



Happenings From The Hill

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Change in Washington!

But What About Occupational Health and Safety?

What with all of the inaugural activity, it goes without saying that Washington, DC was the center of attention the past few weeks. But now it is time to get down to business and continue to seek solutions for the many problems facing the country. As the Obama administration takes charge and begins to spell out its agenda, we wonder just how much time and effort will be spent on occupational health and safety issues.

Some say “it’s early, so don’t get too concerned”. I disagree. If one looks at the history of new administrations, you see that the big issues are accomplished in the first year. This is the time when there is still a feeling of “invincibility”, and proposals are accepted with fewer questions.

Occupational health and safety issues are no different. If this administration expects to address worker health and safety, the time is now. Let’s hope the future Secretary of Labor does not spend too much time in nominating an Assistant Secretary of Labor for OSHA. The agency is already lacking a full-time leader and the agenda is essentially on hold.

As for the “big” issues – updating the PELs, adopting the GHS, ergonomics. Let’s face it; these are long-term issues that will likely still be around in a couple of years. Frankly,

there are more and more individuals who say that ergonomics is a non-starter and that the administration should simply drop the issue. Not only would it be very difficult to address the issue at this time, but some industry associations have already announced they would spend whatever is necessary to defeat an ergonomics standard.

PELs and GHS? These are also tough issues to address in the short-term, but they are issues that must be addressed. Looking at the PEL update, the only way this is going to happen is if OSHA takes the lead. The private sector can spend all the time it wants looking at solutions, but unless the agency becomes involved it is a non-winner. And GHS? The longer the agency takes to address this issue, the more likely it is that the U.S. falls further behind in the global OH&S community.

But these are long term issues. In the interim, the agency needs to do something. Anything! It really doesn't make any difference if the first issue addressed is combustible dust, diacetyl, confined spaces in construction, cranes and derricks, silica, beryllium, etc. What the agency needs to do is take one of these issues, or another, and address it quickly. Show employees and employers that the agency is capable of moving forward and regaining its credibility.

But while the agency has been criticized repeatedly, let's not forget that the criticism should not be targeted at the employees within the agency. These employees are still the best of the best and are committed to worker health and safety. All they need is a little direction from the top and things will be fine. Let's hope the Obama administration, from the President to the Secretary of Labor to the Assistant Secretary of Labor for OSHA understands this and allows the agency to do what it is capable of doing.

Secretary of Labor Nominee Confirmation on Hold

Notwithstanding the fact that the Senate has been moving very quickly to confirm the cabinet nominees for the Obama administration, word is the confirmation of Secretary of Labor Nominee Hilda Solis has been put on hold for a few days. Seems that a couple of the Republican Senators were not too happy with some of the answers provided by Solis during her confirmation hearing, or should we say "non-answers" to some of the questions. In addition, there is some concern about her support for the union organizing issue.

Because of this, the confirmation has been put on hold in the committee and has yet to be sent to the full Senate. However, look for this "gamesmanship" to be quickly overcome and the confirmation process to continue.

As for the Assistant Secretary of Labor for OSHA slot, no word on who might be the final pick. Word has it that the "short list" has only a couple of names on it and that at least one of these names has the inside track. As for when we might hear, it's hard to say. Most insiders feel the individual chosen may not be known until March, or later.

Congress Comes Roaring Back

As the 111th session of Congress convened in early January, several changes were evident. The first is the fact that the Democrats increased their numbers to the point where they look as if they are as close as possible to shutting off any Republican

filibuster in the Senate. With what looks to be 59 votes, one shy of the 60 needed for complete control, Senate Democrats will likely bring back many of the issues they looked at in the last session of Congress.

We expect to see the same OH&S bills introduced this session. The Protect America's Workers Act will be one of the top issues for labor. However, it is likely the lead for this issue may be in the House this time around. Senator Kennedy was the previous lead on this issue but has indicated his priority is health care; plus the Senator is facing some serious personal health concerns. We also expect to see bills introduced on a ban on asbestos, and perhaps individual bills on expansion of OSHA coverage, criminal penalties, victim's rights, etc. We have already seen a bill introduced on the recording of injuries and illnesses and a bill on nanotechnology.

If there is one positive already evident in the new Congress it can be found in the House. In the previous Congress, the Committee on Education and Labor Subcommittee on Workforce Protections, the subcommittee with oversight of OSHA had only eight members. This compared to an average of 20+ on most subcommittees. AIHA has long complained about this low number and immediately after the election it was one of the first issues we raised in meetings with House Committee staff. Well, it looks as if our efforts paid off, albeit only a little bit. The new Subcommittee membership has been named and the subcommittee now has 11 members. Not enough, but better than before.

