

# Workplace Safety Issues that Keep You Up at Night

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# Chair Mackenzie Announces Hearing on Reclaiming OSHA's Mission

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Thursday, 10:15 a.m., the Subcommittee on Workforce Protections, chaired by Rep. Ryan Mackenzie (R-PA), held [hearing](#):

## ***Reclaiming OSHA's Mission: Ensuring Safety Without Overreach.***

The hearing covered various Biden-era policies, including the [worker walkaround final rule](#), [heat injury and illness proposed rule](#), and the expansion of the [Severe Violator Enforcement Program](#) and [Instance-by-Instance Citation Policies](#), as well as “issues where there is opportunity for the current administration to move forward,” such as the creation of a federal tree care standard and updating OSHA’s lockout/tagout standard.



# Federal OSHA Heat Illness Rule.

- Status of the proposed rule:
  - Public comment period was extended from its original date of December 30, 2024, to January 14, 2025.
  - OSHA also announced that an informal public hearing on the proposed rule will begin on June 16, 2025.
- The extension provided interested employee and employer groups with time to work with the new administration to create a workable standard.

# EXCLUSIONS

Does not apply to:

- (i) Work areas “with ***no expectation of exposure***” at or above heat index of **80°F**;
- (ii) Heat exposure of “***short duration***,” meaning exposure at or above initial heat trigger is 15 mins or less in any 60 min period:
- (iii) Organizations whose primary function is the performance of ***firefighting; emergency response*** activities of workplace emergency response teams, emergency medical services, or technical search and rescue; and any emergency response activities already covered under other OSHA standards.
- (iv) Work activities performed in ***indoor work areas or vehicles where air conditioning consistently keeps the ambient temperature below 80°F***;
- (v) ***Telework*** (i.e., work done from home or another remote location of the employee’s choosing); and
- (vi) ***Sedentary work activities at indoor work*** areas that only involve some combination of the following: sitting, occasional standing and walking for brief periods of time, and occasional lifting of objects weighing less than 10 pounds.

Regulations also do not cover government employees.



# Federal OSHA Heat Illness Rule.

- Programmatic standard that would require employers to create a plan to evaluate and control heat hazards in their workplace
- Proposed elements of a heat standard:
  - Scope and application
  - Definitions
  - Heat Injury and Illness Prevention Plan (HIIPP)
  - Identifying heat hazards
  - Requirements at or above initial heat trigger
  - Requirements at or above high heat trigger
  - Heat illness and emergency response and planning
  - Training
  - Recordkeeping
  - No cost to workers



# Key Requirements

- Designate Heat Safety Coordinator to identify hazards in both outdoor and indoor worksites
- Conduct regular heat risk assessments
- Monitor workplace temperatures and humidity levels.
- Implement preventive measures, including hydration, rest breaks, shade and cooling areas.
- Train and educate employees and supervisors on preventative measures and acclimatization programs.
- Heat Illness and Injury Prevention Plan (HIIPP) is required to be in writing for employers with more than 10 employees, including site-specific information to evaluate and control heat hazards. Employers with 10 or fewer employees will still need to communicate this verbally. Plan must be available in a language that each employee, supervisor, and the Heat Safety Coordinator understands. Effectiveness of plan must be evaluated at least annually, and when a heat-related injury or illness occurs that meets OSHA 300 recording criteria.
- Employer must seek input from nonmanagerial employees (i.e. safety committees).



# Key Requirements

- ***Emergency Medical Response:*** Employers must develop a Heat Emergency Response Plan and ensure that supervisors and workers are trained to respond effectively to heat-related emergencies, including providing first aid and contacting emergency services.
- **Recordkeeping and Reporting:**
  - Maintain Indoor Monitoring Data:** Employers must maintain written or electronic records of indoor monitoring data for a minimum six months.
  - Create Incident Reporting Processes:** Detailed records required regarding heat-related incidents, including illnesses and near-misses. This data should be used to review and improve heat safety practices.
  - Audits:** Employers will need to deploy regular audits of heat safety measures and overall compliance with the standard.

