Final Rule Clarifies Third-Party Employee Representatives May Accompany OSHA Officers During Inspections

Posted in Alert on April 2, 2024

Through its final rule issued on April 1, 2024, OSHA is amending its Representatives of Employers and Employees Regulation. The final rule clarifies that a representative or representatives authorized by employees may be either an employee of the employer or a non-employee third-party. The rule states that the third-party employee representative may accompany the OSHA Compliance Safety & Health Officer when, in the judgment of that Officer, good cause has been shown why the non-employee representative is reasonably necessary to aid in the inspection. The final rule also clarifies that such a third-party may be reasonably necessary because of that representative's relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills.

OSHA believes that these clarifications aid workplace inspections by better enabling employees to select representatives of their choice. OSHA noted that employee representation during the inspection is critically important to ensuring that OSHA obtains the necessary information about worksite conditions and hazards. This final rule is consistent with the way OSHA has traditionally handled such non-employee third-party representative requests. However, there had been some inconsistencies in interpretations of existing regulations, and the import of this final rule is to clarify those inconsistencies.

It is important that employers recognize that non-employee representatives are allowed, but designating such a representative is not automatically appropriate in all cases. The Officer must find that good cause has been shown why the non-employee representative is reasonably necessary to aid in the inspection, so there are opportunities for employers to object. Objections should be carefully considered to ensure that the employer is not perceived as overly antagonistic to a reasonable inspection.

We Can Help

Employers with OSHA-related questions may contact Larry L. Cash, Scott Simmons or any member of Miller & Martin's Labor and Employment group.