



Happenings From The Hill

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Congress Nears End of Session – Will OH&S Receive Any Consideration?

The first session of the 111th Congress is winding down and Congress has a full plate to clean up before it leaves town. No date has been set for adjournment, but many expect Congress to remain in session until around mid-December. Much depends on whether or not a health care proposal is completed. While health care, the economy and the war remain center-stage in the debate on the Hill, we are closely monitoring activity taking place on occupational health and safety issues.

The top two current issues for OH&S:

Fiscal Year 2010 Budget

As has become an annual event, Congress failed to adopt a fiscal 2010 budget for most of the departments of the federal government, supposed to have been adopted by October 1. A continuing resolution was adopted to keep the government afloat through October 31. When that ran out Congress adopted another continuing resolution to keep the government running through December 18. The December 18 date is important because it provides a hint that Congress plans on remaining in session until at least that date. As to what this continuing resolution means – it provides government departments, i.e., OSHA, NIOSH, EPA, the same funding received in 2009. Will be interesting to see what happens in December. Look for Congress to eventually wrap everything into one big spending bill.

Protecting America's Worker Act

We are closely watching the one and only OSHA reform measure introduced in this session. Of interest is House Bill 2067, and the Senate version, S 1580.

If the bill is going to receive any serious consideration it will have to be in the House. The Senate is so wrapped up in health care and other issues it seems to have little interest in this legislation. Add to this the fact that with Senator Kennedy no longer in charge of the Committee with OSHA oversight, there doesn't seem to be an OH&S "champion" in the Senate.

Over in the House, Rep. Lynn Wolsey is intent on only moving a bill that actually has a chance of passage. That means the existing bill will probably be redrafted in some form. Here's what we hear so far:

The section of the bill that would expand OSHA coverage to public employees not currently covered by OSHA will probably be removed from the bill. While nearly everyone thinks this coverage is a great idea, the potential cost and other factors will keep this section from being included in a new bill.

There is considerable discussion taking place regarding the provision for an increase in criminal penalties. The discussion centers on how one defines a "willful" violation. When all is said and done we believe they will change the wording to something more in line with the term "knowingly violates any standard or rule". The reason for this possible change is because it is easier to prove someone knowingly violated a rule than to prove they willfully violated the rule.

The House remains convinced the sections regarding "victim's rights" and "whistleblower protections" are the staples of the bill and these sections will be kept intact. Notwithstanding any of these changes, the bill will be difficult to enact.

Increased Activity Continues at OSHA

Let's give credit where credit's due! Agree or disagree with the proposals, one can't complain the agency is lifeless.

State Plan Oversight

Acting Assistant Secretary of Labor for OSHA Jordan Barab recently commented that OSHA will have more oversight of state plans. This is a result of a critical report of the Nevada state OSHA plan citing numerous problems with health and safety in the state. Mr. Barab has provided regional administrators with interim guidance encouraging them to do more in-depth investigation of potential problems in those states approved to operate its own safety and health programs.

Combustible Dust

Most are aware that OSHA published an advance notice of proposed rulemaking on combustible dust hazards on October 21. OSHA has been under fire to enact a dust standard since a 2006 Chemical Safety Board recommendation. The issue became even more important following an explosion that killed 14 workers in Georgia in 2008. OSHA did a two-year national emphasis program on combustible dust and the results more than convinced the agency a standard is needed. Comments are due January 19. The proposal can be found at <http://edocket.access.gpo.gov/2009/E9-25075.htm>

Recordkeeping

OSHA launched its national emphasis program on recordkeeping October 1 and will work to identify underreporting of injuries and illnesses. This is a one-year program and will only target five workplaces in each OSHA region. The program came about because of continued studies asserting underreporting of injuries. No word yet on what OSHA will do with the results from this program.

Hexavalent Chromium

OSHA has provided a letter of interpretation on hex chrom, stating the agency cannot ban the use of hexavalent chromium but recommends employers use a substitute when possible. OSHA is enforcing its hex chrom standards that were promulgated in 2006. The final standard requires employers to install engineering controls and provide respirators no later than May 31, 2010. OSHA says it is also developing a national emphasis program on hex chrom.

By the way, even though OSHA says it cannot ban the use of hex chrom, EPA does have the authority to do so under the Toxic Substances Control Act.

Diacetyl

While federal OSHA debates whether or not to proceed on drafting a rule on diacetyl, the state of California has moved forward with the first proposed diacetyl regulation. Cal-OSHA proposed the rule in October and avoided the controversial issue taking place on the federal level – whether or not it is possible to identify a permissible exposure limit.

Safe-Patient Handling

While OSHA has yet to address the issue of safe-patient handling, Congress hopes to tell the agency it must move forward on a standard to reduce injuries to patients and health care workers. Legislation (S 1788 and HR 2381) has been introduced to would OSHA to propose a rule within one year that would require hospitals to purchase and use safe patient lift devices and employ other handling and injury prevention plans.

When the House bill was introduced earlier this year it looked though the issue might not receive serious consideration. There now seems to be increased interest in the issue and both sides of the issue are gearing up for a possible showdown. Industry says the bill needs more flexibility while labor says the bill contains critical protections for health care workers. Expect a hearing on this issue in early 2010.

Ergonomics

Ah, the issue that continually seems to be on everyone's mind. Talk of an ergonomics standard is again rampant as the Obama administration has continually stated it is an issue that must be addressed. Jordan Barab has on numerous occasions stated sooner or later the agency must address this issue.

But while labor and the administration talk of bringing back the discussion of ergonomics, industry is also gearing up to defeat the issue. My take is labor won the first round of the debate following the Presidential election and continues to press the need for a standard. Industry seems to have won the latest round as they have provided several reports stating recent studies indicate ergonomics concerns are not as work-related as previously thought.

