



SafetyNet

ESSENTIAL INFORMATION FOR THE SAFETY PROFESSIONAL

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Solis Named as New Secretary of Labor

President-elect Obama Dec. 19 announced the appointment of Rep. Hilda Solis (D-Calif.) as the new Labor secretary, an action that received high marks from environmental groups, in part because of her support for efforts to promote so-called green jobs.

Solis serves on the House Committee on Energy and Commerce where she is vice chair of the Environment and Hazardous Materials Subcommittee and a member of the Health and Telecommunications subcommittees. She also is a member of the House Committee on Natural Resources and a member of the House Select Committee on Energy Independence and Global Warming.

The Sierra Club praised the California congresswoman as a “tireless advocate for environmental issues, environmental justice, workers’ rights, and green jobs.”

“We can think of no better person to help President-Elect Obama implement his plans for an economic recovery fueled by the creation of millions of new green jobs,” Pope said, adding Solis also “understands that green jobs must also be good jobs and has worked to make sure that the clean energy economy is one that lifts up all workers.”

Solis first was elected to Congress in 2000 and last month was elected to her fifth term in the House, representing California’s 32nd Congressional District, which includes portions of East Los Angeles. Solis previously served eight years in the California Legislature.

OSHA Rule Establishes Per-Employee Citations

Employers will be required to provide personal protective equipment to every covered employee and can be cited for noncompliance on a per-employee basis under a new Occupational Safety and Health Administration final rule (73 FR 75568, 12/12/08).

The rule amends OSHA regulatory language to “make it unmistakably clear that each covered employee is required to receive personal protective equipment and training, and that each instance when an employee subject to a PPE or training requirement does not receive the required PPE or training may be considered a separate violation subject to a separate penalty,” according to the text of the rule.

The rule largely stems from a decision of the Occupational Safety and Health Review Commission in the case of Erik K. Ho, a Houston businessman who hired workers to handle asbestos but failed to provide them with respirators. Ho originally was charged with separate violations for each employee not provided a respirator and each not offered training, according to the final rule.

OSHRC vacated all but one of the respirator violations and all but one of the training violations, claiming “the plain language of the standard addresses employees in the aggregate, not individually.”

Text of the rule is available on the Web at <http://op.bna.com/dlrcases.nsf/r?Open=vros-7m7lxb>.

Standards

OSHA Seeks Comments On Blasting, Longshoring

OSHA is soliciting public comment on proposals for two information collections, one on blasting and explosives and one on longshoring and marine terminal operations, the agency said in two separate notices in the Dec. 8 *Federal Register* (73 FR 74525 and 74527).

OSHA is particularly interested in whether the proposed information collection requirements are necessary for the performance of the agency's functions. OSHA also seeks comments concerning the quality of information collected and how to minimize the burden on affected employers.

The blasting and explosives regulations (29 CFR 1926.900) lay out several information collection requirements governing acts such as prevention of premature firing of blasting caps, storage of explosives, and supplies used in a blast. The longshoring regulations (29 CFR 1917) contain similar provisions.

Comments on either proposal may be submitted online at <http://www.regulations.gov>, by fax to (202) 693-1648, or by mail to the OSHA Docket Office, Docket No. OSHA-2008-0045 (for the blasting regulations) or Docket No. OSHA-2008-0050 (for the longshoring regulation), U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Ave. N.W., Washington, D.C. 20210.

All submissions must be submitted by Feb. 6, 2009, and identify the agency name and docket number.

Cadmium

OSHA Seeks Comments On Cadmium Rules' Changes

OSHA is seeking public comment on proposed changes to the cadmium in construction standard and the cadmium in general industry standard. The requests for comment were published in the *Federal Register* Dec. 5 (73 FR 74197 and 74199).

OSHA wants to reduce its existing burden hour estimate in the cadmium in general industry standard (29 CFR 1910.1027) from 121,177 hours to 92,259 hours, for a total decrease of 28,918 hours. OSHA said in the notice that based upon its review of new data, the agency reduced the number of plants and employees potentially exposed to cadmium. Comments are due Feb. 3, 2009.