# Proposed Requirements for Identifying Heat Hazards

- Outdoor work
  - Monitoring heat conditions by:
    - Tracking local heat index (i.e., temperature and humidity) forecasts, or
    - Measuring heat index or wet bulb globe temperature (WBGT)
- Indoor work
  - Identifying work areas with hazardous heat exposure
  - Developing and implementing a monitoring plan for these work areas by measuring heat index or WBGT
  - Seeking employee input in developing and updating the monitoring plan





# Initial Heat Trigger and High Heat Trigger

- **Initial heat trigger** - a heat index of 80°F or a WBGT equal to the NIOSH Recommended Alert Limit (RAL)
- **High heat trigger** - a heat index of 90°F or a WBGT equal to the NIOSH Recommended Exposure Limit (REL)



# Top concerns and unanswered questions

- HIIPPs will be required when temperatures reach 80 degrees, even in workplaces where there have been no heat incidents, and where the job hazard analysis does not call out a heat concern.
- Employee consultation is mandated in the rule. However, OSHA provided little guidance on how employers can satisfy the employee consultation prong of the proposed standard.
- The requirement in the rule for “heat safety coordinators” is likely to place significant burden on employers, especially smaller companies. The rule does not provide context on whether the “heat safety coordinators” can be doing other jobs, or other guidelines. Employers will likely have to hire more people to comply with the rule as written.

# Walkaround Rule.

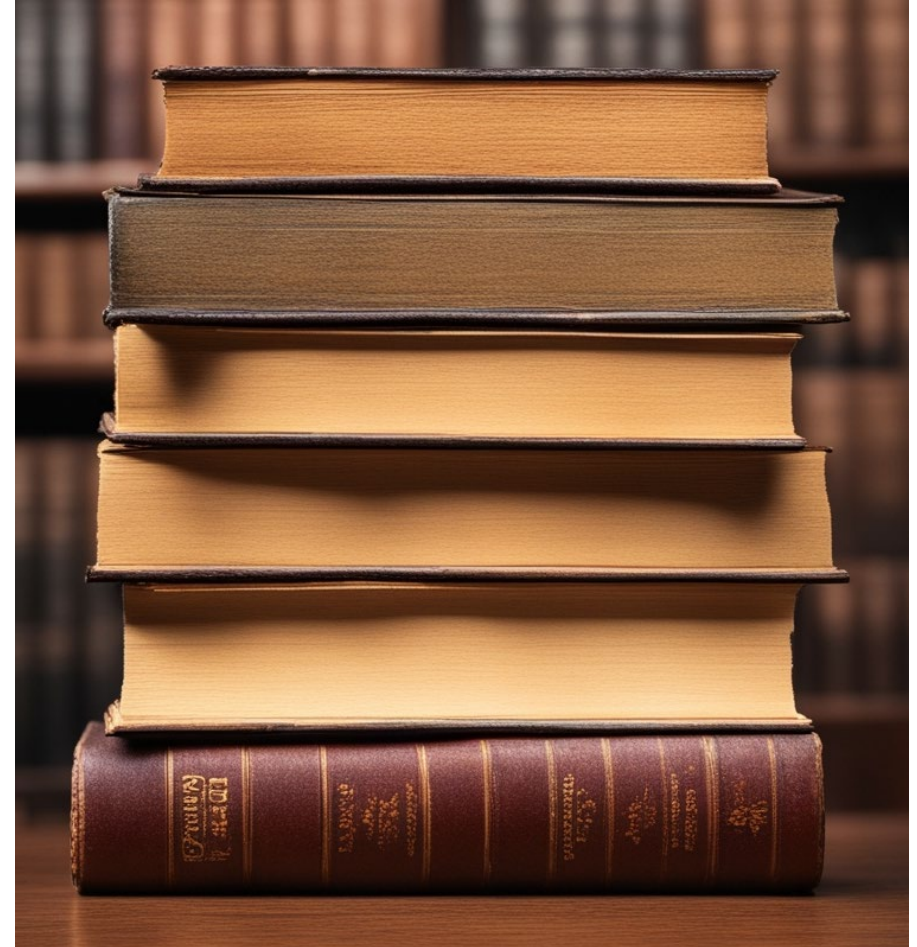


Walkaround rule will be left behind.

