



Happenings From The Hill

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Inside the Beltway – Never a Dull Moment!

Let's talk politics for a moment, because it does have an impact on occupational health and safety.

Congress returned in mid-January from their holiday break after working on a health care bill right up until Christmas. Expectations were the House and Senate would come back, agree on a few changes to the two health care bills, pass the legislation, President Obama would sign it, and then Congress could look at other issues. Then – a political bomb went off with the Massachusetts Senate special election results. So now what?

Well, only the politicians really know what they will do with the health care bill. The rest of us will sit back and watch with great interest. Everyone will look down the road to see what impact all of this might have on the November mid-term elections. One thing is certain – Republican or Democrat, the Massachusetts election results show no one is safe come November.

As for Congressional activity, it's hard to say if anything will be accomplished. After nearly a year of work on the health care bill, most expected the health care issue to be wrapped up this month. Insiders were already looking at the three or four issues to be next on the agenda – jobs, financial regulation, cap and trade, and of course the 2011 federal budget, two wars and the continuing efforts against terrorism.

Had this scenario played out, it was likely there would be little time for consideration of any occupational health and safety issues. That may be even truer today as some say the House will not pass any legislation this year unless they are assured the legislation has an excellent chance of passage in the Senate. The Senate has shown little interest in OH&S issues thus far, so one can assume OH&S issues will have to wait until the 112th Congress.

On the other hand, because Congress may have difficulty in addressing some of the thornier issues, they may decide to actually take a look at other issues impacting the country, perhaps even addressing OH&S. We'll just have to wait and see. But if they need a little push, there are a few things they could look at.

OSHA Reform

House staff has been busy working to redraft the Protecting America's Workers Act (PWAA). Talk has centered on whether or not they will omit the section to expand OSHA coverage to local and state government employees not currently covered by OSHA regulations. AIHA supports this expansion, yet I'm not sure it will remain in the final bill. One option is to remove this section and introduce it as a separate measure where it might stand a better chance of passage.

There is also talk that a new PWAA might include several new sections, perhaps language to require employers have a written safety and health program. Not sure if this will happen but I wouldn't be surprised if the House scheduled hearings on this issue.

Bottom line on this bill is the House just may decide to consider the measure because of a lack of movement on other major issues. It would be nice to at least see the bill receive a hearing.

Safe Patient Handling

Another measure that may receive consideration. The House introduced a bill to require OSHA to enact a safe patient handling rule. A companion measure has now been introduced in the Senate. AIHA has written letters of support for this legislation and has a position statement on the safe patient handling of patients and residents. Don't be surprised to see hearings on this issue.

2011 Federal Budget

While it seems as if they just approved the 2010 federal budget (they did), President Obama is about to propose the 2011 federal budget. Supporters of OSHA, MSHA, NIOSH and EPA were very pleased with the increases approved in the 2010 budget; but don't get too excited. Insiders hint the 2011 budget may put the brakes on nearly every federal agency in an attempt to control spending. Some say the President may recommend an across the board cut, perhaps as high as 5%.

What Can We Really Expect?

Hard to say what Congress may or may not do in this election year. If one were to predict whether or not Congress takes up any OH&S legislation, that's all it would be - a guess. But the odds are probably leaning against any serious consideration of OH&S legislation in this session of Congress.

Agency Activity – Full Steam Ahead!

With the expectation of few results from Congress on OH&S, we turn our attention to the agencies and take a look at what we might expect in 2010.

OSHA

With expectations in Congress on the low side, this may be a huge opportunity for OSHA to assume a more prominent role in moving OH&S issues to the forefront. So far, OSHA seems to have accepted this role.

David Michaels has only been in charge of the agency for a few weeks, but he has taken a big step in his willingness to listen and learn. Not only has he made several presentations to discuss the increased need for worker health and safety, but this past week announced a public meeting to solicit comments and suggestions from stakeholders on key issues facing the agency. The public meeting will be held on February 10 in Washington and an AIHA representative will appear and present comments. In order to solicit comments from AIHA members, AIHA will be holding a “Town Hall” forum around February 1. Please consult the AIHA web site for details on this forum and how you can participate. AIHA hopes to receive considerable comments from the membership on what issues our members feel OSHA should be addressing. For details on the OSHA public meeting, go to <http://edocket.access.gpo.gov/2010/2010-814.htm>

The agency also continues to move forward on several issues:

GHS

The comment period on the Globally Harmonized System of Classification and Labeling of Chemicals proposed rule closed on December 29. OSHA will now hold several public hearings to allow stakeholders to present additional thoughts. AIHA has requested to appear at one of these hearings. While AIHA submitted extensive comments on the proposed rule

<http://www.aiha.org/news-pubs/govtaffairs/Documents/GHS-Comments-12-29-09.pdf>

our number one concern remains the fact that proposed changes to the Haz Com Standard would remove references to the TLVs. AIHA suggested that not only should the TLVs remain in the Standard, or at the least as an appendix, but other occupational exposure limits should also be referenced.

