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HAPPENINGS FROM THE HILL

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Congress Returns for Another Short Run

Congress returned from its “spring district work period” with a full agenda as the November election gets closer and closer. It will be interesting to see what issues are not only debated but voted upon in the remaining days of this Congress.

While many believe this session runs until the end of the year, the truth is there are very few legislative days remaining. Take out a week off over Memorial Day, a week off over July 4, a month off for summer recess, a scheduled adjournment of late September, and the fact that Congress does not normally meet on Mondays and Fridays and the days are numbered.

However, you can look for several oversight hearings to take place over the coming months. Lawmakers recently quizzed Labor Secretary Chao on pandemic flu, the voluntary protection program, the regulatory agenda, ergonomics and diacetyl. OSHA chief Edwin Foulke was just up on the Hill to discuss combustible dust. And the issue of diacetyl is still on the agenda of many.

Whether or not Congress makes final decisions on the budget or other issues of importance to occupational health and safety, here is a quick look at some of the issues being discussed:

Combustible Dust

Considerable activity remains when addressing the issue of combustible dust. Following the sugar refinery explosion in Georgia in February, OSHA began intensifying its enforcement and educational efforts. On March 4, Congress got involved with the introduction of HR 5522, a bill that would require OSHA to issue an interim standard regarding worker exposure to combustible dust within 90 days after enactment of the bill. The bill would also require OSHA to promulgate a final standard within 18 months of the bills enactment. Then, on March 11 OSHA reissued its combustible dust National Emphasis Program (NEP) which would increase the number of inspections.

All of this follows a Chemical Safety and Hazard Investigation Board report back in 2006 that recommended OSHA develop a comprehensive standard for combustible dust. The report from the CSB also recommended a national emphasis program and OSHA implemented the first NEP last October.

In testimony before a Congressional hearing, Edwin Foulke said that OSHA would consider all options, including rulemaking.

It should be noted that the state of Georgia is not waiting for Congressional or agency action. Because of this explosion that resulted in 12 deaths, the Georgia Insurance and Safety Fire Commissioner tightened state rules on industries that produce combustible dust. The new rules require all industries that produce combustible dust to develop emergency plans and include more stringent ventilation requirements.

What's next? A House hearing on HR 5522 is scheduled for April 9 and will probably result in eventual passage by the House. The Senate is another story. It will be much more difficult to have this bill enacted by the Senate in the limited time available. Besides, it seems that Congress has been very effective with the approach it is now taking. A threat of PPE legislation resulted in OSHA finalizing the PPE standard. A bill requiring a diacetyl standard passed the House and seems to also have moved OSHA in the direction of increased attention to this issue, notwithstanding the fact that OSHA admits it has fallen behind its internal schedule on the issue of diacetyl.

On a side note, AIHA submitted a letter to the House Committee in support of the legislation requiring a combustible dust standard. AIHA also supported bills requiring finalization of the PPE standard and requirement for a diacetyl standard.

Ergonomics

OSHA has published the latest in a series of guidelines addressing the issue of ergonomics. The latest addresses employers and employees in the shipyard industry. This is the fourth set of guidelines issued by OSHA – the first three were directed at the retail grocery industry, nursing homes and the poultry industry. No word on what industry may be the next one addressed by OSHA but it is doubtful that any action will be taken during the remainder of the Bush administration. Then we will have to wait and see what takes place. Should the Democrats take control of the administration there is likely to be an attempt to revive a full ergonomics standard.

Ergonomics continues to be an active issue in the states. Michigan has been attempting to promulgate an ergonomics rule for several years, but the politics of the issue has created a “back and forth” movement on the issue. The latest finds that the state’s ergonomics advisory committee approved the rule and the Occupational Health Standards Commission is also expected to approve the rule. If approved, the rule would likely take effect. But hold on! Michigan business advocates are pushing for state legislation that would prevent the standard from taking effect. The bill passed the Senate in late February and awaits action in the House.

Another issue that is very closely related to ergonomics is the issue of “safe-patient handling”. While several states enacted legislation last year addressing the issue, 2008 is also seeing considerable activity:

California – Following the Governor’s veto of a safe-patient handling bill last October, another bill has been introduced and is in a Senate Committee.

Florida – Two separate bills pending. One has passed the Senate.

Hawaii – Bill introduced in January. Still in a House Committee.

Illinois – