

April 1, 2026

California Department of Industrial Relations
Cal/OSHA Legal Unit
1515 Clay Street, Suite 1901
Oakland, CA 94612
Attn: Silas Shawver, Staff Counsel

Submitted: walkaroundrule@dir.ca.gov

RE: Proposed Rulemaking - §331.8 Employer Representative and Representative Authorized by Employees During Workplace Inspections (Walkaround Rule) – Written Comments

To Whom It May Concern:

Please accept the OSH Proterie's comments on the California Division of Occupational Safety and Health's (Cal/OSHA or Division) proposed rulemaking for §331.8 Representatives during the inspection, [Employer Representative and Representative Authorized by Employees During Workplace Inspections \(Walkaround Rule\)](#)¹ (proposed rule).

The [OSH Proterie](#) is a network of Occupational Safety and Health (OSH) compliance leaders across industries in California. Our members are directly responsible for workplace environmental safety and health, and we provide their collective experience and voice to OSH agencies to improve safety, compliance, and operational effectiveness.

The OSH Proterie and its members are deeply committed to the integrity and effectiveness of the Cal/OSHA inspection process. However, we are concerned that the proposed rule, as currently drafted, introduces significant operational safety and security risks while placing an unreasonable burden on both Cal/OSHA inspectors and employers.

To address these concerns, we offer specific, practical recommendations to the regulatory text. Our goal is to provide the necessary clarity to ensure that the inspection process remains focused on identifying workplace hazards rather than facilitating external advocacy or compromising site security. **Visual access is information access, and we must ensure that site security is not sacrificed for unvetted third-party participation.**

¹ Cal/OSHA Proposed Regulation – Regular Rulemaking: <https://www.dir.ca.gov/dosh/doshreg/Employer-and-Employee-Reps-During-Workplace-Inspections/>

I. Recommendation to Pause Rulemaking Pending Federal Litigation

We urge Cal/OSHA to pause the adoption of this proposed rule until the ongoing legal challenges to the Federal OSHA final rule are resolved (*Chamber of Commerce of the USA v. OSHA*, Case No. 6:24-cv-00271) in the Western District of Texas.

While we understand Cal/OSHA's requirement to be "at least as effective as" the federal standard, proceeding while the federal foundation is under judicial review risks creating significant regulatory uncertainty. If the federal rule is vacated or significantly altered by the courts, California will have prematurely adopted a controversial standard that may no longer align with federal requirements leading to unnecessary confusion for employers and inspectors alike. Furthermore, **rushing to adopt a rule that may soon be altered by federal courts will invite immediate and costly legal challenges in California, resulting in a substantial waste of time, taxpayer money, and administrative resources for both the Agency and the employer community.**

II. Security Risks and the Burden on Inspectors

The expansion of accompaniment rights to third parties who are not employees or collective bargaining representatives is a major departure from established safety norms. Granting Cal/OSHA inspectors the authority to make "on-the-spot" determinations regarding a third party's "good cause" for entry is a significant and unreasonable responsibility.

- **Security as a Safety Function:** Employers are legally and ethically responsible for protecting their workplace from security threats. This rule effectively transfers that control to an inspector who may not have the training or background to identify sophisticated security or infrastructure risks.
- **Unauthorized Documentation and Social Media:** A primary concern is the lack of control over a third party once they leave the site. We have seen instances where visitors take unauthorized photographs or videos and post them to social media. Once that information is off-site, the employer has no control over its use, which can compromise trade secrets, employee privacy, site and national security. Proactively managing this risk after the fact is an impossible burden for employers.
- **Critical Infrastructure and "Penetration Testing":** Allowing unauthorized third parties access to private workplaces creates opportunities for individuals to conduct "penetration testing" of critical physical and cyber infrastructure. Simple access reveals entry points, security routines, and internal controls that, if compromised, pose a direct threat to the safety of the employees onsite.

