

OSHA Withdraws Fairfax Memo

Insights

4.28.17

OSHA has provided notice, in the context of an on-going federal lawsuit, (*National Federation of Independent Businesses v. Dougherty*, N.D. Tex., No. 16-2568, 4/27/17), that it has rescinded the interpretation letter and removed the guidance from OSHA's Field Operations Manual (FOM). The "Fairfax Memo" was a standard interpretation letter that provided that non-employees of the subject employer could be permitted to accompany OSHA during the walk around portion of the inspection. Examples mentioned in the letter of who could participate in the inspection included union officials of labor organizations that did not represent the employer's employees and community organizers.

The presiding judge had previously denied part of OSHA's Motion to Dismiss the lawsuit, indicating that the new policy was a rulemaking that should have gone through the required public notice and comment period because it had the effect of broadly changing OSHA's procedures. Based on OSHA's notice that it was rescinding the Fairfax Memo and have ordered the elimination of its directives from the FOM, the plaintiff, NIFB, filed a Notice of Voluntary Dismissal without prejudice (meaning plaintiffs could bring the claim again in the future).

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