- OSHA issued a final rule in 2024 on the so-called “walkaround rule.”
- The rule allows third parties (including union officials) to accompany OSHA compliance, safety and health officers on an inspection of a workplace if an employee requests them to do so.
- The rule went into effect on May 31, 2024.

# OSHA Walkaround Rule Published Regulation

- Removes explicit requirement that an employee representative be an employee of the employer inspected.
- Published reg states “*the representative(s) authorized by employees may be an employee of the employer or a third party.*”



# OSHA Walkaround Rule Published Regulation

- A third-party employee representative may accompany the CSHO during the inspection if:
- In the judgment of the Compliance Safety and Health Officer good cause has been shown why their accompaniment is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.
  - (e.g., because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).





# What changed?

- The revisions to the Walkaround rule provide that:
  - the representative(s) authorized by employees may be an employee of the employer **or** a non-employee third party;
  - employees' options for third-party representation during OSHA inspections are not limited to persons with formal credentials such as an industrial hygienist or safety engineer;
  - the CSHO makes the determination as to whether the third-party representative is reasonably necessary to conduct an effective and thorough inspection.





## **Many OSHA Inspections Are Mishandled Before OSHA Arrives.**

- Non-safety personnel are not trained to manage OSHA inspections.
- Based on past experience, the site does not take the OSHA inspection seriously.
- The site does not follow its own Company and Site safety processes.
- Subs are inadequately managed and may not have necessary procedures and training.
- Site owners may have contributed to hazards.

# Pre-OSHA Inspection Issues Causing Poor OSHA Outcomes.

- No Site Safety Plan.
- Incomplete/poor Daily/Job/Stage Job Safety Analysis or Activity Hazard Analysis.
- Few formal Inspections/Walkarounds and no documentation of informal walkarounds.
- Inconsistent safety enforcement by supervisors and leads.
- Night shift and weekends with little supervision.
- No documentation of site and job-specific training.
- Second/third tier subs challenges – training, inadequate supervision.
- Poor Housekeeping.
- Disruptions/work out of sequence/weather/unusual designs.
- No OSHA Inspection Training.





# Inspection Management Tips

**DEVELOP AND MAINTAIN AN EFFECTIVE SAFETY AND HEALTH PROGRAM!**

**Develop and Follow an OSHA Inspection Plan**

**Make sure plan specifies who to contact.**

**Avoid inspection creep.**

**Inform managers and employees of their rights.**

**Be prepared for document requests and employee interviews.**

**Document what OSHA reviews (i.e., take same photos and videos, take good notes).**



# Inspection Management Tips

## Employer Rights

- Right to limit inspection to complaint or accident;
- Right to accompany inspector;
- Right to attend non-private employee interview;
- No duty to produce documents not required by law;
- Right to end inspection if disruptive;
- Right to require search warrant (should confer with senior management and legal counsel on decision).

## Employee Rights

- Right to private one-on-one interview with inspector;
- Right to refuse interview;
- Right to have another person present;
- Right to end interview at any time;
- No obligation to sign statement or be tape recorded or photographed;
- Cannot lie to inspector.

# Common Errors in OSHA Inspection Management.

- No Opening Conference/poor contractor coordination/CSHOs come onsite without checking in.
- Assuming inspection will be limited, Focus-4, etc.
- No efforts to define and limit inspection scope. \*\*\*\*
- Allow OSHA to rush or intimidate you, such as with document demands.
- No prep of supervisors before formal interviews.
- Prematurely done RCA or Accident report.
- Poor coordination with Corporate.



# Most Common OSHA Violations

- OSH Act General Duty Paragraph
- Reporting Fatalities, Hospitalizations, Amputations and Losses of an Eye
- Portable Fire Extinguishers
- Fall Protection

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# Thank You!

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