Comments on either proposal may be submitted online at <http://www.regulations.gov>, by fax to (202) 693-1648, or by mail to the OSHA Docket Office, Docket No. OSHA-2008-0052 (for the cadmium in general industry standard) or Docket No. OSHA-2008-0051 (for the cadmium in construction standard), U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue N.W., Washington, D.C. 20210.

All submissions must be submitted by Feb. 6, 2009, and identify the agency name and docket number.

Administration

Budget Cuts Leave NIOSH Struggling to Meet Obligations

Budget cuts are constraining ongoing projects throughout the National Institute of Occupational Safety and Health, threatening the agency's ability to fulfill its mission, members of the agency's Board of Scientific Counselors said at a Dec. 4 meeting in Arlington, Va.

NIOSH will absorb the budget cuts partly by limiting expenditures on certain information technology and physical security projects as well as staff travel, Branche said. Each division within the institute also has been asked to identify projects that could be delayed or scaled back, she said.

On Sept. 9, the Centers for Disease Control and Prevention cut NIOSH's budget by \$7.6 million based on "an anticipated government-wide recession and to cover reductions targeted to CDC's centralized mandatory services," said Dr. Christine Branche, NIOSH acting director, quoting a CDC directive at the meeting.

Then, in an October continuing resolution, President Bush froze the budgets of all federal agencies until March 6, 2009 (11 SNET 146, 10/14/08). That left NIOSH's budget, issued by its parent agency, CDC, at \$272.1 million. The institute's budget then was lowered to \$264.5 million. CDC reduced that amount again last month.

"All the federal agencies are fighting for dollars," Branche noted. "I think they're going to be asked to demonstrate the value of what they're doing, in quantitative measures."

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Statistics

Oregon Survey Finds 2007 Had Lowest Injury Rate Ever

Oregon workers employed in the private sector during 2007 had work-related injuries and illnesses at a rate of 5.1 cases for every 100 full-time employees, the lowest rate ever recorded in the state, according to a survey released Dec. 12.

The "2007 Oregon Occupational Injury and Illness Survey Summary" also found the total cases incidence rate was 5.3 in 2006 and 5.4 in 2005.

In 2007, just over half of the total cases resulted in lost workdays, an incidence rate of 2.8 for every 100 full-time employees. The ratio of lost workday cases compared with cases without lost work-time was similar in the past few years.

The highest incidence rate of lost workday cases among industry sectors was 5.6 for every 100 full-time employees in the transportation and warehousing industry, slightly lower than the year before. Other industry sectors had incidence rates as follows:

- the arts, entertainment, and recreation industry had an incidence rate of 4.7;
- the construction industry had a 3.4 incidence rate of lost workday cases, slightly higher than in the previous year;
- the manufacturing sector's incidence rate was 3.6; and
- the agriculture, fishing, forestry, and hunting sector and the utility sector both had an incidence rate of 3.9.

The public sector reported a total cases incidence rate of 5.4 in 2007. The incidence rate of lost workday cases was 2.6.

Nationally, both the total cases incidence rate and the lost workday incidence rate were lower than in Oregon. The 2007 national total incidence rate was 4.2, compared with 5.1 in Oregon. The national lost workday incidence rate was 2.1, compared with the Oregon incidence rate of 2.8.

The Oregon OSHA survey was collected from a sample of employers around the state.

More information on the survey is available under "News Reports" on the Oregon OSHA Web site at <http://www4.cbs.state.or.us/ex/imd/external/>.

Toxic Substances

Study Links Common Solvent, Workers' Neurologic Illnesses

Dry-cleaning and electronics workers exposed to 1-bromopropane (1-BP) were diagnosed with the clinical manifestations of neurotoxicity, the National Institute for Occupational Safety and Health said in a report of cases released Dec. 5.

The cases, when coupled with previously reported studies of workers exposed to 1-BP in the foam cushion manufacturing industry, illustrate the potential health risk of 1-BP exposures, NIOSH said in the *Morbidity and Mortality Weekly Report*. The dry-cleaning and electronics study involves cases that occurred in New Jersey and Pennsylvania between 2007 and 2008.

