Employer Rights Under “OSHA Walkaround Rule”

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Employers do have certain rights when a non-employee attends an inspection. Here are some critical points regarding employer rights in this situation:

- **Challenging the representative**: Employers can object to a designated non-employee representative by raising concerns with the OSHA Compliance Safety and Health Officer (CSHO). Concerns may include whether the representative is truly authorized by employees, whether there's good cause for their presence, and whether they have relevant knowledge or expertise.
    - **Raising objections**: Employers have the right to voice their concerns about a non-employee representative to the OSHA Compliance Safety and Health Officer (CSHO) conducting the inspection.
    - **Authorization by employees**: One of the primary concerns an employer can raise is whether the representative is genuinely authorized by the employees. The CSHO may need to verify that employees have indeed designated this person as their representative.
    - **Good cause requirement**: Employers can question whether there is a "good cause" for the presence of a non-employee representative. The CSHO must determine if the representative's participation is "reasonably necessary" for conducting an effective and thorough inspection.
    - **Relevant knowledge or expertise**: Another valid concern is whether the representative possesses relevant knowledge, skills, or experience that would contribute positively to the inspection. This could include knowledge about the specific workplace, similar workplaces, or particular hazards.
    - **Communication skills**: If the representative claims to facilitate communication between employees and the inspector (e.g., language interpretation), the employer can question the necessity of this role.
    - **CSHO's discretion**: Ultimately, the CSHO has the authority to make the final decision on these challenges. They will evaluate the employer's concerns and determine whether the representative should be allowed to participate.
    - **No formal process**: It's important to note that there is no formal process for employers to challenge a representative. The objection is raised directly with the CSHO during the inspection.
    - **Potential for delays**: While employers can object, refusing entry to a third-party representative might only delay the inspection. OSHA could potentially seek a warrant to allow the representative's participation.

- **Preventing business disruption**: Employers have the right to prevent an inspection from causing "unreasonable disruption" to their operations.
- **Protecting trade secrets**: Employers can limit the entry of non-employee representatives into areas containing trade secrets. It's advisable to identify these areas in advance of any inspection.
- **Requiring non-disclosure agreements**: Employers may require non-employee representatives to sign reasonable confidentiality agreements to protect confidential information learned during the inspection.
- **Enforcing compliance with policies**: Employers can require non-employee representatives to comply with the same safety and health policies as other visitors.
- **Preventing interference**: If a non-employee representative's conduct interferes with a fair and orderly inspection, they may be denied the opportunity to accompany the inspector. This includes prohibiting union solicitation activities during the inspection.
- **Employee interviews**: Non-employee representatives are not permitted to attend employee interviews unless specifically requested by the employee.

It's important to note that while employers have these rights, the final decision on many of these matters often rests with the CSHO conducting the inspection.