This will be an interesting issue to watch over the course of the next three years. No telling who will win, but I can assure you there will be plenty of reports and lots of dollars expended.

GHS

Seems as if everyone is reviewing the GHS proposal from OSHA. This proposal, some 300 pages in length, is expected to be finalized in 18 months if you believe OSHA. I just can't see this happening! Don't be surprised if the comment period (scheduled to end December 29) is extended. Then you have public hearings on the issue. When the hearings are concluded you will have OSHA reviewing all of the comments and making a final recommendation that must clear the Office of Management and Budget. Unless everyone out there agrees on everything in the proposal there is no way to get this out that quickly.

Speaking of agreement on the proposal, AIHA is seeking the input of the membership on a major issue within the proposal. OSHA states that when adopted the GHS the TLVs will no longer be cited within the Haz Com Standard. While OSHA is not required to cite these TLVs, AIHA commented back in 2006 we hoped it would continue to do so, and if not, would at least reference the TLVs in an appendix. AIHA still believes the TLVs, as well AIHA WEELS and other exposure guidelines should be included in the Haz Com Standard.

AIHA sent out a "Member Alert" on this issue last week asking for member input on the issue. If you have comments on this part of the proposal, please send these comments to AIHA. If you are interested in reviewing the GHS proposal you can find it at <http://edocket.access.gpo.gov/2009/E9-22483.htm>

Michaels Nomination Still on Hold

The confirmation of David Michaels to be Assistant Secretary of Labor for OSHA remains stalled in the Senate HELP Committee. Mr. Michaels' name was on a "consent agenda" vote scheduled for October 21 but his name was withdrawn from the list because his answers to some of the questions from Committee members were not received in time for the vote. No date has been set for a new vote.

Republican Senators on the Committee seem to be satisfied with his answers to their questions but because the written answers were not received in time they postponed the vote. No one seems interested in holding a confirmation hearing, as the US Chamber and NAM have demanded. What to expect? Hard to say at this point in time, but I would think the nomination will be approved by the Committee within the next couple of weeks and sent to the full Senate for confirmation.

AIHA Comments and Positions

AIHA has been plenty busy the last month.

- 1) AIHA submitted comments to EPA on Noise Protector Labeling
- 2) AIHA updated the association position statement on ergonomics
- 3) AIHA is finalizing a position statement on H1N1
- 4) AIHA is finalizing a position statement on respiratory protection

5) AIHA is finalizing a white paper on chemical fumigation in health care settings.

To receive further information on any of these issues please contact AIHA.

State Legislatures Gearing Up

We are starting to see pre-filed legislative measures for the 2010 state legislative sessions. While we expect the issues of mold abatement, meth laboratory cleanup, safe-patient handling, and several other issues to again be on the agenda, don't be surprised if we see an issue pop up that stretches across state lines. I wouldn't be surprised to see a considerable number of bills introduced addressing the issue of H1N1.

The Way I See It!

Ergonomics – Ergonomics – Ergonomics. Get used to it because I'm afraid we are in for a lot of talk in the next three years. Here's the rub! AIHA and many others have long supported an ergonomics standard. But AIHA and many others had some concern about the proposal overthrown by Congress back in 2001. Now, the administration says they will address this issue in the next three years and industry says it is gearing up for a fight on the issue.

While I agree the issue must be addressed, I'm not sure we should be talking about it at this time. OSHA, under the leadership of Secretary Solis and Acting Assistant Secretary Jordan Barab, has done an excellent job in moving some of the "low hanging fruit" at the agency. They have an agenda that seems to be moving forward. Why in the world would they want to create more of an adversarial relationship with industry by bringing up ergonomics? Why not work with industry on some of the issues where they both perhaps can agree and solve some of these problems first.

Yes, ergonomics is a top priority for this administration and for labor! But put it on the back burner for a while and see if we can solve some of the other issues first.

David Michaels. What seems to be the hold up on confirming Mr. Michaels? If this administration is trying to show true interest in OH&S it needs to tell the Senate to "get the lead out" and confirm Mr. Michaels as Assistant Secretary of Labor for OSHA.

There are many who have concerns about Mr. Michaels and his views on industry and science. But he is the nominee and it's time to move forward. Mr. Michaels has stated his top three priorities at the agency are to complete rulemakings now under way, including silica, beryllium, cranes and derricks, and the globally harmonized system; to promulgate a combustible dust standard; and to initiate rulemaking for an occupational safety and health program standard. He also hopes to create a new "culture" of health and safety in the workplace.

In answers he provided to the Senate Committee overseeing his nomination he said he believes both consultation and enforcement are important OSHA functions. Does this include continued support for VPP, alliances and partnerships? We won't really know the answer until Mr. Michaels takes over.

Perhaps it is time we give Mr. Michaels the benefit of the doubt on this. He is going to be confirmed, notwithstanding the reservations of some in industry; therefore let's finish the confirmation, move on and continue working to improve worker health and safety.

Eating a Little Crow!

The last issue of "Happenings" stated OSHA had finalized a silica rule and issued the proposed silica rule at the same time. Oops! Shouldn't have written this in such a hurry. It's not like this sort of rulemaking hasn't occurred before - OSHA issued a final rule on acetylene and issued the proposed rule at the same time earlier this year; however it did not occur with silica. What OSHA did say about silica was they were going to expedite silica rulemaking by accepting comments on the preliminary health effects and quantitative risk assessment at the same time as the proposed rule. I apologize for the confusion.

No "Happenings" Next Month

With the holidays approaching, don't look for a December issue of "Happenings" unless there is an abundance of activity.

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 left side under access to information. Once in government affairs, click on "Federal Legislation Action Center". You will need to sign in as this is a members-only section. 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.