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Cal/OSHA Proposes Major Changes to Workplace Inspection 'Walkaround' Rules

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By **Rachel L. Conn**

Cal/OSHA has issued a Notice of Proposed Rulemaking that would significantly broaden who may accompany inspectors during workplace inspections. The proposed regulation (8 CCR 331.8) would define the roles of employer representatives and employee-authorized representatives during inspections and align California's procedures with recent Fed/OSHA amendments adopted in 2024.

Under current California Labor Code section 6314(d), both an employer representative and a representative authorized by employees must be given the opportunity to accompany Cal/OSHA during a workplace inspection. However, Cal/OSHA regulations do not currently define who qualifies as a representative authorized by employees.

In April 2024, Fed/OSHA amended 29 CFR § 1903.8(c) to clarify that an employee representative may be an employee, a union representative, or a third party. A third party may participate when the compliance officer determines that their presence is reasonably necessary for an effective and thorough inspection.

Because California operates under a federally approved state plan, it must maintain regulations that are at least as effective as Fed/OSHA. Proposed 8 CCR 331.8 is intended to satisfy that requirement.

Key Provisions of Proposed 8 CCR 331.8

1. **Right of Accompaniment**

Both a representative of the employer and a representative authorized by employees must be given the opportunity to accompany the inspector. The inspector may allow multiple representatives and has authority to resolve disputes regarding participation.

2. **Expanded Definition of Employee Representative**

The employee representative may be: (1) an employee of the employer; (2) a collective bargaining representative; or (3) a third party. If the representative is not an employee or union representative, the inspector must determine that good cause has been shown and that the representative's participation is reasonably necessary to conduct an effective and thorough inspection. Relevant expertise, knowledge of workplace

hazards, industry experience, or language skills may justify third-party participation.

Unlike the federal rule, the proposed rule does not require the collective bargaining representative to make a showing that they are likely to aid in the inspection. Per the Initial Statement of Reasons, the employee's union representative is assumed to have the necessary knowledge and experience of the workforce and workplace, as well as the ability to communicate with employees about workplace matters.

3. **Inspector Control of the Inspection**

The inspector is expressly authorized to control the inspection process, limit interactions between representatives, prevent advocacy unrelated to the inspection, and remove any representative whose conduct interferes with a fair and orderly inspection.

4. **Protection of Trade Secrets**

Employers may require that any employee representative entering an area containing trade secrets be an employee of the company or otherwise authorized by the employer. If no such representative is available, the inspector must consult directly with employees working in that area.

Status of Fed/OSHA Rule

Cal/OSHA's move to align with Fed/OSHA comes at a time when the future of the Federal rule remains uncertain. Specifically, a pending lawsuit filed in the United States District Court for the Western District of Texas by the U.S. Chamber of Commerce and several trade groups seeks declaratory and injunctive relief. Industry groups have filed a summary judgment motion and that motion has been fully briefed by both parties.

What This Means for Employers

The expanded access allowed under this proposed regulation presents a number of practical and legal risks for California employers:

- Union access to non-union worksites: Union organizers may now gain a presence during inspections under the guise of "safety expertise."\
- Litigation exposure: Plaintiff attorneys or "experts" could use inspections to collect information for future lawsuits.
- Workplace disruption: Disgruntled former employees, media, or activist groups may seek access that causes operational or reputational harm.
- Trade secret concerns: Employers must take extra care to protect sensitive information from third-party exposure.

How Employers Can Prepare Now

California employers should act *now* to prepare for this new inspection environment. Here are a few strategies:

- Join CMC's rulemaking coalition to work on Cal OSHA's worker walkaround rulemaking (see below).
- Establish a Trained Cal/OSHA Inspection Team: Assign a go-to team for inspections and provide them with specific training—especially on how to handle walkaround requests from third parties.
- Create a Warrant Strategy: Consider whether and when to demand an administrative warrant—especially if

you object to the third party chosen by employees.
- Designate Trade Secret Areas: Identify parts of your facility containing proprietary or sensitive information, and ensure you have procedures to restrict access.
- Implement Visitor NDAs: Require third-party representatives to sign confidentiality agreements as a condition of entering your facility.
- Empower Internal Safety Committees: Having well-trained internal employee reps ready to assist Cal/OSHA inspectors may reduce the perceived "need" for third-party reps.
- Plan for Multilingual Needs: Identify internal interpreters ahead of time to prevent Cal/OSHA from bringing in an outside party solely for language support.

Public Hearing and Comment Deadline

A public hearing is scheduled for April 1, 2026. Written comments are due by April 1, 2026, at 11:59 p.m. If adopted, the rule will be codified at Title 8, California Code of Regulations, Section 331.8.

Join Conn Maciel Carey's Cal/OSHA Walkaround Rule Rulemaking Coalition

Conn Maciel Carey's Cal/OSHA Practice is organizing a flat fee-based, company-anonymous coalition of employers and trade groups to advocate for the most reasonable possible outcome of this proposed rulemaking.

We will coordinate with our coalition participants to:

- Keep everyone informed about developments of the rulemaking
- Solicit member input about what is feasible, what is not, what may prove most problematic for operations, and what we need to fight hardest to keep out of the final rule
- Advocate for your interests through written comments, testimony at Standards Board and Advisory Committee meetings, and other formal or informal engagement with decision-makers at the agency
- Educate coalition members about the rulemaking and final rule through regular email updates and virtual meetings

If your organization is interested in participating, please contact **Rachel Conn**, Chair of CMC's California Practice.