



# Kentucky OSHA Adopts Emergency Regulation in Line With Fed's New Rule on "Walkaround" Inspections: What Employers Need to Know and What You Should Do Now

Insights

10.01.24

Starting today, Kentucky employees may designate a third party – including union representatives in non-union facilities – to accompany safety inspectors during walkaround inspections. State safety officials adopted an emergency regulation yesterday amending Kentucky's "walkaround" rule so that it runs parallel to the new federal OSHA rule that took effect earlier this year. Here's what Kentucky employers need to know about how these changes could potentially affect facility walkarounds and what you should do next.

## How Did We Get Here?

Earlier this year, the federal Occupational Safety and Health Administration (OSHA) issued a new final rule allowing employees to designate third parties – including union representatives – to accompany an OSHA inspector during a facility walkaround. The new rule, which was published in the Federal Register on April 1 and took effect on May 31, gave labor unions an advantage because it granted union representatives access to the property of non-union employers and allowed them to directly interact with non-union employees. We developed a series of FAQs to address your top employer questions and concerns.

Kentucky, however, operates its own OSHA-approved workplace safety and health program through the Education and Labor Cabinet's Department of Workplace Standards, Division of Occupational Safety and Health Compliance (KOSH). As a "State Plan" state, Kentucky was required to adopt and implement federal OSHA's walkaround rule by October 1 or create its own rule that is substantially similar. On September 30, KOSH adopted an emergency rule (and filed an identical proposed ordinary rule) to comply with this requirement.

## What Are the Specific Changes to Kentucky's Walkaround Rule?

Effective October 1, Kentucky's workplace walkaround regulations will change in two important ways:

**1. Employee representatives are no longer required to be your employees.** Instead, employees may designate a third party as their representative.

**2. Third-party employee representatives may extend beyond industrial hygienists or safety engineers.** The regulation no longer lists those professionals as examples of third-party employee representatives.

These changes bring Kentucky's walkaround rule in line with federal OSHA, essentially removing the general requirement that all employee representatives be employees of the employer.

### **What Should Kentucky Employers Do Now?**

Know your rights and prepare! Keep in mind that employers have Fourth Amendment and state property rights, and nothing in the emergency rule changes that. Even under the new rule, KOSH can only inspect worksites with the employer's consent, unless it has a warrant. Therefore, you are still entitled to control how KOSH accesses company property and the areas covered during an inspection, unless the agency has a warrant. Work with your counsel if you have questions and to understand the ramifications that might result if you push the KOSH representatives to demand a warrant.

While the emergency rule is effective today, the public hearing and comment period has just begun:

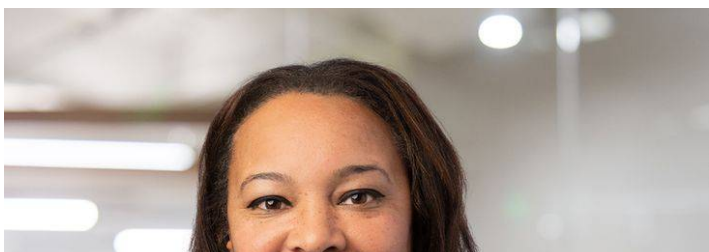
- **Emergency Walkaround Rule.** A public hearing is scheduled for **November 25**, and you may submit written comments by **November 30**.
- **Proposed Ordinary Walkaround Rule.** A public hearing is scheduled for **December 23**, and you may submit written comments by **December 31**.

Also, keep in mind that federal OSHA's walkaround rule is being challenged in court, so it's possible that a court could decide to strike it down. In the meantime, though, you should become familiar with KOSH's new requirements.

### **Conclusion**

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, or any attorney in our [Louisville office](#).

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