Congress Looks at Budget in Stimulus Package

With all of the legislative maneuvering on the stimulus package, it seems Congress is also finding a little time to address the federal budget. Now remember, this is the federal budget that was supposed to have started last October 1. The federal government has been operating on a continuing resolution since then, with the current resolution set to expire on March 6.

As Congress looks at the billions of dollars being earmarked within a stimulus package, they have also been addressing the budget. The current draft shows that DOL would be provided with an additional \$80 million. However, no word on how much of that, if any, might be earmarked for OSHA. Most insiders feel that OSHA will be lucky to receive \$10 million of this amount, but at least that amount would cover the cost of living increases for OSHA employees.

Over at CDC, the agency would receive an additional \$400+million. No word on how much of this might be allocated to NIOSH, but it is expected that a substantial amount is to be spent to acquire real property and relocate and consolidate real property and facilities. NIOSH is involved in purchasing and relocating some of its facilities, but we are pretty sure this doesn't include any talk of relocating NIOSH headquarters in Washington.

DOL "Secret" Proposed Rule Dies

In a somewhat surprising move, the Bush Administration and the Department of Labor allowed the DOL proposed rule on risk assessment to simply "die" as the January 20 administration changeover occurred.

If you recall, this rule was proposed to change the way health standards, and the risk associated with these standards, were to be determined within OSHA. DOL claimed it was an “internal” rule and had no impact on the regulated community.

But there was substantial opposition to the rule from labor and numerous others about the process used to develop this rule. AIHA submitted a letter of opposition to DOL and Congress and numerous AIHA local sections and members also submitted letters of opposition. In the end, the administration must have determined that the proposed rule was not worth the fight. The Bush administration also probably realized that the Obama administration would do whatever possible to override the rule.

OSHA Announces Advance Notice of Proposed Rulemaking on Diacetyl

OSHA has published an advance notice of proposed rulemaking on diacetyl, requesting comments by April 21. The danger of exposure to this food flavoring has been an issue of debate for the last several years. Notwithstanding the fact that several studies have indicated the danger of exposure to diacetyl, OSHA has previously delayed becoming more involved with the issue. Congress became involved in 2007 when legislation was introduced that would have required OSHA to issue a final standard on diacetyl within two years. AIHA supported this legislation, which passed the House but died in the Senate.

No word on what the Obama administration might do with this issue.

AIHA Reminds President of Importance of Worker Health and Safety in Stimulus Package

AIHA sent a letter to President Obama and Secretary of Labor Nominee Solis this past week regarding the President’s Stimulus Package. The AIHA letter commented on the news that the President hopes to create more than 600,000 construction jobs with the stimulus package. AIHA told the President it is vital that the appropriate number of health and safety professionals is included in this new labor force to protect these new workers and urged the President to direct the Occupational Safety and Health Administration to ensure that the new jobs created by the stimulus package have adequate workplace protections for these workers. The AIHA letter will be posted on the AIHA web site.

State Legislatures in Full Swing

It goes without saying that nearly all state legislatures are in session this time of year. That means thousands of bills being introduced. Through the first three weeks of January, AIHA located nearly 100 bills of interest to the profession. These bills address many issues – methamphetamine laboratory cleanup, mold assessment requirements, radon and asbestos qualifications, safe-patient handling, and even several states looking at creating OSHA state plans.

AIHA has provided comments on many of these bills and will continue to notify our local sections of bills that may be of interest to their membership.

It is becoming very clear that as many look at occupational health and safety “inactivity” on the federal level the states have assumed the role of addressing the issues. Whether this is good or bad is not the question at this point in time, it’s just reality!

Public Policy Issues Update

AIHA government affairs is now publishing a public policy issues update on a regular basis. This update will keep readers abreast of all regulatory proposals of interest to the profession. The update contains comment deadlines, hearing dates, and lists AIHA committees that may be considering responding to the specific issues. The update also contains a link to the specific Federal Register issue containing each of the proposals. While there will be no individual email listing of those who may be interested in receiving this update, each update will be forwarded to all local section and volunteer group officers who may then distribute to their membership. The update will also be placed on the AIHA government affairs web page. Contact Aaron Tripler with any questions.

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.