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OSHA Reform: “Partnership” with Employers

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OSHA Reform: “Partnership” with Employers

SUMMARY

The Occupational Safety and Health Administration has occasioned controversy ever since its inception in 1971, both for being too strict with employers and not being strict enough. In the last few years most of the OSHA reform bills in the Congress have been presented as a response to the complaints of small business. The common theme is to shift the agency away from levying fines and toward cooperatively working with employers to solve problems.

The most prominent of the bills in the 106th Congress aimed at fundamentally changing safety regulation was the SAFE Act (Safety Advancement for Employees Act, in related but not identical versions as H.R. 1427/S. 385). The centerpiece was a program under which employers could contract with private-sector consultants and, if complying with their recommendations, be exempt from OSHA civil penalties for the following year. (S. 385 was reported by committee on April 29, 1999.)

There were also a number of bills in the 106th Congress dealing with particular issues. The chairman of the House Subcommittee on Workforce Protections introduced a package that would: allow for a waiver of penalties for some violations by small businesses (H.R. 1437), require that risk-benefit analyses be done on an industry by industry basis (H.R. 1436), provide new procedures for whistleblower protection suits (H.R. 1439), assure confidentiality for employer self-audits (H.R. 1438), and clarify application of the National Labor Relations Act (H.R. 1434). (None of these were reported by the committee.)

Several bills would have reformed the

methods all safety-related agencies (not just OSHA) would use in fashioning their regulations. S. 746 would have codified that cost-benefit analyses be done for major new regulations (currently required by Executive Order), and would have subjected these analyses to peer review and, potentially, judicial review. However, the agencies would not be required to show quantitatively that benefits of their final rules exceed the costs. S. 59/H.R. 1074 called for an annual review of regulations on the books, with recommendations, by the Office of Management and Budget. (S. 746 and H.R. 1074 were reported by committee.)

The Clinton Administration stressed whistleblower protection as a legislative priority, arguing that the protections afforded by the OSH Act in 1971 are not as effective as other, more recent, Federal laws. S. 652 and H.R. 1851 would have allowed a private right of action by complainants, whereas currently only the Labor Department can bring actions on workers' behalf. Moreover, these bills would have increased recoveries to include full compensation and punitive damages. (Neither advanced beyond committee.)

Meanwhile, the Clinton Administration moved forward by regulation on some important new standards. The new ergonomic standard requires all employers to respond to reported injuries by developing plans to deal with a potentially wide range of ergonomic hazards. Congress almost passed a legislative rider to prevent the issuance of an ergonomic standard, but the Administration was able to complete the rulemaking. Opponents of the measure could still try to overturn it by court action or by use of the Congressional Review Act.

MOST RECENT DEVELOPMENTS

On November 14, 2000 the Clinton Administration issued its standard on ergonomics, making moot a provision in the then pending appropriation bill that would have prevented its issuance. Opponents of the rule have already sued, and may also try to invoke the Congressional Review Act to block it.

BACKGROUND AND ANALYSIS

The Occupational Safety and Health Administration (OSHA) has operated since its creation in 1970 under an authorizing statute (“OSH Act,” P.L. 91-596) that was never directly amended until 1998 (when the U.S. Postal Service was brought under its jurisdiction) despite many attempts to do so. Its mission is to assure a safe and healthful workplace for all working Americans within its jurisdiction (about 85% of the nation’s workforce) and it has operated in recent years with a budget of about \$300 million. The agency has occasioned controversy since its inception, both by acting and failing to act. Up to and through the 103rd Congress (1994), most legislative initiatives were directed toward strengthening OSHA’s authority, but with the 104th Congress, significant efforts have been made to constrict its authority. In the past, when initiatives arose in the Congress to redirect the agency, OSHA responded by moving sufficiently to preempt new legislative mandates. While resolution of current controversies is unpredictable, it is noteworthy that OSHA is already in a process of simplifying its regulations, restructuring its offices, and giving employers new options for “partnership” with the agency.