In recent years, NIOSH said, there has been an increase in the use of the solvent 1-BP as a substitute for ozone-depleting chlorofluorocarbons and other regulated compounds. The solvent is used in multiple manufacturing processes, including vapor and immersion degreasing operations to clean electronics and metal and as a solvent vehicle in industries using aerosol-applied adhesives, such as foam cushion manufacturing.

According to NIOSH, in some states 1-BP now is being used as an alternative solvent within the dry-cleaning industry in response to the restricted use of perchloroethylene, which is considered "probably carcinogenic to humans" by the International Agency for Research on Cancer.

NIOSH said it is evaluating exposures and potential health effects among workers potentially exposed to 1-BP.

NIOSH also is working with a major manufacturer of 1-BP products to better understand the extent of their use, practices that will minimize worker exposure, and proper methods for handling the material.

Currently, NIOSH does not have a recommended exposure limit and OSHA does not have a permissible exposure limit for 1-BP.

The Environmental Protection Agency stated in May 2007 that exposures within or below the range of 17 ppm to 30 ppm are expected to be protective against reproductive effects in men and women, according to NIOSH.

Asbestos

Asbestosis Rate Still High Despite Years of Regulations

Decades after the 1970 passage of asbestos-exposure regulations, workers still are contracting asbestosis with no decrease in the trendlines, according to a report published Dec. 12 by the National Institute for Occupational Safety and Health.

Because asbestosis can manifest itself up to 40 years after the initial exposure, the study, which surveyed asbestosis deaths between 1968 and 2005, was not as telling as the data over the next few years will be, Dr. Jacek Mazurek, a NIOSH scientist and lead author of the report, told BNA Dec. 15. "In the next couple of years we expect the number to go down," he said.

Asbestosis is a disease of the lung tissue. The disease is distinct from gastrointestinal or larynx cancer, lung cancer, or mesothelioma.

In the NIOSH study, asbestosis was the underlying cause of death for 9,024 decedents. In 13 percent of those cases, the decedent was younger than 65 years old. However, within the group of asbestosis deaths that occurred before age 65, the majority (84.3 percent) were at least 55 years old. Only one decedent in the study group was younger than 34.

Of the decedents aged 25 to 64, 96.2 percent were male and 91.0 percent were white. The male deaths accounted for 7,038 total years of potential life lost, defined as years of life before age 65.

The industries with the highest rates of asbestosis-related death were construction and shipbuilding. The specific jobs with the highest rates of asbestosis deaths were administrators and managers; insulation workers; and pipefitters, plumbers, and steamfitters.

The state with the fewest lost work years was South Dakota, which had no asbestosis death of a worker younger than 65 during the study period. The next lowest mean total was three years of potential life lost before age 65, shared by Alaska, Hawaii, North Dakota, and Vermont.

The National Institute for Occupational Safety and Health Report, Asbestosis-Related Years of Potential Life Lost Before Age 65 Years, is available on the Web at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5749a1.htm>.

Federal News

Marine Terminals

Final Rule Governs Vertical Tandem Lifts

Cranes at marine terminals may lift two empty containers stacked atop one another if special interbox connectors are used, according to a final OSHA rule promulgated in the Dec. 10 *Federal Register* (73 FR 75246).

The rule takes effect April 9, 2009.

Certification and testing requirements of interbox connectors also are laid out in the rule amending the longshoring and marine terminals standards of the federal regulations (29 CFR 1917 and 1918).

The new requirements specify that stacked lifting operations, known as vertical tandem lifts, can be performed only by a crane that can restrain unintended rotation about any axis, is capable of handling the load volume and wind sail potential of vertical tandem lifts, and specifically is designed to handle containers.

Container gantry cranes used in vertical tandem lift operations must have load-indicating devices, and operators must be trained and competent in safety procedures. Other parts of the final rule require visual examinations of each container, corner casting, and interbox connector for "obvious structural defects" and prohibit crane lifts when the wind is blowing harder than 55 kilometers per hour.

The rule stipulates only empty containers may be lifted in a vertical tandem lift. To that end, employers must verify each container is empty before it can be raised.

OSHA said testimony at a 1998 meeting on vertical tandem lifts confirmed crane operators sometimes do not know whether a container is empty until it is on the ground.