III. Disguised Agendas and Future Employer Liability

We are concerned that this rule will be used by third parties with interests unrelated to the specific safety purpose of the inspection to gain access to facilities they would not otherwise be authorized to enter. While the Division may argue that **inspectors have the authority to remove anyone who “interferes,” this reactive measure does not address the risk of disguised or hidden agendas.**

- **Maintaining Safety Focus:** A workplace inspection is a technical safety event, not a platform for external advocacy. Allowing the inspection to be used for purposes outside the scope of Title 8 safety orders dilutes the Division’s resources and distracts from the primary goal of identifying and correcting workplace hazards.
- **The Limits of Inspector Oversight:** An inspector is trained to identify safety hazards, not to vet the underlying motives of a third-party representative. An individual with an ulterior motive may remain perfectly "orderly" during the walkaround while quietly collecting information, observing proprietary processes, or identifying vulnerabilities to be used in future litigation, media targeting, or advocacy campaigns.
- **Transfer of Risk:** Once the inspector leaves the site, any "disturbance" or "interference" caused by the misuse of information gathered during the inspection is no longer Cal/OSHA’s issue—it becomes a permanent legal and operational liability for the employer to manage. The Agency is essentially facilitating a "discovery" process for outside interests under the guise of a safety inspection, leaving the employer with no recourse once the third party is off-site.
- **Redundancy of Third-Party Translation:** The Division’s own Policy & Procedures Manual already establishes a mandatory and reliable framework for addressing language barriers.² It requires compliance personnel to use **certified DIR translators or contract translation services** for interviews with non-English speaking employees and prohibits the use of employer-provided services for this purpose. Because the Division already has a prescribed, neutral, and professional mechanism for translation, the admission of an unvetted third party for "translation" purposes is not "reasonably necessary" and introduces avoidable risks to the worksite and inspection process.

We note Cal/OSHA’s own statement in the Initial Statement of Reasons (ISOR)³ regarding the intent of the control provisions that: “The workplace inspection is not an opportunity for employer and employee representatives to advocate with each other or address issues that are not germane to the inspection.” We agree. **The concern is that hidden agendas may not manifest as on-site**

² DOSH Policy & Procedures Manual, P&P C-1A(F)(7)(a) (requiring use of certified DIR or contract translators for language barriers).

³ Initial Statement of Reasons, p.6: <https://www.dir.ca.gov/dosh/doshreg/Employer-and-Employee-Reps-During-Workplace-Inspections/ISOR-walkaround.pdf>

“arguments” or overt disruption yet can still create substantial downstream risk for employers.

IV. Lack of Clarity and the Risk of Arbitrary Enforcement

A primary concern for our members is the lack of clear, objective definitions for terms like "good cause," "reasonably necessary," and conduct that "interferes." Without specific criteria in the regulatory text, the rule is open to inconsistent and arbitrary application by different inspectors. Federal OSHA found it necessary to issue an extensive list of FAQs to explain its final rule, which illustrates that the rule itself lacks the clarity required for consistent application. To ensure Cal/OSHA meets its responsibility to draft clear and enforceable regulations, we recommend moving key protections from the "FAQ level" directly into the regulatory text of §331.8. This would not only provide the clarity employers need but would also ensure that Cal/OSHA's rule is interpreted and operated in a manner truly consistent with the federal intent.

V. Economic Impact and the \$50 Million Threshold

While we understand the \$50 million threshold for a formal Standardized Regulatory Impact Assessment (SRIA), we believe the Division has significantly underestimated the cumulative economic impact of this rule and that a formal assessment is warranted.

In the ISOR⁴, the Division states: “The proposed amendments will not have significant adverse economic impacts on employers.” It goes further, stating “The employer’s role will be the same.” This conclusion is consistent with Federal OSHA’s Final Economic Analysis⁵.

