



AIHA Occupational Health
EPA U.S. House of Represent
Health and Safety Industrial
Representatives U.S. Senate
Industrial Hygiene Congress



ial Hygiene Congress OSHA
NIOSH AIHA Occupational
s OSHA EPA U.S. House of
cupational Health and Safety
House of Representatives U.S.

HAPPENINGS FROM THE HILL

American Industrial Hygiene Association Government Affairs Department

Aaron K. Trippler, Director
703-846-0730 atrippler@AIHA.org

March 13, 2007

What's Happening with Specific Issues?

A quick look at some of the specific issues that seem to be on the minds of everyone within occupational health and safety -

Personal Protective Equipment – Who Should Pay For It?

Looks as though the issue of a final rule requiring employers to pay for personal protective equipment for employees may be heading for a conclusion – whether at OSHA, in the courts, or in Congress.

A little background on the issue.

- OSHA proposed a rule on the issue back in 1999, a proposal that would require employers to pay for equipment for their workers. Finally, just when everyone thought the rule was nearing completion in 2004, OSHA decided to open up the rule for additional comments. OSHA asked stakeholders about the definition of “tools of the trade”.
- The latest semi-annual regulatory agenda suggested that OSHA would be finalizing the rule by May of 2007.
- In January of 2007, the AFL-CIO and others filed a lawsuit that would force OSHA to finalize the rule. OSHA has until March 19 to file a response.
- On March 5, the US Chamber, National Association of Manufacturers and others filed a motion to join as “friends of the court”, saying that the Dept. of labor had no right to

finalize a rule that would force employers to pay for this equipment. The motion stated that this action by the Department would amount to an economic issue and that Labor had no right to force an economic issue on employers.

- Finally, on March 6, HR 1327 was introduced in the US House that would require OSHA to finalize the PPE rule within 30 days of enactment of the legislation. The bill was introduced by Rep. Roybal-Allard (D-CA) and Rep. George Miller (D-CA). Rep. Miller, if you recall, is now the Chairman of the House Education and Labor Committee. AIHA is in the process of drafting a letter of support for this legislation.

Stay tuned!

Ergonomics Activity on the Upswing

While the issue of ergonomics is not exactly on the “front burner” at OSHA, there seems to be an increase in activity in other areas.

- Rep. John Conyers (D-MI) introduced HR 378 in Congress on January 10. The bill, while not directly addressing the issue of ergonomics on a large scale, does look at musculoskeletal injuries to patients, direct-care registered nurses, and other health care providers. The legislation would direct OSHA to adopt a safe-patient handling standard. No action has been taken on the bill and it is doubtful that this bill will move anywhere.
- The issue of “safe-patient” handling also seems to be of interest on the state level. As of March 12, no less than nine bills have been introduced in state legislatures that would establish some sort of provision for safe-patient handling.
- At least two states (CT and MS) have introduced legislation that addresses ergonomics. The CT bill would require a written ergonomics program and the MS bill urges business to implement such a program.
- Schools haven’t been left out. A bill has been introduced in MA that would establish a commission to study ergonomics in the public schools.
- Finally, not to be outdone, our friends up in Canada are also looking at the issue. A new musculoskeletal disorder prevention guideline has been developed from the OSH Council of Ontario, part of the provincial government’s plan to reduce workplace injuries by 20 percent by 2008.

Asbestos Ban Re-Introduced

Senator Patty Murray (D-WA) fulfilled her promise to continue efforts to ban the use of asbestos with introduction of S 742 on March 1. The legislation would ban the importation, manufacture and distribution of products containing asbestos. The bill would also appropriate money for asbestos-related disease research and treatment as well as create an asbestos-related disease registry.

While Senator Murray has long supported this effort and now has more influence in Congress (Chairwoman of the Senate Labor Subcommittee on Employment and Workplace Safety) the bill

will be difficult to enact. An asbestos ban would require many different federal agencies to be involved, including the Department of Defense, Environmental Protection Agency, NIOSH to study different health effects, OSHA, even NASA.

Nanotechnology

Research continues on the nanotechnology front, trying to determine the extent of any hazard exposure to workers. Most of this research is being done within NIOSH, specifically in the NIOSH Nanotechnology Research Center.

While great strides have been made, the biggest obstacle to determining worker exposure seems to be funding. Within the NIOSH budget, there are literally no funds earmarked for nanotechnology research. In fiscal year 2005, \$3 million was redirected from existing NIOSH program funds to conduct research. In fiscal year 2006, \$3.7 million was redirected and in fiscal year 2007, \$4.6 million will be redirected.

Not quite sure where the real problem lies. Is it within CDC or has the administration simply refused to provide an earmark for this important research? What is known is that NIOSH believes that an infusion of \$10 million would go a long way toward finding some of the answers about the health and safety of nanotechnology. The President's fiscal year 2008 budget did not include any specific funds for this research, but AIHA and many others are determined to educate Congress on the need for this funding.

Other Activity at OSHA

As OSHA and other federal agencies begin the long process of seeking approval of fiscal year 2008 budget expenditures, it is interesting to see exactly what each agency believes can be accomplished in the coming year.

We all know that the President has requested expenditures of \$490.3 million in fiscal year '08 for OSHA. While this is an increase of \$17.9 million over the 2006 and 2007 fiscal year budgets, some have offered up more detailed figures that show this increase is actually a decrease when inflation is accounted for. The figure being tossed about is an actual \$5.1 million decrease after inflation.

In addition to the actual appropriations requested, each agency also supplies Congress with what is known as a "budget justification document". This document outlines plans the agency has for the coming fiscal year and where the appropriated dollars will be spent.

OSHA's justification document includes quite a "wish list". The agency says it expects to issue three notices of proposed rulemaking – including the haz com standard update (GHS and MSDS issues), crystalline silica and beryllium. The agency also says it will begin a small business panel review on ionizing radiation. The first stakeholder meeting on this issue was recently held. OSHA also plans to issue final rules for the standards improvement project phase III, and a consensus standard update. And finally, the agency says it will issue guidance documents on hazard communication and several others issues.

Whew! Quite an agenda for an agency that has continually backpedaled on several regulatory

issues the last several years. One would think the agency would pick out a couple of realistic activities, perhaps finalizing the PPE standard or begin working with industry and labor to update the permissible exposure limits. Should the agency succeed in more than one or two of the activities in the justification document many would consider the year a huge success. We'll be watching!

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. The center can be found within the members-only section of the AIHA web page.

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.