The Clinton Administration and congressional leaders seemed to be in basic agreement that the relationship between OSHA and the businesses it regulates needs redirection. A political consensus seems to be emerging that there needs to be greater emphasis on technical assistance to employers rather than enforcement. An approach focused exclusively on law enforcement is not enough, if only because the agency will never have the resources to inspect frequently every workplace. Employers should be encouraged and assisted to make safety an integral part of the way they do business, while traditional enforcement powers are reserved for those employers who are clearly negligent. But differences arise over a host of particulars. Current OSHA reform is an area where, in important respects, “the devil is in the details.”

General Political Considerations

Surveys of small business owners have repeatedly shown that they consider OSHA to be the most difficult of the federal regulatory agencies to deal with, and the bills discussed here are largely a response to such sentiment. Big business is not particularly happy with OSHA either, but their opposition is relatively muted because they have professional staffs dealing full time with safety and their workers’ compensation is self-insured or experience-rated (i.e., safety saves them money). Their concern is more that “reasonable” standards be written so that they know exactly what is expected of them. The other principal political actor — the trade union movement — generally wants OSHA regulation to be as strict as possible, but this orientation has not received prominent representation since 1994 by either congressional or Administration leaders.

Debate over OSHA has long been polarized. On one side, the “reform” camp portrays employers as essentially well-meaning and concerned for their employees’ welfare, and paints OSHA as a bureaucracy most interested in scoring points with “gotcha” citations. In this world view, OSHA needs to be transformed into a helpful consultant. The opposing, more traditional view is that employers will cut corners on safety as much as they can, while OSHA is the “white knight” riding to the rescue of employees. If enforcement powers are never exercised, few employers will sign up for “voluntary” consultation programs.

These opposing views come most clearly to the fore in the issue of penalties for citations. Small business representatives maintain that many citations arise because the standards are so complicated that employers don’t understand them. Thus, it is only fair that they be given a chance to correct them before being fined. Further, corrective expenditure directly improves the situation, which fines do not. On the other side, advocates of strict enforcement believe that many employers will only make the workplace as safe as they have to: If there is no extra cost in being cited, they just will not correct dangerous situations until an inspector comes and specifically directs them to do so.

“Reinventing” OSHA

Legislative Initiatives in General

Since the beginning of the 104th Congress a number of measures have been introduced with the common theme of shifting OSHA’s emphasis away from levying fines and toward cooperatively working with employers to provide guidance and to solve problems. Sponsors of these bills maintain that most employers want to make their workplaces safe and lack only information about how to do so. Although there is wide agreement that OSHA must retain enforcement powers to deal with those employers who would otherwise disregard safety, bill sponsors want OSHA to give all businesses a chance and not immediately “treat them as criminals.” Legislatively, there are two basic tracks: comprehensive reform bills and narrower, incremental bills.

The SAFE Act

The most prominent of the comprehensive reform bills has been the Safety Advancement for Employees Act (SAFE Act), S. 385 (Enzi) in the 106th Congress. (A related bill in the House was H.R. 1427 (Talent)). S. 385 would have made a number of specific changes in agency functioning. Its centerpiece was a new program under which employers could contract with private-sector safety consultants and, if gaining from them a certificate of compliance, be exempt from OSHA civil penalties for the following year. One of the requirements for compliance would be that the workplace must have a “safety and health program,” that is, an organized, participatory system for identifying and mitigating the particular hazards of each workplace. As specified by S. 385, these programs would be similar to — though differing in key details from — the programs long advocated by OSHA itself and which it has tried to embody in an administrative rulemaking (see below). Advocates of the SAFE Act claim that it would improve safety by bringing to bear professional expertise in a greater number of workplaces than OSHA inspectors could ever reach. Opponents express concern that there will be temptations to “buy” exemption from enforcement by dealing with lax or unethical consultants.

Other provisions of S. 385 included:

- ! authorization for issuance of a warning in lieu of a citation in cases where an employer “in good faith acts promptly to abate a violation;”
- ! authorization for employers to conduct alcohol and substance abuse testing under specified guidelines;
- ! a pilot program for expediting voluntary consultations with OSHA for small businesses, including an opportunity to correct violations without being fined; and
- ! codifications (with some changes) of current programs, such as the Voluntary Protection Program.

