



Happenings On The Hill

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Congress Up and Running

Only a few weeks into the 114th Session of Congress and we already see the Republicans in Congress and the White House in a “war of words”. That doesn’t bode well for “compromise” that was discussed only a few weeks ago.

While few legislative issues have been introduced regarding occupational health and safety (and I don’t expect very many), one can see that regulatory reform issues will be at the top of the agenda for the Republicans. Two bills have already been introduced, with one of these bills having passed the House.

HR 185

HR185, to reform the process by which federal agencies analyze and formulate new regulations and guidance documents, was introduced by Rep. Bob Goodlatte. This bill would alter the federal agency rulemaking procedures to require agencies to adopt the least costly regulatory alternatives, publish advance notice of proposed rulemaking for major rules, as well as require hearings on high-impact rules. The bill would also require agencies to adopt rules only on the basis of the best reasonably obtainable scientific, technical, economic basis as well as a consideration of alternatives. The bill passed the House and has been sent to the Senate. Will it pass the Senate? Perhaps, but the President has already signaled his intent to veto the bill if it makes its way to the White House.

Interesting note on this bill. During Committee hearings there was an attempt to amend the bill to exempt from this requirement any regulations or guidelines proposed by OSHA

to prevent health care workers from contracting infectious diseases (referring to the OSHA effort to address current rulemaking on infectious diseases). The attempt failed.

S 168

Introduced by Senator Pat Roberts, this bill would require all federal agencies to review significant regulations and propose a timeline to repeal those deemed burdensome, unnecessary or those that harm the economy or job creation. This is very similar to the bill introduced in the House (HR 185). This is not the first attempt by Senator Roberts to push this legislation; however it has yet to ever make it out of the Senate. And again, President Obama has already threatened a veto.

Other Congressional Issues

HR 128. Another attempt by Rep. Gene Green to revise regulations concerning the recording and reporting of occupational injuries and illnesses. This is the same bill he has introduced in the past and would require employers to keep track of injuries and illnesses for all employees on a worksite, whether such employees are employed by the site-controlling employer or are employed by contractors. Didn't make it very far in the past and won't make it very far this time around either.

House Resolution 5. An interesting "rules" requirement. This Resolution was passed by the House and would require any committee reports or resolutions to include a statement estimating the number of federal rulemakings required by the legislation.

OSHA Budget Details

Now that the debate over the FY15 budget has concluded and spending is set, at least through September 30, it might be a good idea to take a little closer look at the OSHA budget. It was reported in the last issue that the agency was provided a funding level of \$552.8 million, down only a couple of million from what the President requested and actually about \$500,000 more than what was appropriated in FY14. Of course, if one takes into consideration upcoming federal salary increases and inflation, OSHA actually has less to spend than last year.

So where were the changes? Well, the real changes from FY14:

- Federal enforcement received a \$215,000 increase in FY15
- Whistleblower protection received a \$500,000 increase in FY15
- State Programs received a \$950,000 increase in FY15
- Federal compliance assistance took a hit - \$1 million less for FY15

However, there is a little more to this budget than what you see. When Congress approved OSHA funding for FY15, the bill had several riders on it that may impose some potential problems for the agency.

The riders:

- Require OSHA to notify the House and Senate committees of any new national, regional or local emphasis programs as well as the data used to determine the new program.
- Require the agency to consider all new currently available technology as the agency moves forward with the silica rule.

OSHA Activity

Just across the street from the Capitol, OSHA leaders vow to move on several agenda items in the last two years of the Obama administration. Some are long-time issues and some more recent. Notwithstanding the vow from OSHA leaders, reality will probably set in and we end up seeing few of the issues completed; however it's still worth taking a quick look. And give Dr. Michaels credit for trying to move these issues forward.

Reporting Requirements. This is complicated, not for the details of the issue, but for the fact that there are actually three different reporting proposals.

- 1) New requirements for what employers are required to report to OSHA went into effect January 1. These are the requirements to report all work-related fatalities within 8 hours and all in-patient hospitalizations, amputations, and losses of an eye within 24 hours of finding out about the incident..
- 2) Clarification of recordkeeping. OSHA has proposed changes to a rule clarifying that an employer's obligation to record injuries and illnesses continues until after five years after an incident. A 2012 federal court decision said that employers couldn't be cited for alleged recordkeeping violations more than six months prior to OSHA discovering the program. OSHA says that is incorrect and is now trying to clarify that it is five years.
- 3) Electronic reporting. And finally, OSHA is in the process of drafting a final rule that would require employers to electronically file injury and illness records with OSHA publishing this information on the OSHA web site.

Silica. As I have stated earlier, OSHA still expects to finalize this rule prior to the end of the Obama administration in 2017.

Confined Spaces in Construction. Another issue the agency hopes to finalize by 2016. A draft final rule has been sent to the White House budget office for review.

Beryllium. A third issue the agency hopes to complete prior to the end of the Obama administration.

News from NIOSH

Update from NIOSH:

Funding Details. While NIOSH received a total of \$334.9 million in the final omnibus bill, what most don't know is that this was actually a tiny increase from 2014, albeit a small \$2.5 million. More importantly, the final budget included continued funding for the Education Research Centers. The allocation included \$114.5 million for the National Occupational Research Agenda (NORA). Congress did express a concern in the final NIOSH budget of a lack of progress with NIOSH developing a certification standard for combination unit respirators. One other negative in NIOSH funding is that the Institute has now stopped collecting agricultural injury data because of the increased costs and future budget uncertainty. This is likely only one of many issues the Institute will face in the coming years with a tighter grip on federal spending.

