

Proposed OSHA Rule Would Result in Changes to Inspection Procedures

By Lauryn T. Robinson

OSHA recently proposed a rule which would revisit and revitalize the Obama Administration's Fairfax Memo. Consequently, this recent proposal (RIN:1218-AD45) would likely result in more union-friendly changes to current OSHA inspection procedures.

The original Fairfax Memo of 2013 was created by former Deputy Assistant Secretary Richard E. Fairfax and permitted workers at a worksite, without a collective bargaining agreement, to designate a person affiliated with a union or other organization to act as their representative during OSHA walkaround inspections. In 2016, the Trump Administration rescinded the Fairfax Memo. As a result, non-union employees were no longer permitted to designate a person affiliated with a union to represent them during inspections. The repeal of the Fairfax Memo created a higher burden of proof for unions and employees trying to have union representation during OSHA inspections.

The new OSHA proposal will essentially reinstate the Fairfax Memo. RIN:1218-AD45 specifies that a worker or union representative will be permitted to accompany an OSHA inspector during the inspection process/facility walkaround, regardless of whether the representative is an employee of the employer if, in the judgment of the Compliance Safety and Health Officer, such person is reasonably necessary to support an effective and thorough physical inspection. This "reasonably necessary" standard mirrors language in the original Fairfax Memo.

Given previous litigation over this issue, OSHA's new proposal will likely face challenges. However, the rule will surely impact employees and employers alike and is expected to further support the Biden Administration's stated union-friendly platform.

For more information about the recent OSHA proposal, or any other employment related matters, please contact any of the listed Roetzel professionals.

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