S. 385 differed in a number of respects from its predecessor in the 105th Congress, in response to various comments. Thus, the exemption from penalties was shortened from two years to one, and the requirement of adopting a workplace safety program was added. Excluded from the new bill were (a) a provision requiring new regulations to be reviewed by the National Academy of Sciences, (b) additional requirements for employees filing safety complaints, and (c) authorization of labor-management safety committees outside the usual collective bargaining framework. S. 385 was reported by the Senate Committee on Health, Education, Labor and Pensions on April 29, 1999.

Incremental Bills

Whistleblower Protection. The Clinton Administration identified whistleblower protection as its highest legislative priority for OSHA at the outset of the 106th Congress, claiming that the OSH Act of 1971 falls short of such protections in many other more recent laws. Complaints are a key element in the safety compliance system, as OSHA has only limited resources for conducting random (“programmed”) inspections. Even though the OSH Act prohibits employers from retaliating against employees who report safety problems to OSHA, it has been estimated that perhaps two-thirds of employees filing complaints subsequently lose their jobs. Some business groups argue, though, that many complaints are spurious, for example if a union threatens to call for OSHA inspections as a pressure tactic.

Various bills were introduced; H.R. 1439 (Ballenger) was approved by the House Subcommittee on Workforce Protections on May 19, 1999. It would have extended the employee’s filing deadline for a claim of retaliation (to 60 days instead of 30) and shorten the Labor Department’s allowed response time (to 20 days instead of 90). Most importantly, it would have allowed for private action if the Labor Department does not pursue the case in a timely manner. These claims would be heard by the Occupational Safety and Health Review Commission rather than by a federal court, though they could be appealed to the courts.

The Clinton Administration favored a reform approach along the lines of S. 652 (Wellstone and Kennedy) and H.R. 1851 (Owens). These bills, as well, would have allowed workers to bring their own cases before an administrative law judge, lengthen the time for workers to file complaints about retaliation (to 180 days), and expedite resolution. Going beyond the provisions of H.R. 1439, though, they would have explicitly expanded the remedies available by including punitive damages and compensation for the complainant’s legal costs. (There is some legal dispute as to whether punitive damages are authorized by current law.)

Aside from legislative changes, it has been suggested (by the Labor Department Inspector General, among others) that OSHA itself could do more to pursue retaliation cases. Only about 1% to 2% of these cases brought to OSHA are referred to the Labor solicitor for prosecution; another 12% to 15% result in settlement with some compensation. Arguably, though, the agency is hamstrung in pushing for stronger settlements because current law is limited in how much complainants could receive even if they win in court. One action the agency has begun is to better publicize to workers generally that they do have some whistleblower protections under current law and practice.

Ballenger Package. As he did in the 105th Congress, the Chairman of the House Subcommittee on Workforce Protections (Mr. Ballenger) introduced a package of focused OSHA reform bills. These would have:

- ! Authorized employers to deal with employees in joint committees and other collaborative ways on safety-related issues without running afoul of the National Labor Relations Act (H.R. 1434);
- ! Required OSHA to state to which industries new standards will apply, and perform its risk-benefit analyses on an industry-specific basis (H.R. 1436);
- ! Waived penalties for “non-serious” violations by small businesses when they promptly abate the violations (H.R. 1437);
- ! Assured confidentiality, under specified conditions, for employers’ self-audits of safety (H.R. 1438, also as part of H.R. 1439); and,
- ! Provided for private right of action (before the Occupational Safety and Health Review Commission) for workers claiming they were retaliated against for making safety complaints (second part of H.R. 1439).

Cost-Benefit Principles in Standard Setting. Several bills would provide more oversight for the regulations of many agencies. (In the case of OSHA, safety regulations are known as “standards.”) They would require that the agencies report on the costs and benefits of their regulations, and that these reports be examined by higher authorities (such as the Office of Management and Budget) and independent peer reviewers. The bills would not necessarily change any particular regulation, but the explicit attention paid to costs, in particular, could make some measures politically untenable.

The most prominent of these bills in the 106th Congress was S. 746 (Levin, Thompson et al.), which was a further revision of S. 981 from the 105th Congress, which bill had been revised in July 1998 after negotiations with the White House. S. 746 would have required safety-related agencies to perform cost-benefit analyses on major new rulemakings (as already required by Executive Order), and submit these analyses to outside peer-review when the regulation would have an economic impact of more than a \$500 million. The analysis could be challenged in court, but only on the grounds that the agency was arbitrary and capricious. The analysis would have to lead to a determination as to whether the benefits justify the costs, but the agency’s final decision on the regulation would not have to follow from that determination. This is important in the case of OSHA, as the OSH Act, as interpreted by the courts, requires that standards be as protective as possible regardless of cost, limited only by what is technically and economically *feasible*. S. 746 was reported by the Committee on Governmental Affairs in July, 1999.