OSHA's final rule on vertical tandem lifts is available on the Web at <http://edocket.access.gpo.gov/2008/pdf/E8-28644.pdf>.

Risk Assessment

Rule May Be Issued Without OMB Oversight

The Department of Labor's issuance of a final personal protective equipment rule Dec. 12 without Office of Management and Budget oversight raises the possibility the department also could issue the risk assessment rule without that oversight, stakeholders told BNA.

The rule would change the procedure for determining how occupational health standards are set. In a notice of proposed rulemaking published Aug. 29 (11 SNET 129, 9/9/08), the Labor Department said it would require its agencies, including OSHA, to solicit scientific information and studies as well as data on the duration, frequency, and intensity of worker exposures before issuing rules dealing with health issues.

The labor agencies would be required to publish an advance notice of proposed rulemaking to solicit information from the public when developing assessments for health standards regulating occupational exposure to toxic substances.

Under the Clinton-era Executive Order 12866, federal agencies must send rules that could have a significant economic impact to OMB for review. The PPE rule was allowed to skip that step because it only clarifies OSHA regulatory language and adds no new compliance burden for employers, Celeste Monforton, a former OSHA policy analyst and currently a lecturer at George Washington University's School of Public Health and Health Services, told BNA Dec. 15.

A similar argument could be made for the risk assessment rule, Monforton said, because the Labor Department consistently has positioned the rule as an internal policy only, with no impact on the regulated community.

Despite the Labor Department's decision regarding the final PPE rule, spokesman Rick Manning told BNA Dec. 16 the department still intended to send the risk assessment rule to OMB.

Chemical Hazards

Urgent Recommendations Issued for Fertilizer Tanks

The U.S. Chemical Safety and Hazard Investigation Board issued urgent safety recommendations Dec. 9 after last month's collapse of a two-million-gallon liquid fertilizer storage tank at the Allied Terminals distribution facility in Chesapeake, Va.

CSB urged the company to lower the maximum safe fill height of tanks and guard three other nearby fertilizer storage tanks from possible failure.

According to the text of the urgent recommendations, which were unanimously approved by the board and released at a news conference, "The potential for collapse of a tank poses an unacceptably high risk of causing substantial property damage or a number of injuries or possibly deaths among the general public."

The Nov. 12 tank collapse seriously injured two contract workers, who were hospitalized. Two members of the public who tried to aid the injured men required treatment likely related to exposure to ammonia vapor from the released fertilizer.

The fertilizer overtopped a containment dike and flooded sections of a nearby residential neighborhood, requiring ongoing remediation of the soil. At least 200,000 gallons of spilled fertilizer could not be accounted for, and some reached the nearby Elizabeth River, which flows into the Chesapeake Bay.

The recommendations also call on Allied Terminals to develop and implement a corrective action plan for any identified deficiencies in the tanks, according to a CSB press release.

CSB investigators concluded the Nov. 12 collapse of Tank 201, which contained an aqueous solution of ammonium nitrate fertilizer and urea, likely resulted from defective welds on the tank wall.

A copy of the safety recommendations is available on the Web at http://www.chemsafety.gov/news_releases/docs/CSBNews_ReleaseAlliedTerminals12.8.08.pdf.

Federal News

Bloodborne Pathogens

Employers Must Use Lancets With Safety Features

Employers who conduct finger-prick blood sampling at work must use lancets with safety features, OSHA said in a Sept. 9 interpretation bulletin released Dec. 4.

The only exception is when the use of safety lancets is "somehow contraindicated in a particular disease," OSHA said. "As always, if using a safer device compromises either patient safety or medical integrity, its use would not be required."

There are two basic types of lancing devices for workplace use, standard exposed blade lancets and safety type lancets.

The bloodborne pathogens standard in the Occupational Safety and Health Act requires employers to use "engineering and work practice controls to eliminate occupational exposure or reduce it to the lowest feasible extent" to prevent needlestick injuries (29 CFR 1910.1030).

The standard does not apply to self-administered personal tests by employees, OSHA said, such as diabetics who need to self-administer finger pricks to test their blood glucose levels.

The same is true of residential settings, such as nursing care facilities, where residents may need to self-test.

