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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

June 1, 2017

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Acosta:

I write to express my deep concern regarding the Occupational Safety and Health Administration's (OSHA) rescission of guidance that clarified workers' right to authorize a representative of their choosing, including a third-party from outside the workplace, to accompany and aid OSHA investigators during workplace inspections and to request information regarding that decision. Since his inauguration, President Trump has shattered his campaign promise about putting workers first. This recent decision continues a pattern by the Trump Administration of undermining protections for workers and putting forth policies that make it harder for families to reach economic security.

OSHA was created to fully and effectively enforce workers' basic right to safe and healthful workplaces as a result of the Occupational Safety and Health Act (OSH Act). Workers depend on OSHA to set standards, investigate complaints, and inspect workplaces to guarantee that employers are not unnecessarily putting their lives at risk. Still, each year thousands of workers are tragically killed on the job, tens of thousands more die of occupational diseases, and nearly four million more suffer serious injuries at work. That is why robust and effective enforcement of workplace safety and health standards is critical.

On April 12, OSHA took a step in the wrong direction, rescinding guidance that clarified workers' rights to authorize a representative to accompany OSHA investigators during workplace inspections to aid in the inspections, including representatives other than fellow employees or representatives from their union. Workers often request an outside representative because the representative has experience in evaluating similar working conditions at other businesses; because the workers are not native English speakers and want a representative who can help them communicate with the OSHA Compliance Safety and Health Officer (OSHA CSHO); or because they feel uncomfortable talking to an OSHA CSHO without a representative of their choosing.

The guidance was initiated by a 2013 letter from Mr. Steve Sallman from the United Steelworkers requesting clarification about whether workers without a collective bargaining agreement could designate a person affiliated with a union or a community organization as their representative for an OSHA workplace inspection. Before this guidance was issued, workers and

employers had experienced some uncertainty as to whether workers could authorize a representative of their choosing to assist in the inspection or if the representative was restricted to being a current employee or elected union representative.

OSHA provided guidance on the issue in a letter of interpretation, clarifying that “a person affiliated with a union without a collective bargaining agreement or with a community [organization] can act on behalf of employees as a walkaround representative so long as the individual has been authorized by the employees to serve as their representative.”ⁱ The regulation also explicitly notes that while the representative is typically an employee at the workplace, the representative can be someone other than an employee if it is “reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace...”ⁱⁱ

This guidance made it clear that employees had the right to choose a representative to assist OSHA in its workplace inspections from within the workplace or from organizations outside of it. However, on April 12, OSHA rescinded this guidance in a memorandum and further stated that the portion of OSHA’s Field Operations Manual directing OSHA inspectors on how to follow the guidance was now superseded and would be revised.ⁱⁱⁱ Not only is rescinding this guidance bad for workers’ safety and health, it is also contrary to the OSH Act, OSHA’s regulations, and Congressional intent—all of which was painstakingly detailed in the rescinded guidance.

You stated in your first blog post as Secretary of Labor that, “[s]upporting the ability of all Americans to find good and safe jobs is a priority for President Trump and for me.”^{iv} This step by OSHA, however, does not prioritize safe jobs for workers. I request that you stand with workers by reversing this damaging action and reissuing the 2013 guidance.

In order to understand why OSHA rescinded the guidance, I request answers to the following questions:

1. Please describe the process OSHA undertook to rescind the guidance. Who at the Department of Labor was involved in making the decision?
2. What factors did OSHA consider when deciding to rescind the guidance? Please list them.
3. Did any individuals in the White House request or encourage the Department of Labor to rescind this guidance?
4. In the absence of the guidance, how does OSHA intend to clarify whether workers who are not represented by a recognized collective bargaining agent have the right to authorize a representative of their choosing to accompany OSHA inspectors on workplace inspections?
5. In the agency’s opinion, under what circumstances do workers have the right to authorize a representative other than another employee or member of their union to accompany inspectors on workplace inspections?

6. Please also provide copies of any communication between OSHA and any private person or entity that discusses the OSHA walkaround guidance between January 23, 2017 and today.

I look forward to your answer no later than June 15. If you have questions about this request, please contact Joe Shantz or Carly Rush with my Health, Education, Labor, and Pensions Committee Staff at 202-224-0767. I look forward to hearing from you.

Sincerely,



Patty Murray
United States Senator
Ranking Member, Senate Health, Education,
Labor, and Pensions Committee

ⁱ Fairfax, Richard E., Deputy Assistant Secretary, Occupational Safety and Health Administration, Letter to Steve Sallman, Health and Safety Specialist, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Feb. 21, 2013, *available at* https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28604.

ⁱⁱ 29 C.F.R. § 1903.8(c).

ⁱⁱⁱ Dougherty, Dorothy, Deputy Assistant Secretary, Occupational Safety and Health Administration, Memorandum for the Regional Administrators, Rescission of February 21, 2013, letter to Mr. Steve Sallman and Update to the OSHA Field Operations Manual, Apr. 12, 2017, on file with the HELP Committee.

^{iv} Acosta, R. Alexander, Secretary of Labor, Department of Labor, Helping Americans Finds Good Jobs, May 3, 2017, *available at* <https://blog.dol.gov/2017/05/03/helping-americans-find-good-jobs>.