Another approach to the disclosure of costs and benefits was embodied in S. 59 (Thompson) and H.R. 1074 (Bliley), the Regulatory Right-to-Know Act. These would have required the Office of Management and Budget (OMB) to compile annually a detailed report

on the costs and benefits of all major regulations currently on the books (by all of the regulatory agencies), and make recommendations for revising inefficient regulations. They would also have the OMB prescribe guidelines for agencies to follow in doing their cost-benefit analyses. H.R. 1074 was passed by the House on July 26, 1999.

Outside review panels would have been required by bills applying specially to OSHA and the Mine Safety and Health Administration (MSHA). H.R. 2639 (Bonilla) would have required review of new OSHA standards by panels of technical experts. S. 1114 (Enzi) would have extended to MSHA a procedural step that currently applies to OSHA and the Environmental Protection Agency. Specifically, S. 1114 would have required that new standards be reviewed at a relatively early stage by panels representing small mine owners. It was reported by the Committee on H.E.L.P. in January, 2000.

Other Bills. There were many other OSHA-related bills in the 106th Congress, most of these dealing with specific hazards, with OSHA's enforcement of standards ("compliance"), or with the scope of coverage of OSHA jurisdiction. Only one, the needlestick bill, was enacted and, indeed, it was the only one to be reported by committee.

The problem of needlesticks and other injuries suffered by health care workers who use sharp instruments ("sharps") led to P.L. 106-430 [H.R. 5178 (Ballenger and Owens) / S. 3067 (Jeffords)]. This amends OSHA's standard on bloodborne pathogens so as to require health care facilities to explicitly (and with staff input) consider using needleless systems and other "safer medical devices." The needlestick issue also was brought into the Labor appropriations bill when the Senate added provisions (S.Amdt. 3629 and S.Amdt. 3630) declaring a sense of the Senate and allocating \$10 million for an information clearinghouse on safer "sharps." However, these provisions were dropped in conference.

As to compliance, various bills would make the regime either more or less stringent. Tightening was exemplified by S. 651 (Wellstone and Kennedy), which would have allowed criminal prosecution *as a felony* (currently classified as a misdemeanor) of cases where willful violations of the OSH Act lead to fatalities. Easing of the compliance regime would have been achieved by H.R. 391 (McIntosh) (elimination of penalties for most first-time violations of paperwork rules of most agencies) and H.R. 1987 (Goodling) / S. 1158 (Hutchinson of Arkansas) (providing recovery of attorneys' costs when accused employers prevail on the issues).

OSHA's jurisdiction would have been expanded to state and local government workers by H.R. 776 (Andrews), to U.S. Department of Energy Facilities by H.R. 3907, and to federal workers generally by S. 650 (Wellstone and Kennedy). Several bills were introduced in January 2000 in response to an OSHA advisory about the coverage of "telecommuters." The agency then revoked its opinion letter and launched public consultations on the proper treatment of potential hazards of home office work. On February 25 it was announced that home offices would be exempted from random inspections, and that employers would not be expected to inspect their employees' homes. OSHA did reserve the right to follow up on referrals indicating dangerous conditions.

Initiatives by the Clinton Administration

The Clinton Administration included several projects for OSHA in its "reinventing government" initiative. These include simplifying the language of safety standards; providing

on-line, interactive guides to the more complex standards; restructuring area offices; and fashioning a “construction directorate” to deal specifically with the unique features of that important sector. Generally speaking, these projects successfully achieved their limited objectives.

A more ambitious effort, the Cooperative Compliance Program (CCP), had to be pared back significantly after being challenged in court. Under CCP, firms with the worst records of injuries and violations were to be given special attention. They would have the choice of entering the program, getting technical assistance and a chance to improve their performance, or not entering, which could mean a heightened degree of inspections and enforcement. But after an adverse court decision (*Chamber of Commerce v. OSHA*, D.C. Circuit, No. 98-1036, 9 April 1999), OSHA went forward with a plan embodying only part of CCP, namely, the targeting of inspections according to firm-specific accident rates.

