

OSHA's Walkaround Rule Showdown in Court: Will the Agency Be Allowed to Tread on Employers' Rights?

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The Occupational Safety and Health Administration's (OSHA's) Walkaround Rule has sparked a legal showdown between business associations and OSHA in a U.S. District Court in Texas. The agency's rulemaking powers and businesses' civil liberties are at stake.

[OSHA's Walkaround Rule](#) enables third-party representatives, including union activists, to accompany OSHA inspectors during workplace inspections. Proponents argue this rule facilitates more thorough inspections and protection for workers. However, many employers view this rule as an overreach, imposing undue burdens and compromising property rights.

In Texas, a coalition of business associations has filed a lawsuit against OSHA, captioned *Chamber of Commerce of the United States of America, et al. v. OSHA, et al.*, arguing the Walkaround Rule exceeds the agency's statutory authority. This case has significant implications for employers nationwide, as it addresses fundamental questions about OSHA's regulatory authority.

Plaintiffs' Arguments Against the Walkaround Rule

The plaintiffs' main arguments in the case focus on statutory authority, constitutional rights, and administrative law principles. They contend that OSHA lacks the statutory authority to impose the Walkaround Rule. They argue that Congress did not authorize unlimited third-party access to employer workplaces, making the rule an overextension of OSHA's power.

Additionally, the plaintiffs argue that the rule violates the Fifth Amendment by forcing employers to allow third-party representatives onto their property. They contend this constitutes an unlawful appropriation of property rights. The property rights argument echoes a [2021 U.S. Supreme Court decision](#), in which the high court found a union-access regulation constituted an unconstitutional taking of the employer's property. The plaintiffs further claim the rule is arbitrary and capricious and OSHA failed to provide a reasoned explanation for the policy change, did not consider obvious alternatives, and underestimated the rule's costs.

Moreover, the plaintiffs cite the Supreme Court's decision in [Loper Bright Enterprises v. Raimondo](#) as support that OSHA's general rulemaking authority does not automatically validate a specific rule and that the court must adopt the "best reading" of the statute in question.

OSHA's Defense

The defendants, representing OSHA, brought a motion to dismiss and countered the

plaintiffs' claims. As a preliminary matter, they argue the plaintiffs lack standing to challenge the Walkaround Rule, asserting that the alleged harms are speculative and not concrete. In response to the challenge to their rulemaking authority, the defendants assert the Walkaround Rule is consistent with OSHA's statutory authority and necessary for effective workplace inspections.

Additionally, the defendants contend that the rule is a reasonable regulatory measure and does not constitute a taking of private property. Finally, the defendants argue that the rule is reasonable and well-explained, adhering to administrative law principles.

OSHA argues that the *Loper Bright* decision supports the validity of OSHA's authority to regulate employee representation during inspections, emphasizing that the statute expressly delegating authority to OSHA allows the agency to exercise discretion.

Potential Outcome

If the plaintiffs were to succeed, the court's ruling could curtail OSHA's authority to dictate third-party participation in inspections, thereby reducing the regulatory burden on employers. On the other hand, a ruling in favor of OSHA could solidify the agency's power to implement such measures and embolden the agency to further intrude upon employers' property rights.

Jackson Lewis attorneys will continue to monitor cases pertaining to workplace safety regulations. If you have questions about the OSHA Walkaround Rule or related issues, contact a Jackson Lewis attorney to discuss.

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