Nevertheless, OSHA recommended in its interpretation that employers require residents and workers to appropriately discard used sharps in specially designed sharps containers rather than in regular office trash. Safety lancets typically feature spring-loaded, auto-retracting blades, OSHA said.

The agency's interpretation responded to a letter from Craig Munson, president of Craig Medical Distribution in Vista, Calif., who asked if the use of standard exposed blade lancets was acceptable.

The letter of interpretation is available on the agency's Web site at <http://www.osha.gov/index.html> under "Interpretations."

Hazardous Waste

Simulator Does Not Meet Training Requirement

Computer training programs that simulate activities in which workers dealing with hazardous waste must be trained are not adequate to meet federal training regulations, OSHA said in a July 2 enforcement letter released by the agency Dec. 4.

The letter was sent to Clay Bednarz, chief executive officer of National Environmental Trainers in Martinez, Ga. It was written in reaction to a National Environmental Trainers' product called "HAZWOPER Hands-On Simulator."

The simulator is an interactive program that recreates a training session on personal protective equipment.

"OSHA expects, as part of the 40-hour (or 24-hour) training requirement, that a trainee be able to don, doff, touch, feel and otherwise manipulate a particular piece of personal protective equipment that an employer of a specific site may require or provide to protect their employees to prevent injury or illness," according to the letter, sent by OSHA Director of Enforcement Programs Richard Fairfax.

"This would include the actual donning and doffing of a respirator and/or chemical protective clothing, and not just using a simulator."

OSHA further requested that National Environmental Trainers correct statements on its Web site regarding the simulator.

National Environmental Trainers' Web site currently states the program merely will "aid" in PPE training. No language on the site indicates the program is an acceptable substitute for actual hands-on training.

Under the hazardous waste operations and emergency response standard, employers must provide training based on the employee's role during site cleanup operations (29 CFR 1910.120).

Health Hazards

OSHA Notice on Diacetyl Is Sent to OMB for Review

OSHA sent an advance notice of proposed rulemaking (ANPR) for its diacetyl standard to the White House Office of Management and Budget Dec. 16 for a regulatory review.

Sending the notice to OMB's Office of Information and Regulatory Affairs reflects earlier promises made by the Labor Department to retroactively apply its proposed risk assessment rule, which mandates the issuance of an advance notice of proposed rulemaking for all new standards, to rulemakings already under way before the proposal was made (11 SNET 144, 9/23/08).

OSHA launched a diacetyl National Emphasis Program aimed at popcorn manufacturing plants in July 2007, responding to pressure from Congress and labor unions to issue a temporary emergency standard for diacetyl exposures (10 SNET 113, 8/14/07).

OSHA then placed the diacetyl rulemaking on its fall 2007 regulatory agenda after rejecting a petition for an emergency temporary standard from the United Food and Commercial Workers and International Brotherhood of Teamsters in 2006. The petition links diacetyl, a food flavoring chemical, with *bronchiolitis obliterans*, a potentially fatal respiratory disease also known as "popcorn lung."

In the department's most recent semiannual regulatory agenda, OSHA added an action date of November 2008 for the diacetyl ANPR and pushed back its goal to complete a Small Business Regulatory Enforcement Fairness Act report for the rule to February 2009, nine months later than the date set in its previous agenda (11 SNET 180, 12/9/08).

Marc Freedman, director of labor law policy for the U.S. Chamber of Commerce, told BNA Dec. 17 that the advance notice is necessary, citing disagreement over whether diacetyl posed a health risk and where OSHA would set any proposed permissible exposure limit.

Enforcement

Bloodborne Pathogens

Commission Affirms Items In Bloodborne Pathogens Case

On remand from the U.S. Court of Appeals for the Third Circuit, the Occupational Safety and Health Review Commission affirmed two items in a case involving violations of the bloodborne pathogens standard (*Secretary of Labor v. Beverly Healthcare-Hillview*, OSHRC, No. 04-1091, 12/3/08).

The case involves two citation items alleging violations of the federal bloodborne pathogens standard, 29 CFR 1910.1030(f)(1)(ii)(A). In 2006, the commission held the provision in the standard requiring employers to provide medical treatment "at no cost" to exposed employees is ambiguous and fails to adequately notify employers whether employees must be reimbursed for time and travel expenses.