New Standards

Ergonomics. Improper ergonomic design of jobs is one of the leading causes of work-related illness, accounting for perhaps a third of employers’ costs under workers’ compensation. Due to the wide variety of circumstances, however, any comprehensive standard would necessarily be complex and costly, while scientific understanding of the problem is not yet complete. Nevertheless, proponents believe that it would be worth the effort, preventing extensive pain, suffering, medical expense and lost productivity. Congressional debate has been framed in terms of how much is known or not known. Opponents of immediate rulemaking emphasize the gaps in knowledge and argue for further study; OSHA and other proponents of a rule say that the problem is urgent and that enough is known to begin bringing it under control.

On November 14, 2000, the Occupational Safety and Health Administration (OSHA) issued its ergonomics standard. It requires employers to set up control programs for any job categories where “work-related musculoskeletal disorders” are reported. These programs include hazard identification and control, employee participation, medical management, and training. (However, if a “Quick Fix” option resolves the reported problems within 90 days, the second level would not be required.) “Medical management” means, among other things, that convalescing employees could be excused from work (or regular work assignments) with up to normal pay for up to 90 days.

Legislative riders to the Labor Department appropriations bills have been enacted repeatedly since 1995 to prevent OSHA from issuing a final standard. Opponents of OSHA action alleged that the agency was trying to rush the standard through with inadequate public input, deliberation, or scientific basis. In particular, they believe that OSHA should have waited to take into account a review of the literature by the National Academy of Sciences, which is being conducted pursuant to a Congressional mandate. In June 2000 both chambers added an amendment to the Labor Department appropriations bill (H.R. 4577) to prevent issuance of a final rule at least through FY2001. This became one of the most hotly contested issues in concluding a conference committee report and reaching agreement with the President on the appropriation bill. Before final agreement was reached, however, OSHA issued the final rule and rendered moot the question of whether it would be allowed to do so. However, active opposition continues. Suits have been brought by both business and labor groups, and Congressional opponents may seek to invoke the Congressional Review Act (5 U.S.C., Sections 801-808) to overturn the rule.

Comprehensive Workplace Safety Programs. For several years OSHA has given high priority to a “workplace safety and health programs” rule, but was unable to promulgate it in final form during the Clinton administration. What the rule would do is require virtually all employers to examine the hazards in their particular worksites and devise a formal plan to address those hazards. A keynote of such programs, as formulated by OSHA, is the full participation of employee representatives throughout the process.

Draft language was released in November, 1998 but, in light of the court decision on the Cooperative Compliance Program, it appears that a workplace programs rule would be considered a “standard” that imposes new substantive obligations on employers. Hence, it could only be issued after a formal notice, hearing and comment process, and OSHA has deferred action indefinitely.

OSHA maintains that workplace programs are very effective at reducing risks, to the benefit of employers (through reduced worker compensation costs) as well as employees. Moreover, workplace programs allow tailoring to the particular circumstances of the business, rather than relying exclusively on the relative inflexibility of “one size fits all” standards. Consequently, many businesses, both unionized and non-unionized, have already implemented workplace safety programs voluntarily.

Nevertheless, the most prominent business associations vigorously oppose adoption of a programs rule. Their objections are that it is costly (especially for small business), it “sneaks” into practice a number of safety standards that OSHA could not promulgate in the proper manner, and it may upset the balance of rights and responsibilities established by federal labor law. They agree that well-structured programs can save employers money, but note that they are being adopted voluntarily to the extent that this is so. A rule would reduce flexibility to the extent that it is specific, but open employers to capricious enforcement if it is made too flexible.

LEGISLATION

P.L. 106-430

[H.R. 5178 (Ballenger and Owens)/S. 3067 (Jeffords)]

Needlestick Safety and Prevention Act. Revises OSHA standard on bloodborne pathogens by requiring health care facilities to explicitly consider and adopt, in consultation with staff, the appropriate use of safer medical devices to prevent injuries from sharp instruments. Requires employers to maintain a “sharps” injury log. H.R. 5178 introduced September 14, 2000, referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections. Approved by Subcommittee September 19. Called up to House floor and passed under suspension, October 3. Taken up and passed by Senate, October 26. Signed by President November 6.

