



Happenings On The Hill

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Congress on Cruise Control

Congress hasn't exactly been setting any speed record when discussing legislation that might impact occupational safety and health. Heck, Congress isn't setting any speed record on anything. About the only news being discussed on the Hill is what the President's Fiscal Year 2015 federal budget will look like. We expect to get the first look at the budget proposal sometime in the next two weeks. But don't get too excited as this proposal will undoubtedly be "dead on arrival" on the Hill.

Having just concluded finalizing the FY14 federal budget in early January, Congress must begin discussion on the FY15 budget as soon as possible in order to avoid any huge debates just prior to the mid-term November elections. I can assure you, Congress wants to "get out of town" and go home and campaign without any huge issues remaining on the table back here.

What can we expect in the FY15 proposal from the President? Hard to tell at this point in time but if I had to guess – expect another attempt to cut funding for the Education Research Centers and perhaps flat-line funding for agencies such as OSHA and NIOSH. We will know soon enough.

Bill Introduced to Consolidate Labor and Commerce Departments

Here's a new one for you. A bill has been introduced in the Senate that would consolidate the Departments of Labor and Commerce. According to the bill OSHA would be lumped into one large agency that would provide worker protections and promote business. One goal of the bill is to get rid of "duplicative" efforts. Not sure I should comment on this – let's just say the bill is likely to go nowhere. However, brings back some previous attempts to change things – like making the Environmental Protection Agency a cabinet-level department.

Speaking of some "far-out proposals", how about the one in California. This effort would divide the state of California into six separate states. Better not comment on that one either.

Regulatory Activity

Things seem to have slowed down just a bit on the regulatory front after a couple of months with an unusually high amount of activity. While this has been true so far as "proposals" go, it has not been the case on continued movement of existing proposals.

OSHA Crystalline Silica Proposed Rule

The deadline for submission of comments has now passed and it looks as if OSHA received approximately 3,000 responses. Public hearings on the silica proposed rule are to begin March 18 and are now scheduled to run at least through April 1. If you didn't get anything from the above, let me spell it out. This issue is a long, long way from ever being finalized.

Just 30 days ago the issue was one that had many people talking about how this was the one big thing OSHA was trying to finalize in 2014. Now, even those at OSHA have stated that the agency will be spending the rest of the year reviewing the comments submitted and the expected comments from the hearings. That means it will be some time before we see a final proposal. And you can bet the lawsuits will be flying when, if ever, a final proposal is announced. Dr. David Michaels however, has stated that the silica rule is now the number one priority of the agency.

For your information, AIHA comments on the proposed rule can be found at <https://www.aiha.org/government-affairs/PublicPolicy/Silica%20Comments-Submitted-02-04-14.pdf>

In addition to AIHA submitted comments, AIHA will be appearing and providing comments at the public hearings.

OSHA Injury and Illness Prevention Program (I2P2)

The I2P2 used to be the number one priority of OSHA but is now so controversial there is no telling when, or if, OSHA will put out an actual proposal. OSHA states the agency is still on track to put out a proposal by the end of 2014 but that will be difficult if not impossible.

OSHA Recordkeeping Standard

OSHA still hopes to continue moving forward with its recordkeeping proposal. The proposed rule is still in the comment period, now scheduled to end on March 10. But opposition is continuing to build over this proposal even before the comment period ends. Some business leaders are concerned about the data being used in a way that would be hugely detrimental to their business, possibly even resulting in some businesses underreporting injuries and illnesses.

NIOSH Carcinogen Policy Document

The comment period has now closed on the NIOSH Draft Current Intelligence Bulletin "Update of NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace". As stated by NIOSH, the draft document provides an update of the NIOSH Carcinogen Classification and relevant Recommended Exposure Limit (REL) policies. AIHA submitted comments on this proposal and the comments can be found at <https://www.aiha.org/government-affairs/PublicPolicy/NIOSH-Carcinogen%20Comments-Submitted-02-10-14.pdf>

The Way I See It!!

This month's "Happenings" is a bit short on substance but not opinion.

One of the questions I am constantly asked is "why can't OSHA get anything done?" A fair question with a difficult answer. It would be easy to simply respond that OSHA is subject to a lot of politics, and I mean a lot of politics. It would also be easy to simply answer that it depends on who asked the question, and more importantly, when they asked it. Let me explain.

When the Democrats are in control of the White House, therefore OSHA, it seems inevitable that industry and/or business in general will complain that OSHA is too focused on enforcement. When the reverse is true and the Republicans control the White House, and therefore OSHA, it is inevitable that labor will complain that OSHA is too focused on compliance assistance and allowing injuries and illness to increase in the workplace. Either way, politicians and others can usually twist the words to fit whatever scenario they wish to address.

Yes, you can look at numbers end on end to prove or disprove success or failure at OSHA. But let's throw all of this out the window and look at the success of the agency from a different point of view. Not by enforcement or compliance assistance but by whether or not, in the long term, workers and others are protected from workplace hazards. In my opinion, the answer is a resounding "yes" and for different reasons than most would think.

Step back and think about it. In the early 90's OSHA proposed an indoor air quality standard to address the issue of health hazards posed by occupational exposure to tobacco smoke. The agency received in excess of 100,000 comments on the proposed standard and in 1994 the standard was withdrawn. It was obvious at the time that it was not possible to enact such a standard. So – was the attempt by OSHA a failure?

Not in my opinion! OSHA may have failed to enact a standard but succeeded nonetheless. Think about it. Since 1994 how many employers, both public and private, took it upon themselves to address this issue? It has to number in the hundreds of thousands. In other words, the proposed standard was withdrawn but the issue was addressed. Perhaps not to the satisfaction of everyone but I would say our workplaces and even our public areas are much safer from tobacco smoke today than pre-1994.

Another example. Ergonomics. In November of 2000 just prior to the Clinton Administration leaving town, OSHA published a final rule on an ergonomics program. When the Bush Administration took control of the White House and Congress in January of 2001, Congress overthrew this standard and it has not appeared in any future efforts from the agency. Did OSHA fail with this issue? Again, depends on who you talk to but in my opinion OSHA did not fail.

Why? Again, stop and think about it. I would venture to guess that prior to the effort to enact this ergonomics rule that upwards of 90 percent of workers and others had never heard the term “ergonomics”. They may have known about the problems of ergonomics but no one had ever used this term nor specifically addressed the issue. Today, nearly everyone knows what ergonomics is and what it means. Not only that, but again think of the hundreds of thousands of employers, both public and private, that have addressed this issue on their own. The workplace is obviously safer ergonomically than prior to the ergonomics proposed rule.

I understand there will be many who disagree with my views on this, but the bottom line is that OSHA has been very successful, not only when it enacts or enforces a standard or rule or provides compliance assistance but sometimes just by taking a look at the issue and making everyone aware. This “educational” effort provided to workers, employers and others is hard to measure.

And I’m sure one could come up with many more such success stories.

Bottom line – you can agree or disagree whether or not the agency has been out of touch with employers or workers but success can be found in many different ways. Let’s hope these efforts can be measured in the same way in the future. Besides, I’m getting a little tired of a call one day complaining that OSHA is over-regulating and the next day receive a call that OSHA isn’t doing enough. How about everyone trying, just once, to work together. Anyway, that’s the way I see it!

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.