Combustible Dust

The comment period on the combustible dust advance notice of proposed rulemaking closed on January 19 and AIHA also submitted comments on this proposal

<http://www.aiha.org/news-pubs/govtaffairs/Documents/CombustibleDustSubmittedComments-01-19-10.pdf>

Injury and Illness Prevention Program

Dr. Michaels has been talking about his support for advocating “that every employer establish a comprehensive workplace safety and health program that features management leadership, worker participation, and structure that fosters continual improvement”. With that in mind OSHA is looking at all options on how it might best regulate occupational injury and illness prevention programs. Look for this issue to be near the top of the list at OSHA in 2010.

Safe Patient Handling

It is obvious this administration would like to see movement on an ergonomics standard. It is also becoming quite clear that such an effort will probably not take place anytime in the next year or two. That said, OSHA seems to be taking a closer look at the issue of safe patient handling and how it might best build on efforts undertaken by numerous states to address this issue. Don't be surprised if the agency moves forward on this issue in 2010.

Recordkeeping

Following the numerous reports of "underreporting" of injury and illness in the workplace, OSHA began a national emphasis program on recordkeeping. As this national emphasis program continues there are some signs OSHA may move towards mandating states to implement this program. Many expect the issue of recordkeeping to become a top issue for OSHA in 2010.

PELs

One of the top issues from AIHA and several other stakeholders, the agency has not indicated its plans on updating the PELs. AIHA recently put out the word that "while we are aware that OSHA has limited resources available to update the PELs on an individual basis, we do not believe the agency can sit idly by and not address the issue". With no definitive response, there are signs OSHA wants to look at this issue. Dr. Michaels has stated repeatedly there is a problem with outdated PELs. And further signs OSHA may look at this issue is the fact that one of the questions OSHA hopes stakeholders will address in their public hearing on February 10 is whether or not updating the PELs should be a priority for the agency or are there suggestions for other ways to control workplace chemical exposures.

Other

Several additional issues seem to be "in the news" at the agency. These include discussions involving a review of the VPP program and whether or not the agency should consider an aerosol transmissible disease standard.

NIOSH

The most important change taking place at NIOSH seems to be a closer working relationship with OSHA. Dr. John Howard has made it a priority that NIOSH and OSHA build a closer working relationship, something that will only improve occupational health and safety. As a matter of fact, Dr. Howard seems to be reaching out to EPA and MSHA to build a closer relationship.

OMNE (OSHA, MSHA, NIOSH, EPA) – a working group is supposedly being discussed where the four agencies can get together to discuss issues of mutual concern. A great idea.

Diacetyl – NIOSH has been conducting research on three potentially hazardous diacetyl substitutes and has provided this information to OSHA.

Respirators – NIOSH is evaluating at least one respirator model to determine whether or not there are fit-testing difficulties. The problem arose in California, where nearly a third of the state stockpile contains these respirators.

State Legislative Activity

The beginning of the year brings with it the start of many state legislative sessions. That means AIHA will be reviewing some 3,000 legislative measures that may impact occupational health and safety and the profession of industrial hygiene. While most of these sessions are just getting underway, AIHA has already seen several measures that demand attention. These include measures mandating licensing for those involved in mold analysis and remediation, qualifications for those involved with the cleanup of methamphetamine laboratories, whether or not states should enact or repeal a state OSHA plan, and the newest issue to make its way into the lawmaking process – the issue of the problems being encountered with Chinese drywall and efforts to identify and remediate the problem.

Rest assured AIHA national will be monitoring all of these issues, contacting local sections impacted, and respond when necessary.

The Way I See It!

I just finished reading an article where an organization gave OSHA a 'C' grade for the first year under the Obama Administration. I have no problem with organizations grading the "administration" or "congress" after one year, but am not sure it is fair to grade an agency after only one year.

Most agencies really haven't been in full operation for a full year. It takes time to have agency leaders nominated and confirmed; it takes even more time for these leaders to fill positions within the agency. One can also add to this the fact it takes additional time for an agenda to be proposed. By the time all of this is accomplished the agency has really been "on the job" only a few months. In the case of OSHA this past year, literally only a few months.

Would I like to see movement at a quicker pace? Of course. But the regulatory process is a complex process, one that moves slowly. Too slow to be sure, but one shouldn't expect any agency to enact regulations and rules in such a short period.

What I would really like to see isn't so much a grade on the pace of rulemaking, but perhaps a grade on how the agency addresses the issue of occupational health and safety in a broader sense. We hear a lot of talk about "transparency" in today's workplace so let's watch the agency in the coming year to see how "transparent" it becomes.

Will the agency reach out to employers as well as labor? Will the agency reach out to stakeholders who have the expertise to assist the agency in its work? Will the agency look at the hard issues like enforcement, compliance assistance, VPP, updating the PELs, recordkeeping, and ergonomics in such a way that employers and workers feel everyone is given an equal opportunity to express ideas on how to help workers remain healthy and safe.

Here's hoping OSHA not only moves a regulatory agenda but takes a look at a "bigger picture" of where the agency needs to be in five years, ten years, or more. Is what was created in 1970 still working 40 years later or does it need to be changed? This may be the time to look at alternatives – whatever they may be!

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.