The Third Circuit vacated the commission's decision in September, finding Beverly Healthcare-Hillview had fair notice of the secretary of Labor's interpretation of the cited bloodborne pathogens standard provision.

Because the Third Circuit had concluded Beverly had fair notice, the commission affirmed the two citation items that pertained to failure to make medical treatment available at no cost to two employees who suffered needlestick injuries.

The commission also directed Beverly to reimburse the two affected employees for their time spent and travel expenses associated with receiving post-exposure evaluation and follow-up treatment.

Beverly operates a nursing home facility in Altoona, Pa. The employer was cited under 29 CFR 1910.1030(f)(1)(ii)(A) after two nurses suffered needlesticks in separate incidents. The standard requires the employer to make medical treatment available "at no cost" to employees.

The Beverly nurses sought medical attention during their nonworking hours because the clinic was closed

during their shifts. Beverly paid for the medical treatments but did not reimburse the nurses for their time or travel costs.

The secretary, asserting the employees were not adequately compensated, filed a motion for summary judgment with the commission. The employer filed a cross motion for summary judgment, arguing it only had to pay for the medical treatment. OSHRC Administrative Law Judge Covette Rooney granted the secretary's motion and ordered the employer to reimburse the nurses.

On review, the commission majority held the phrase "at no cost" was ambiguous and open to different interpretations. The language of the rest of the bloodborne pathogens standard and its legislative history also did not provide further clarification.

The Third Circuit reversed the commission's decision. The court held the combination of case law and a 1999 OSHA opinion letter provided sufficient notice of the secretary of Labor's "at no cost" interpretation of the standard.

Excavation

OSHA Seeks \$216,000, Alleging Excavation Violations

OSHA has cited John Rocchio Corp. of Smithfield, R.I., for alleged willful and serious violations of the excavation safety standards at a North Kingstown, R.I., worksite. The company faces a total of \$216,000 in proposed penalties.

Responding to a report of unsafe conditions at a water line installation, OSHA inspectors found two employees working in an 8-foot-deep excavation that lacked cave-in protection, according to a written statement from the agency.

There was a pile of excavated materials stored at the edge of the excavation site but neither a ladder nor any other safe method to exit, according to OSHA.

The federal standard requires all excavations 5 feet or deeper to be protected against collapse, have a

safe means of entering and exiting the excavation, and store excavated materials at least 2 feet from the edge.

As a result of these alleged conditions, OSHA issued three willful citations carrying \$210,000 in proposed fines.

"The sizable fines proposed here reflect the nature and severity of the cited hazards," according to Patrick Griffin, OSHA's area director in Providence, R.I. "An unguarded excavation is always an imminent danger situation since its walls can collapse suddenly and with great force, crushing or burying workers before they can react or escape."

The company also has been issued two serious citations, with \$6,000 in total fines, for allowing water to accumulate in the excavation and for the lack of hard hats for employees exposed to overhead hazards.

Process Safety

Shell Chemical Faces OSHA Fines of \$63,000

Shell Chemical LP in Norco, La., faces a \$63,000 fine for an alleged willful workplace safety violation after placing employees in portable buildings too close to a facility process unit, OSHA announced Dec. 8.

The agency said it issued the citation following an investigation that began June 3 when an agency compliance officer investigating another site witnessed the alleged violation of occupied trailers within 68 feet of a blowdown system. OSHA's process safety management standards require employers to manage possible hazards of occupied portable buildings in accordance with recognized and generally accepted engineering, said Dorinda Folse, OSHA's area director in the Baton Rouge Area Office.

Shell Chemical disputes there was inadequate separation of portable buildings from a process unit. "We have appealed the citation, so we're not at liberty to discuss the specifics of the matter," Lily Galland, Shell Norco external affairs manager, told BNA.

Trends in Safety and Health

Acting, Former Safety Chiefs Ponder Past, Future of OSHA

While the acting head of the Occupational Safety and Health Administration defended the agency's use of alliance and partnership programs, his predecessor and the former chief of the National Institute for Occupational Safety and Health recently suggested workers should bear more responsibility for workplace safety.