H.R. 987 (Blunt)/S. 1070 (Bond)

Prevents OSHA from promulgating a standard on ergonomics before the National Academy of Sciences completes a review of the scientific literature. H.R. 987 introduced March 4, 1999, referred to Committee on Education and the Workforce, Subcommittee on

Workforce Protections. Approved by subcommittee May 19, approved by full committee June 24. Passed House by vote of 217-209, August 3. S. 1070 introduced May 18, 1999; referred to Committee on Health, Education, Labor and Pensions.

H.R. 1074 (Bliley)/S. 59 (Thompson)

Regulatory Right to Know Act. Bills not identical, but both would generally: Require annual statement by the Office of Management and Budget of costs and benefits of existing regulatory programs, and recommendations regarding duplications and inconsistencies. Require agencies to follow uniform guidelines for measuring costs and benefits of proposed regulations. H.R. 1074 introduced March 11, 1999, referred to Committee on Government Reform, Subcommittee on National Economic Growth. Subcommittee reported measure in the nature of a substitute April 20. Full committee reported, amended, June 7 (H.Rept. 106-168). Passed House, amended, by vote of 254-157, July 26. S. 59 introduced January 1999; referred to Committee on Governmental Affairs. Hearing held April 22. (Senate Hrg. 106-180).

H.R. 1192 (Hefley)

Repeals enforcement provisions of the OSH Act, provides for technical assistance for small businesses. Clarifies application of National Labor Relations Act. Introduced March 18, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 1427 (Talent)/S. 385 (Enzi)

Safety Advancement for Employees Act (SAFE Act). Allows employers to consult with private safety consultants and gain exemption from OSHA civil penalties, for a year at a time. Authorizes warnings in lieu of citations in some cases. Allows employers to conduct alcohol and substance abuse testing under certain guidelines. Codifies and expands current programs, such as Voluntary Protection. H.R. 1427 introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections. S. 385 introduced February 6, 1999; referred to Committee on HELP, Subcommittee on Employment, Safety and Training. Reported, amended, by full committee October 28 (S.Rept. 106-202).

H.R. 1434 (Ballenger)

Authorizes employers to deal with employees in any capacity on safety and health issues, notwithstanding National Labor Relations Act. Introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections. Hearing held May 13.

H.R. 1436 (Ballenger)

Requires that cost-benefit analyses be done on proposed regulations on an industry-specific basis. Introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 1437 (Ballenger)

Waives penalties for non-serious violations by small businesses if violations are promptly abated. Introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 1438 (Ballenger)

Prevents information from employer self-audits from being used in enforcement actions except under certain conditions. (Substance of this bill also found in H.R. 1439.) Introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections. Hearing held April 21.

H.R. 1439 (Ballenger)

Modifies whistleblower protection provisions of OSH Act. Provides for an administrative right of action by the claimant. Also includes audit confidentiality provisions of H.R. 1438. Introduced April 15, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections. Approved by subcommittee May 19, 1999.

H.R. 1851 (Owens)

Strengthens whistleblower protection provisions of OSH Act. Introduced May 18, 1999; referred to Committee on Education and the Workforce.

H.R. 1987 (Goodling)/S. 1158 (Hutchinson of Ark.)

Provides recovery of attorney's fees by employers or unions who prevail in cases brought by OSHA or the National Labor Relations Board. H.R. 1987 introduced May 27, 1999; referred to Committee on Education and the Workforce. Reported, amended, October 14 (H.Rept. 106-385). S. 1158 introduced May 27, 1999; referred to Committee on Health, Education, Labor and Pensions, Subcommittee on Employment, Safety and Training. Hearing held July 29.

H.R. 2639 (Bonilla)

Requires "broadly representative," independent panels to review the scientific and economic data supporting new OSHA standards. Introduced July 29, 1999; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 3518 (Davis of Va.)

