

May 19, 1977

OSHA UPDATE

BACKGROUND:

Since the creation of the Occupational Safety and Health Administration in 1970, controversy has surrounded this agency. When Rep. William Steiger (R-Wisc.) and Sen. Harrison Williams, Jr. (D-N.J.) co-authored this law, it was made mandatory that Labor Department agents issue citations for violations, regardless of whether or not the business owner understood the complex regulations, and by law the agents are prohibited from giving any advice. For small manufacturers this stipulation has caused major financial problems apart from the uncertainty of whether or not they are complying with the regulations.

The owner of a small southern California manufacturing firm has said, "I am terrified of O.S.H.A. Because of the lack of qualified advisors in my area, and the subjective nature of many requirements, I feel very insecure. I wish O.S.H.A. had a program for the very small employer (under 25 employees) to have O.S.H.A. inspect (even for a nominal fee) and then allow 30 days grace to correct violations before fines can be levied. Amongst employers I know, a great pre-occupation with O.S.H.A. occurs, and not in a productive sense. Understanding and compliance in many areas is difficult to achieve."

IMPRACTICAL REGULATIONS

Another concern of business with regards to OSHA has been that regulations are either impractical for local operations or that they do not conform to reality. A case in point involved P.M.F., Incorporated. In Twin Falls, Idaho, on June 12, 1972, this firm, a small construction company with fewer than ten employees, was at work on a job which OSHA suddenly closed down while a Compliance Officer conducted an inspection. It is true that OSHA's own Compliance Operations Manual says an inspection "shall be such as to preclude unreasonable disruption of the operations of the employer's establishment..." but that was ignored. After the inspection, OSHA ordered that roll bars be put on a crawler tractor, which P.M.F.'s President, Dee Pace (who has twenty-five years of experience) says would be dangerous because the tractor is used in an open field. Nonetheless, OSHA proposed fines totalling \$1,430 for P.M.F., to which would be added the cost of the changes. So, as the Act per-

mits, Mr. Pace contested the proposed penalties with a registered letter. OSHA later claimed that Pace had not contested and that the penalties were therefore final.

COST:

The costs of doing business have sharply increased since the creation of OSHA. This is the view of Engineering News Record which reported on August 24, 1972, that OSHA had added \$4,315 to the base price of a new Caterpillar D-9 tractor. Estimates of how much OSHA regulations raise general business costs range as high as 10% and more. Unless business absorbs these costs, then the only place they can be passed onto is the consumer.

COURT CASE:

Recently, OSHA has been dealt a series of crippling blows regarding its constitutionality. The most notable was the three-judge federal court decision filed December 30, 1976, in the U.S. District Court of Idaho. In Barlow's Inc. v. Usery ruled that Section 8(A) of the Occupational Safety and Health Act of 1970 (OSHA) is unconstitutional because it allows federal inspectors to enter businesses and farms without a search warrant. The clause authorizing such warrantless inspections was found by the judges to be "unconstitutional and void in that it directly offends against the prohibitions of the 4th Amendment of the Constitution of the United States of America."

At this time OSHA is appealing the case before the U.S. Supreme Court; however, this district court ruling places OSHA in a constitutionally tenuous position.

KEY BILLS:

Already there are six bills in the House of Representatives that call for the repeal of OSHA. They are H.R. 4416-Rep. Phil Crane (R-Ill.), H.R. 3850-Brinkley (D-Ga.), H.R. 1679-Ketchum (R-Cal.), H.R. 1348-Symms (R-Ida.), H.R. 676-Rousselot (R-Cal.), and H.R. 6313-Hammerschmidt (R-Ark.)

Furthermore, there are two bills that would provide that the requirements of the OSHA Act apply to the Congress, Federal agencies, and the Courts of the United States. These bills are respectively H.R. 4215-Pressler (R-Iowa) and H.R. 6509-Pressler (R-Iowa). Also Rep. George Hansen (R-Idaho) has introduced H.Con.Res. 56 expressing the sense of the Congress that inspections pursuant to Section 8(A) of the Occupational Safety and Health Act of 1970 shall cease pending a determination by the Supreme Court of the United States of the constitutionality of such inspections.

Also Cong. Robin Beard (R-Tenn.) introduced on April 5, 1977, H.R. 6054 as an amendment to the Occupational Safety and Health Act of 1970. It would provide that any employer who successfully contests a citation or penalty shall be awarded a reasonable attorney's fee and other reasonable costs.

BEARD REFORM BILL:

Cong. Robin Beard has introduced the most comprehensive of the OSHA reform bills. This bill (H.R. 6055) is similar to the reform bill he introduced during the 94th Congress (H.R. 7836).

The major provisions of this bill include:

- a. Prohibition against advance notice of inspection removed; sanctions removed.
- b. Nonagricultural employers employing twenty-five or less; and small farmers both exempted from coverage.
- c. Employer may establish safety committee for purposes of the Act without violating Section 8 of NLRA.
- d. For each proposed new standard the Secretary must include a statement regarding its financial impact, and must have given due regard to that impact when determining that the benefit to be derived justifies the proposed standard.
- e. Grandfather clause is included for equipment and facilities unless failure to change or phase out before natural expiration would result in serious violation ("if there is a substantial probability that death or serious physical harm could result....").
- f. Employer has the option to use alternative protective equipment and technological procedures where adequate protection afforded to employee and where no danger created thereby.
- g. Even if violation found, no citation or suggested penalty to be issued if employer can show that health and safety of employees in the facility inspected not materially affected by the violating conditions; or that alternative procedures employed which are as effective; or reasonable efforts and adequate notice provided by employer and violation due to employer.
- h. Deletes the provision which allows employer to be assessed up to \$1,000 civil penalty for non-serious violation.

CONCLUSION:

Both H.R. 6054 and 6055 seem to go a long way in meeting the objections of small business to OSHA, while yet requiring that workers be protected in a safe working environment. Individuals who have constitutional or moral objections to the concept of OSHA will probably endorse the repeal bills in Congress, while Rep. Robin Beard's bill tries to eliminate many of those features of the present OSHA law that concern small businessman and farmer/rancher alike.

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ADDENDUM:

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Yesterday, Secretary of Labor Ray Marshall announced that some of the changes in OSHA policy will be as follows:

- 1) In such high-risk industries as construction, manufacturing, transportation and petrochemicals, OSHA will increase its share of inspections from the current 80-85 percent to 95 percent.
- 2) Suspending penalties for standards violations that "have nothing to do with worker health or safety" until the standards are rewritten or revoked.
- 3) Offering handbooks with simple checklists and other self-help guides, professional services to encourage voluntary compliance.
- 4) Eliminating outdated or unnecessary regulations, and simplifying regulations that are "needlessly detailed, complicated or unclear."

Summary:

None of the proposed changes are addressed to the Constitutional objections to OSHA, nor are there efforts to incorporate the reforms advocated in Rep. Robin Beard's HR 6055.