Criticisms of alliance and partnership programs are unfounded because they imply the agency permits voluntary compliance with its regulations, Thomas Stohler, acting assistant secretary of Labor for OSHA, told BNA Dec. 16.

"There's no such thing as voluntary compliance," Stohler said. "That's a phrase that gets kicked around all the time. All employers must comply with OSHA standards, period."

AFL-CIO Calls for More Action

Peg Seminario, director of safety and health at AFL-CIO, told BNA she agreed OSHA has undertaken some enforcement initiatives under the Bush administration. However, more enforcement is needed in certain areas, such as fall protection and trenching fatalities, because of high worker death rates, she said.

"Think about the mindset of some employers," Seminario said. "Most of them know that if they were to put a hazardous waste in a creek, they'd go to jail. But they think nothing of sending a worker into an unshored trench."

The "voluntary" tag has been attached to OSHA's partnership programs by the agency's critics in a deliberate attempt to discredit it, according to Marc Freedman, director of labor law policy at the U.S. Chamber of Commerce.

"Compliance is as mandatory as it has ever been," Freedman told BNA. "OSHA's critics misrepresent these things because they're trying to put out the message that the Bush administration has not emphasized enforcement. It's been a standard talking point for them as well as for Demo-

crats on the Hill. Anything that goes against the pure enforcement method—even if the standards are high, even if the results it generates are good, even if these are employers that OSHA should not be wasting its limited resources on—still flies in the face of the union and labor view that employers will skate by unless someone brings the hammer down on them."

Stohler pointed out OSHA performed some 38,000 inspections in 2008. A total of 80 percent of the citations it issued were for serious or higher violations, the highest rate ever, he said.

Only 24 percent of all inspections led to no citations, which Stohler said proves OSHA is doing a good job of targeting truly hazardous work sites.

"All employers must comply with OSHA standards, period."

— THOMAS STOHLER, ACTING ASSISTANT SECRETARY OF LABOR

Henshaw, Howard Suggest Reform

The Occupational Safety and Health Act of 1970 is such an outdated piece of legislation, nothing but a total overhaul could fix it, the former heads of NIOSH and OSHA said during a Dec. 9 briefing sponsored by the American Society of Safety Engineers.

John Howard, NIOSH director from 2002 to July 2008, said the modern workforce and very nature of work has changed so much since the late 1960s, when the act was drafted, it has ceased to address current safety and health issues.

A more effective model would give workers themselves additional duties and privileges for ensuring their own protection instead of relying on government to set standards and employers to fulfill them, Howard said.

John Henshaw, head of OSHA during President Bush's first administration, agreed with Howard's assess-

ment, suggesting a new statute would make it easier for OSHA to issue new standards.

Sluggish Track Record

The agency's sluggish track record in setting standards is largely the result of a myriad of administrative obstacles that "make it very difficult for the agency to come up with progressive and timely rulemaking," Henshaw said. He called for a streamlined process for updating permissible exposure limit standards, for example, suggesting the removal of procedural barriers could allow the agency to perform a complete PEL revision "in one shot."

"The act needs to be completely changed, not just piecemeal," Henshaw said. "OSHA's objective is not to cite or penalize. Its overall objective has to be to create change."

Congress 'Tinkering'

However, Henshaw called the Protecting America's Workers Act, which proposes expanded coverage to federal workers, higher fines, and whistleblower protections, mere "tinkering."

Howard said OSHA will have to take some type of action to protect workers from musculoskeletal injuries, or else it will "become irrelevant."

Henshaw said the ergonomics issue still is so politically controversial that "it may be a non-starter," referring specifically to the Congressional Review Act, an obscure 1996 law invoked by Republican senators in 2001 to kill an ergonomics regulation drafted during the Clinton administration (4 SNET 42, 3/27/01). That marked the first and only time CRA has been used.

Further, opponents of ergonomics regulation will be able to present cost estimates equivalent to or higher than the estimates quoted in response to the first ergonomics rule. "But we know work needs to be done in this area. We need to look at a different way of approaching it," Henshaw said.