NORA. Great to see that NORA funding is continuing and makes up a large part of the total NIOSH funding package. This program began back in 1996 as a partnership to

stimulate innovative research and improve workplace practices. With nearly 20 years of accomplishments, NIOSH will be undertaking an evaluation for the second decade of NORA work. Look for a NIOSH docket to open in 2015 for comments on the program.

Ebola. Yes, this is still an issue, notwithstanding the fact that the media and others seem to have moved on to the next story. But NIOSH and OSHA haven't yet relegated the issue to the back room. Matter of fact the two just made available a fact sheet to help healthcare workers, responders, and employers prevent work-related fatigue in tending to Ebola cases. Most forget that when an employee is fatigued, the risk of an injury or some other mistake rises considerably. A great fact sheet, available through CDC/NIOSH.

Ergonomics. The issue still creates controversy every time it is mentioned, but needs our attention. NIOSH hasn't forgotten and just released a guidance document for grocery employers to head off worker ergonomic injuries. It may be focused on the grocery industry but can likely be adapted to other workplaces. Again, go to the NIOSH web site for further information.

2015 Agenda. While Ebola will continue to keep NIOSH busy in 2015, there are other issues that will be just as important to the Institute. Dr. Howard hopes to take a closer look at how science is interpreted and used in developing standards.

NIOSH Leadership. What many consider the most important NIOSH agenda item in 2015 will be whether or not Dr. John Howard remains at the helm of NIOSH. Dr. Howard, who headed NIOSH from 2002 to 2008 and then was appointed to a second six-year term, will see his term expire in September. No word yet on whether or not Dr. Howard wishes to be re-appointed or whether he will be re-appointed, but hard to find anyone who disagrees that Dr. Howard has been the best ever leader of the Institute.

EPA and Lead-Based Paint Rules

Everyone remembers the controversy surrounding the EPA Lead-Based Paint (LBP) rule from the mid-90s. The EPA final rule essentially forced everyone (regardless of existing knowledge and education) involved in LBP activities to become trained and certified. This included professionals and firms involved with risk assessment, supervising, inspections and dust sampling. Well, EPA is once again proposing some changes to this rule; however this time the proposed changes make a lot of sense.

A portion of the change will exempt individuals from having to pay an additional fee for each jurisdiction where certification is requested. In other words, until now an individual was forced to pay additional fees if they wanted to work in more than one state. Only requiring one certification for each EPA-administered State jurisdiction helps to streamline the process. The change will actually reduce the cost to individuals and firms. Can't remember the last time I saw a proposal that "streamlined" a process. EPA is accepting comments on the rule until February 13.

State Legislatures Begin With Busy Agendas

As January nears an end we are seeing most state legislatures in action and policymakers introducing thousands of bills. What makes state legislatures so

interesting is the fact that measures introduced, in most cases, reach a quick conclusion fairly quickly. Many of the legislative sessions last only a few weeks, some as short as 30 days. That means issues are quickly reviewed, enacted or disposed of. A second factor in dealing with state legislatures is that there never seems to be a lack of issues addressing occupational health and safety.

A quick look at the issues in the first three weeks of January:

Mold Abatement. The issue of licensing individuals involved with mold analyses and abatement is expected to again be a hot issue. AIHA follows all of these bills to determine the impact the legislation might have on those in the IH profession. Several bills have already been introduced that would require regulations to be developed.

Safe Patient Handling. One bill has been introduced to require hospitals to put safe patient handling programs in place. Numerous states have already enacted some form of safe patient handling laws and/or regulations the last few years.

Methamphetamine Laboratory Cleanup. This continues to be an issue in the states. AIHA is also involved in these issues as we seek to make sure that only accredited occupational health and safety professionals are involved in providing the “all clean” for these labs after remediation.

Lead. Surprise! Even after all these years, we still see a few bills introduced that address the issue of lead abatement.

Criminal Penalties. A bill has been introduced that would increase fines and civil penalties for violating occupational health and safety regulations.

Voluntary Protection Program (VPP). In a first in the nation attempt, the state of Virginia has legislation introduced that would make the VPP a permanent program in Virginia. Whether or not this is a direct result of some of the political pressures placed on the federal VPP is hard to determine, but make no mistake about it, Virginia wants to make sure the program continues in Virginia. Don't be surprised in this legislation is enacted. AIHA national sent letters of support to Members of the General Assembly.

Hazard Abatement. No bills yet but will be interesting to see if any are introduced. The issue is whether or not employers would be required to abate a hazard while challenging a citation. California, Oregon and Washington have some form of this already in place. Don't be surprised if others take a look at it.

State Plan Funding. Becoming a bigger problem every year. Federal OSHA is supposed to provide 50% of the funding for state plans but federal funding has essentially been flat the last few years, placing a larger burden on the states to provide additional funding. We will closely watch this to see if resources begin to have an impact on occupational health and safety. And don't forget that federal OSHA is challenging some of the state plans about regulations “being at least as protective as federal regulations”.

For information on any of these issues please contact me.

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. Simply go to the AIHA home page. Click on “government affairs”, located on the “stay connected” tab at the top of the page. Once in government affairs, click on “Federal Legislation Action Center”. Also available within this Action Center is the opportunity for any member to directly contact their elected officials in Washington simply by inserting their zip code. You can send an email or learn how to contact them by phone or mail. Take a look!

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each State site is access to the various state agencies, including the Governor’s office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

For information on any of the items in this report, please contact Aaron Tripler.