

OSHA's 'Union Walk Around Rule' Rescinded by OSHA

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PRACTICES OSHA, Labor and Employment

OSHA rescinded a memo creating the Union Walk Around Rule, which stated that non-union employees may elect anyone to accompany OSHA compliance officers as they inspect the employer's worksite.¹

OSHA, under the new direction of the Trump Administration, inherited a legal challenge to the Union Walk Around Rule but has now decided to drop its defense of the rule and rescind it. On September 8, 2016, a lawsuit was filed by the National Federation of Independent Business ("NFIB") seeking to enjoin and strike down the Walk Around Rule.² NFIB argued that there is nothing within the Occupational Safety and Health Act allowing a *non-employee* to accompany the compliance officer. NFIB argued that the Union Walk Around Rule violates the Administrative Procedures Act because it is, in fact, a standard (or attempts to undo a previous standard). Standards are required to go through notice and comment rulemaking, a much more difficult process than issuing true guidance. The court had already ruled against OSHA on a Motion to Dismiss NFIB's claim. Much of the court's reasoning suggested that NFIB would prevail.

¹ See [OSHA Standard Interpretation Letter](#), February 21, 2013.

² *National Federation of Independent Business v. Dougherty, et al.*, 3:16-cv-025688 (September 8, 2016) filed in the United States District Court for the Northern District of Texas.