However, Federal OSHA’s analysis is based on a regulatory framework and position that the changes only clarified a longstanding OSHA practice⁶. California does not share the same implementation baseline reflected in the federal analysis; Cal/OSHA’s documented inspection procedures tie employee participation to the worksite bargaining-unit representative (when present) and otherwise to employee consultation.^{7 8} Because the ISOR relies on federal

⁴ Initial Statement of Reasons, p. 7

⁵ Occupational Safety and Health Administration, *Worker Walkaround Representative Designation Process*, 89 Fed. Reg. 23744, 23757 (Apr. 1, 2024): <https://www.federalregister.gov/documents/2024/04/01/2024-06572/worker-walkaround-representative-designation-process>

⁶ Federal OSHA described the 2024 amendment to 29 C.F.R. § 1903.8(c) as a clarification of OSHA’s “long permitted” practice regarding third-party employee representatives, while noting that a federal district court in 2017 concluded OSHA’s prior interpretation was not consistent with the regulation. See [Worker Walkaround Representative Designation Process, Final Rule](#), 89 Fed. Reg. 22558 (Apr. 1, 2024).

⁷ Labor Code §6314(d).

⁸ Cal/OSHA Policy and Procedures Manual, refers to participation by the “authorized employee bargaining representative” P&P C-1A, *Inspection Procedures, Conducting Walkaround*; p. 14: <https://www.dir.ca.gov/DOSHPol/P&pc-1A.pdf>

assumptions grounded in a different practice, the Division should evaluate the economic and operational impacts specific to California's regulatory environment rather than assuming the federal "no significant impact" conclusion carries over.

While the rule may not impose new "compliance obligations" in a narrow legal sense, **it creates operational and liability exposures that employers must actively manage.** In practice, employers will implement procedures to control access, protect confidential information, ensure safe participation in hazardous environments, and mitigate downstream risks associated with unvetted third-party presence.

The fact that these controls are not explicitly mandated by the rule does not eliminate the costs associated with them. In practice, these measures are necessary to meet existing obligations related to workplace safety, trade secret protection, national security, and risk management. Accordingly, the conclusion that "the employer's role will be the same" is not supported. Employers will face new costs to manage unvetted variables, as outlined below:

- **Aggregate Administrative Costs:** Even if a small fraction of California's employers spend a modest amount on legal review to update visitor policies, or on safety managers' time to manage these new risks, the \$50 million threshold could be approached or exceeded when considered cumulatively across California employers.
- **Insurance and Liability Premiums:** Insurance carriers price risk based on "uncontrolled variables." Allowing non-vetted third parties into high-hazard zones or high-security areas, fundamentally changes an organization's risk profile. Even a minor "risk premium" increase across California's high-hazard industries would result in millions of dollars in additional costs that the Division has not accounted for.
- **Additional Oversight and Management:** While the Division may argue that a safety briefing is already required for the inspector, adding third parties creates *additional* burden and subsequent costs. This is multiplied when the number of additional participants is not limited. A briefing for a trained government official is not the same as a briefing for an unauthorized third party who may have zero familiarity with the specific industrial hazards of the site. This will also require more intensive 1-on-1 supervision and orientation time from the employer's safety staff.
- **PPE and Liability:** It must be explicitly stated in the text that employers are not required to provide or pay for training or specialized PPE for third-party representatives.

VI. Recommended "Guardrails" for the Regulatory Text

To address these concerns while still meeting the "at least as effective as" requirement, we suggest the following additions to the text:

