

Shipbuilders Council of America

Legislative Update

Protecting America's Workers Act

Miner Health and Safety Act of 2010



The national trade association for U.S. shipbuilders, ship repairers, and shipyard suppliers.

Founded in 1920



OSHA Reform Legislation in the 111th Congress

Protecting America's Workers Act: HR 2067 (PAWA)

- First major reworking of the OSHAct since 1970
- Introduced in April 2009 and referred to the House Committee on Education and Labor, Subcommittee on Health, Employment, Labor and Pensions
- Proposed changes impose substantial costs on businesses struggling to create and retain jobs.
- The bill does nothing to help prevent workplace accidents and injuries.
- The bill contains no support or assistance for employers to help them implement better safety programs or better understand safe work practices and related legal obligations



PAWA Is Unnecessary and Will Not Improve Workplace Safety

Workplace injury, illness and fatality rates are at all time lows

- BLS data show that workplaces are safer than ever. Workplace fatalities have declined 23 percent since 1994. This drop occurred even as the workforce expanded, with the economy adding 23 million new jobs over the same time period.
- Injury rates have shown a similar drop. Since 1994, the total case rate has declined by 50 percent and the lost days from work rate has declined by 44 percent.
- While the government's reporting system may not capture every workplace injury or illness, the data undeniably reveals the trend of declining workplace injury rates.



Declining fatality and injury rates support the 15 year bipartisan approach to workplace safety

- Outreach to private sector through partnerships;
- Safety education and training for employers and employees;

Results: More serious, willful, egregious citations issued; More criminal referrals; Record high participation in partnerships; Almost 800,000 employers/employees trained by OSHA in 2008.

PAWA focuses exclusively on increasing penalties and enforcement and does nothing to assist employers in improving their workplace safety efforts.

Most companies are not 'bad actors'.



Provisions & Problems

Increased civil and criminal penalties

- Will impact the operation of the Solicitors' Office at the Department of Labor by triggering more litigation.
- Will likely require compliance officers to spend more time on inspections to insure their citations will withstand being challenged by the employer.
- Increased litigation pulls compliance officers away from inspecting workplaces for safety and health hazards, as they defend their citations.

Experience with MSHA shows that increasing penalties increases litigation and impacts Department resources.

“Employer” means any responsible corporate officer.

- Corporate officers rarely have involvement in day to day affairs; this will make them vulnerable to the least safety conscious employee.



Provisions & Problems cont...

Abatement Sections

- Would require abatement of violations for serious hazards during the time employer contests to a citation are being reviewed and resolved.
- Will interfere with OSHA and DOL's ability to decide how to move forward with OSHA cases.

Would prohibit employer safety incentive programs.

- Many employers have successfully gotten employees to focus on workplace safety through offering incentives.

Would allow employee or representative of employee to challenge settlement agreements/citation modifications

- Will interfere with settlement process which allows OSHA to expedite case resolution and conserve resources while achieving goal of getting employers to accept changes in workplace safety practices—no administration should want this.



Criminal Penalty Changes

OSHA Criminal Penalties Would Increase Making Death in the Workplace a Felony and Removing Death as Requirement for Criminal Penalties

	<u>Current</u>	<u>Proposed</u>
Willful Causing Death	Max: \$10,000, 6 months prison or both	18 U.S.C. 3571; and possible 10 years/both
Repeated Willful Causing death	Max: \$20,000, 1 year prison or both	18 U.S.C. 3571; and possible 20 years/both
Willful Causing Serious Bodily Injury		18 U.S.C. 3571 and possible 5 years/both
Repeated Willful Causing Serious Bodily Injury		18 U.S.C. 3571 and possible 10 years/both



Civil Penalty Changes

	<u>Current</u>	<u>Proposed</u>
Willful or Repeat	Minimum: \$5,000 Maximum: \$70,000	\$8,000 \$120,000
Willful or Repeat Causing Employee Death	Same	Min: \$50,000 Max: \$250,000
Small Bus. w/ 25 or fewer Empees		Min: \$25,000
Serious/Less than Serious	Maximum: \$7,000	Max: \$12,000
Serious/Less than Serious Causing Death	Same	Min: \$20,000 Max: \$50,000
Small Bus. w/ 25 or fewer Empees		Min: \$10,000



PAWA Status

- Currently Stalled
- As a stand alone bill, it will not move in lame duck.
- Election Implications??
- Outreach efforts to House and Senate Republican Staff continue
- Goal: Ensure that the first major re-working of the OSHAct since 1970 is a bi-partisan effort.



OSHA Reform Legislation in the 111th Congress

Miner Health and Safety Act of 2010: HR 5663

--Late June, the bill is introduced in the wake of Upper Big Branch Mine disaster. Combines both major OSHA and MSHA reform. Attempts to push through the major tenants of PAWA. 75%MSHA / 25%OSHA

--In July, the House Ed. And Labor Committee holds Hearing and passes the measure in a party line vote (30-17) with minor changes and no Republican amendments.

--In Late July, the Senate companion is introduced (S. 3671). Sen. Rockefeller seeks to bring to bill up for UC. His request was blocked by Sen. Enzi.

Same Message as PAWA: The proposed changes will impose substantial costs on businesses which are struggling to create and retain jobs. At the same time, the bill does nothing to help prevent workplace accidents and injuries.



Provisions & Problems

-- H.R. 5663 imposes new and vague standards for criminal liability—including felony criminal sanctions against “any company officer or director” for “knowing” violations of the OSH Act.

--The bill, however, provides no definition of “knowing,” nor does it provide any limitation or guidance on which “officers or directors” could face criminal charges.

--H.R. 5663 imposes draconian penalties, and complicated and costly procedures for adjudicating whistleblower cases that include unlimited liability for companies. .



Provisions & Problems cont...

- The proposed changes will increase litigation, discourage settlements, and create disincentives for cooperation between employers, associations and OSHA. This will stretch and misdirect the resources of OSHA and other federal agencies and impose substantial costs on businesses at a time they can afford it least, all while doing nothing to prevent workplace accidents and injuries.
- Under the bill, OSHA inspectors could require employers to make immediate and costly changes to the workplace without OSHA showing an imminent threat or providing employers with a hearing or judicial review of the inspector's allegations. These changes can include shutting down the workplace or critical processes or machinery.
 - This is particularly troubling given that inspectors are not industry experts and lack knowledge or background regarding the industry specific safety practices and operations. Employers who fail to comply with the work stoppage would face a fine of \$7,000 per day



What's Missing From H.R. 5663

- Bill contains no provisions that would actually help a business improve workplace safety.
- It contains no support or assistance for employers to help them implement better safety programs or better understand safe work practices and related legal obligations.
 - Such compliance assistance is particularly necessary to help small businesses, which often cannot afford to maintain safety personnel or hire consultants to guide them through complicated OSHA regulations.

In order to work towards our shared goals of healthy and safe workplaces, OSHA must be a resource for employers as well as an enforcement agency. Unfortunately, this legislation will create a more adversarial relationship between small business owners and OSHA, as fears of felony prosecution will make employers leery of working with OSHA.



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