Focus On

Worker Advocate Leads Obama's Team on Safety Issues

Emily Spieler has been named to President-elect Obama's transition team to address issues facing the Occupational Safety and Health Administration, including who will be the new administrator for the agency. She brings to the transition team a lengthy track record of worker advocacy, her colleagues told BNA (see related story, p. 185).

Spieler is the dean of the law school at Northeastern University.

She previously was the commissioner of the West Virginia Workers' Compensation Fund, member of the state Human Rights Commission, and West Virginia deputy attorney general for civil rights.

Spieler once served on a National Institute for Occupational Safety and Health research committee on the economic and social consequences of occupational disease and injury, according to her Northeastern University biography. She also served on a National Academies committee on the health and safety needs of older workers.

Colleagues Praise Spieler Selection

Spieler is a "true believer" in workers' rights, according to Les Boden, a professor of environmental health at Boston University's School of Public Health, who has collaborated with Spieler on several academic papers.

"She's interested not only in protecting workers from hazards at work but also from discrimination and generally things that would undermine their standard of living," such as unfair hours or wages, Boden said.

"And she's one of the smartest people I know. She's very thoughtful and creative, and she won't be limited to the standard, inside-the-box thinking about what OSHA ought to be doing."

Tom Baker, a law professor at the University of Pennsylvania, told BNA Spieler's values are consistent with Obama's. "Looking out for working people and taking the law seriously. She'll be looking for people who really want to take seriously the idea that OSHA can help people."

Baker also said Spieler is "hugely networked in democratic circles, and she's been in this field for a long time."

"So she's going to have a good network for identifying people."

AFL-CIO Recommendations

The new president's top priority for the Department of Labor should be the appointment of "a strong, pro-worker" secretary and assistant secretaries who will make health and safety a priority, the AFL-CIO said in a series of reports to President-elect Obama's transition team.

"The overall DOL budget should reflect an emphasis on enforcing basic worker protections."

— *TURN AROUND AMERICA: AFL-CIO RECOMMENDATIONS FOR THE OBAMA ADMINISTRATION*

Protection of Workers

The federation said the new administration should take the following actions during its first few months:

- develop programs to address migrant workers' health and safety needs;
- move forward with OSHA rules on beryllium, cranes and derricks, diacetyl, and silica;
- refocus on ergonomics and musculoskeletal disorders; and
- strengthen OSHA's civil and criminal penalties.

The reports, collectively entitled *Turn Around America: AFL-CIO Recommendations for the Obama Administration*, urged the incoming administration to return DOL to its "intended purpose, the protection of workers," by shifting the department's focus and resources from its current union watchdog role to its intended worker protection role.

"Appoint a strong, pro-worker Secretary of Labor who will make

safety and health a priority," the labor federation urged Obama. The AFL-CIO also suggested Obama immediately "freeze or reverse" the "last minute" proposed rule issued Aug. 29 by DOL on agency risk assessments of occupational health hazards (73 FR 50909, 11 SNET 129, 9/9/08).

It also recommended extending OSHA's authority to cover flight attendants, whose health and safety protection now resides with the Federal Aviation Administration.

In addition, the AFL-CIO said, "The overall DOL budget proposed by the Administration should reflect an emphasis on enforcing basic worker protections," with fewer resources directed to the Office of Labor-Management Standards, which "has achieved huge growth in the hands of the Bush Administration."

Reallocating Resources

"Far too many resources have become concentrated in OLMS at the expense of OSHA and DOL's Employment Standards Administration's Wage and Hour Standards Division," the AFL-CIO stated. The labor federation recommended using the fiscal year 2001 allocation of resources among the Mine Safety and Health Administration, OSHA, and the Wage and Hour Division as "a baseline" for restoring DOL's worker protection focus.

The AFL-CIO also recommended that the administration create a governmentwide database government procurement officers could use to check for employer violations of federal health and safety and wage and hour laws.

The labor federation also urged Obama to suspend and review the Department of Transportation's revised alcohol and drug testing rule (73 FR 35961, 6/25/08; 11 SNET 119, 8/12/08).

Text of the recommendations is available on the Web at http://change.gov/open_government/entry/afl_cio_turn_around_america/.