

OSHA Interpretation Letter Allows Non-Union Employees To Designate Union Personnel As “Representative” During OSHA Inspection

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In a recently released [Interpretation letter](#) (dated Feb. 21, 2013 but not released to the public until April 5, 2013), OSHA has stated that *anyone* may be designated by workers at a non-union facility as their “representative” during an OSHA inspection, even a union representative. While OSHA claims that this is just a policy clarification of current regulations, this represents a significant departure from previous interpretations in the past.

While permitting a union representative at a union facility to accompany an OSHA inspector during the walk around is required by current OSHA regulations, no such right exists with respect to *non-union* employees. Current regulations state that if “good cause” is shown, the OSHA inspector has *discretion to permit a non-employee representative* if “it is reasonably necessary to the conduct of an effective and thorough inspection.”

While this regulation has been around for years, OSHA has not interpreted it to permit small groups of employees from that non-union employer to designate a non-employee third party as their representative during an OSHA inspection. This represents a significant expansion of the existing regulations and OSHA’s own internal Field Operations Manual (FOM) into the arena of labor and management relations under the National Labor Relations Act. The concept of being required to recognize a “representative” of less than a majority of your workforce is troubling at best. Employers are well advised to consult with qualified counsel to discuss how to handle this situation in advance of the actual inspection request.

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