspection party have been trained on the company's rights and limitations. Have a plan for handling areas which contain trade secrets. And when needed, involve your legal counsel.

If you have any questions or would like additional information, please contact Al Vreeland at 205-323-9266 or avreeland@lehrmiddlebrooks.com.