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OSHA Proposes Rule that May Allow Union Organizers and Plaintiffs' Attorneys to "Walk Around" Workplaces

*By **Eric J. Conn** and **Mark Trapp***

Earlier this month, OSHA issued a Notice of Proposed Rulemaking for a "Worker Walkaround Representative Designation Process" Rule, which would expand the circumstances when non-employees, particularly union representatives at non-union workplaces, can accompany OSHA inspectors during enforcement inspections.

The proposed rule would allow union representatives, other labor or community activist groups, and even plaintiffs' attorneys (or their expert witnesses) direct and early access to non-union workplaces and employees, potentially as a front for organizing campaigns where they otherwise would not have access or to advance personally injury lawsuits. Similarly, the rule could allow competitors, contractors, or others onsite to employers' detriment.

The Washington Legal Foundation featured an article by Eric J. Conn of Conn Maciel Carey's national OSHA Practice and **Mark Trapp** of CMC's Labor & Employment Practice about this development. Here is a link to the WLF article.

Employers OSHA Inspection Walkaround Rulemaking Coalition

With that backdrop, we understand that employers have a strong interest in having a seat at the table for this rulemaking. To that end, Conn Maciel Carey's OSHA Practice and Labor Law Practice are collaborating to organize a **fee-based company-anonymous coalition of employers and trade groups to advocate for the most reasonable possible fed OSHA regulation about third party participation in OSHA inspections**.

Those of you who have participated in any of our recent OSHA rulemaking coalitions know that together we have had a very positive impact on OSHA rulemakings over the last several years. We have submitted comprehensive written comments to the rulemaking record, testified at rulemaking hearings, advocated directly to OSHA and OMB in informal and formal stakeholder meetings. Through those prior rulemaking coalition initiatives, our input has resulted in direct changes to regulatory language and decisions by OSHA about the substance and policy direction of its regulations and standards. We intend to follow a similar approach with this rulemaking. We will be coordinating with our coalition members to:

- Keep coalition members informed about developments with the rulemaking on a regular and frequent basis;
- Solicit your input about the direct and indirect harm and costs associated with OSHA's proposed rule;
- Advocate for your interests through written comments, stakeholder meetings, and any other informal and formal opportunities to engage with decisionmakers at OSHA and OMB;
- Engage with OSHA as necessary post-issuance to steer guidance or further rulemaking in the right direction; and
- Educate coalition members about the rulemaking and the final regulation through regular email updates and/or calls and webinars.

This rulemaking will move quickly, with written **comments due by October 30, 2023**. **If your organization is interested in participating in this rulemaking coalition** or if a call would be helpful to talk through the rulemaking process, our advocacy plans, or anything else, please **contact OSHA Practice Chair Eric J. Conn, or Labor Law Partner Mark Trapp as soon as possible**. We want to ensure as much time as possible to hear your input and get your feedback about written comments and talking points we are already starting to develop.