Makes OSH Act inapplicable to employment performed in an employee's residence with use of electronic devices. Introduced January 24, 2000; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 3530 (Shaw)

Makes OSH Act inapplicable to employment performed in an employee's residence. Introduced January 24, 2000; referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 3907 (Bliley)

Makes Department of Energy Facilities subject to occupational safety regulation by the Nuclear Regulatory Commission (for radiological risks) and by OSHA (all other occupational safety risks). Introduced March 14, 2000; referred to Committees on Commerce, Science, Armed Services, and Education and the Workforce. Hearing held by Commerce Subcommittee on Energy and Power, March 22.

H.R. 4098 (Hoekstra)

Makes OSH Act inapplicable to office employment performed in an employee's residence. Requires OSHA to conduct a rulemaking to define home office employment and to specify application of OSHA standards to other types of home work. Introduced March 28, 2000; referred to Committee on Education and the Workforce.

H.R. 4577 (Porter)

Labor, health and education appropriations bill. Section 103 of House version, as reported by committee, prohibits use of funds to issue a standard on ergonomic protection. H.Amdt. 760 (Traficant) would strike that provision. Amendment rejected June 8, 2000 on vote of 203-220. Bill passed House June 14. Senate bill as reported by committee did not have an ergonomics restriction. S.Amdt. 3593 (Enzi) would bar issuance of standard during FY2001. Amendment adopted by vote of 57-41 on June 22. Bill passed Senate June 30. Ergonomics provision dropped in conference, December 15 (H.Rept. 106-1033).

H.R. 5037 (Hall of Texas and Tauzin)

Codifies an "employee misconduct" defense for employers who are cited for a violation of an OSHA standard. Also allows "alternative methods" of protecting employee safety if they are equally effective as the standard. Introduced July 27, 2000, referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

H.R. 5038 (Hall of Texas and Tauzin)

Specifies that an employer on a multi-employer work site is not responsible for violations caused by other employers (with exceptions). Introduced July 27, 2000, referred to Committee on Education and the Workforce, Subcommittee on Workforce Protections.

S. 650 (Wellstone and Kennedy)

Extends full OSH Act coverage to Federal employees. Introduced March 17, 1999; referred to Committee on Health, Education, Labor and Pensions.

S. 651 (Wellstone and Kennedy)

Increase criminal penalties under the OSH Act for willful violations that result in fatalities. Introduced March 17, 1999; referred to Committee on Health, Education, Labor and Pensions.

S. 652 (Wellstone and Kennedy)

Strengthens whistleblower protection provisions of OSH Act. Introduced March 17, 1999; referred to Committee on Health, Education, Labor and Pensions.

S. 653 (Wellstone and Kennedy)

Combines provisions of S. 650, S. 651, and S. 652. Introduced March 17, 1999; referred to Committee on Health, Education, Labor and Pensions.

S. 746 (Levin, Thompson et al.)

Regulatory Improvement Act. Requires cost-benefit analyses and risk assessments for major new regulations by safety-related agencies, such studies subject to independent peer reviews and, potentially, judicial review. Introduced March 25, 1999; referred to Committee on Governmental Affairs. Hearing held April 21, 1999. Reported, amended, July 20, 1999 (S.Rept. 106-110).

S. 1114 (Enzi)

Requires that new standards of the Mine Safety and Health Administration be submitted for review by panels representing small mine owners. Introduced May 25, 1999; referred to Committee on Health, Education, Labor and Pensions. Reported January 7, 2000 (S.Rept. 106-227).

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Education and the Workforce. Subcommittee on Oversight and Investigations. *OSHA Policy Concerning Employees Working at Home*. Hearing, January 28, 2000. Serial No. 106-81. Washington, U.S. Govt. Print. Off., 2000. 154 p.

— — *Under the Radar Screen Rulemaking at the U.S. Department of Labor: OSHA's Employee Work-at-Home Policy and Beyond*. Hearing, April 5, 2000. Serial No. 106-101. Washington, U.S. Govt. Print. Off., 2000. 84 p.

U.S. Congress. House. Committee on Education and the Workforce. Subcommittee on Workforce Protections. *The Federal Mine Safety and Health Act of 1977*. Hearing, July 30, 1998. Serial No. 105-137. Washington, U.S. Govt. Print. Off., 1999. 279 p.

— — *H.R. 987, H.R. 1438, H.R. 1439, and H.R. 1459*. Hearing, April 21, 1999. Serial No. 106-26. Washington, U.S. Govt. Print. Off., 1999. 284 p.

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