1. **Establish a Validation Process:** Require the inspector to document, prior to entry, a clear justification that the third party's specific knowledge, skills, or experience is reasonably necessary to aid the physical inspection. This should include identifying the specific inspection limitation or gap that their participation is intended to address and documenting why this need cannot be fulfilled by the existing inspection team.
2. **Clarify “their employees” in §331.8 a):** The proposed text in §331.8 a) uses “authorized by employees.” We recommend revising this to “authorized by **their** employees,” consistent with Labor Code §6314(d) (“representative authorized by his or her employees”), to avoid ambiguity about who may authorize the representative.
3. **Defining Relevant Expertise:** Add language to §331.8 b) requiring the third party to have specific safety and health experience related to the *actual* inspection.
4. **Protecting National Security (ITAR):** Align with Federal OSHA's §1903.8(d) by explicitly stating that only authorized persons may access areas containing information classified in the interest of national security.⁹
5. **Employer Rights and Visitor Protocols:** Explicitly state that third parties must comply with all established, non-discriminatory employer worksite rules, including safety orientations, background checks, and non-disclosure agreements.
6. **PPE and Training Clarification:** Add language stating that the employer is not responsible for the cost of training, medical evaluations, or providing specialized PPE for third-party representatives.
7. **Defining Interference:** Incorporate specific examples of conduct that constitutes "interference," such as solicitation, wandering into unauthorized areas, and taking unauthorized photos/videos.
8. **Clarify the Meaning of “Authorized Representative”:** The proposed rule should clarify the intended scope of “authorized representative” to avoid overly broad or inconsistent interpretation. Historically, Cal/OSHA has treated employee representatives as individuals with a defined and accountable relationship to the workforce, such as representatives of an “authorized employee bargaining unit” where one exists. This **demonstrates that representation has not been interpreted as unlimited third-party access.**¹⁰

The current proposal expands this concept without clearly establishing limiting principles. **This creates a ‘transfer of risk’ where the Agency makes the access decision, but the employer retains 100% of the resulting liability.** To ensure consistency and prevent misuse, the regulation should define or constrain who may qualify as an authorized

⁹ 29 CFR §1903.8(d) includes: “With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.”: <https://www.osha.gov/laws-regs/regulations/standardnumber/1903/1903.8>

¹⁰ Cal/OSHA Policy and Procedures Manual, refers to participation by the “authorized employee bargaining representative” P&P C-1A, *Inspection Procedures, Conducting Walkaround*; p. 14: <https://www.dir.ca.gov/DOSHPO/P&pc-1A.pdf>

representative, and tie third-party participation to demonstrable safety expertise or a direct connection to employee.

Without this clarification, the term may be interpreted to include individuals with no established relationship or experience with the hazards being inspected increasing the risk of inconsistent enforcement and shifting the burden of interpretation onto compliance officers in the field.

This clarification would also align with the Division's stated intent to maintain inspection focus and prevent participation that does not aid the inspection.

VII. Support and Clarification of Scope Control

We support Cal/OSHA's inclusion of language in §331.8 c) authorizing the Chief or their representative to "limit the scope and extent" of representative participation to ensure the inspection remains "fair, effective, and limited to the appropriate subject matter." This is an important addition and provides needed clarity that third-party participation must remain focused on the purpose of the inspection.

This California-specific language should be retained and strengthened with clearer guardrails, particularly around documentation and information control (e.g., unauthorized photography, video, and dissemination). Once information leaves the worksite, any misuse becomes a long-term risk for the employer and is no longer an on-site "conduct" issue that can be managed during the inspection.

While the ability to limit participation is important, it is inherently reactive and dependent on what can be observed in the moment. Inspectors may not be in a position to identify underlying affiliations, intentions, or downstream use of information during the inspection itself. Clear, upfront guardrails are therefore necessary to ensure this authority can be applied consistently and effectively in practice.

For this reason, the Division should align this provision with a formal process in §331.8 b) to determine if participation is "reasonably necessary." This ensures that third-party participation is limited to individuals who demonstrably contribute to the physical inspection through specific safety expertise or necessary communication support, beyond translation, **and whose participation addresses a specific inspection need that is not otherwise met and cannot be fulfilled by the inspection team.**

Without this alignment and a pre-entry validation process, the inspector's authority in §331.8 c) is purely reactive and therefore insufficient to protect site security.

Closing

While we support Cal/OSHA's goal of effective inspections, we believe this proposal as currently drafted is unclear and creates significant safety and security risks. By codifying the guardrails mentioned above and ensuring the rule is clear and limited in scope, Cal/OSHA can protect the integrity of the inspection process and the safety of California's workplaces.

Thank you for considering our comments. Please feel free to contact us if you have any questions or would like to discuss these recommendations further.

Sincerely,



Helen Cleary
Founder & Leader
OSH Proterie