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June 13, 2013

The Honorable David Michaels, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Assistant Secretary Michaels:

On February 21, 2013, the Occupational Safety and Health Administration (OSHA) issued a letter of interpretation allowing Compliance Safety and Health Officers (CSHO or inspectors) to be accompanied by third-parties who are selected by employees of the company being inspected. Rescinding a previous letter of interpretation from March 7, 2003, referred to as the "Racic Letter," the new interpretation is a dramatic change in OSHA practice. It raises questions as to the priorities of OSHA's inspectorate and may create more confusion with respect to OSHA's workplace inspections.

OSHA's 2013 letter of interpretation is problematic in a number of respects. The letter fails to explain how or when employees are to select these third-party representatives. If OSHA were to seek employee representatives several days prior to an inspection, it could be construed as providing advance notice of such an inspection.

The letter of interpretation also fails to address the experience or qualifications required of third-parties who might be selected to accompany OSHA inspectors, which is in direct contrast to OSHA regulations suggesting third-parties who accompany inspectors should be safety engineers or industrial hygienists.¹

In addition, OSHA has not clarified how these third-parties will interact with the employees of the company during an inspection. It also fails to address several basic employer concerns with having non-employees in the workplace, such as how OSHA will address the potential liability of having third-parties in hazardous work areas for which they have no training. Additionally,

¹29 CFR 1903.8(c)

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OSHA's letter of interpretation does not address how confidential business information or processes will be treated by third-parties during the course of an inspection.

Finally, the letter of interpretation suggests the third-party might act as an interpreter for non-English-speaking workers. This raises a number of concerns, including the quality of the interpretation, which could lead to legal challenges to citations issued in conjunction with the inspection.

To assist our evaluation of this dramatic change in longstanding OSHA policy, please provide the following information to the House Committee on Education and the Workforce by June 27, 2013:

1. All documents and communications, including external communications, related to the issuance of this policy change;
2. All documents and communications related to the legal memorandum or other supportive material related to the letter of interpretation;
3. Guidance provided to CSHOs related to this letter of interpretation; and
4. Legal agreements third-parties will be required to sign related to acting as an employee representative.

If you have any questions regarding this request, please contact Loren Sweatt, House Committee on Education and the Workforce, at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Enclosure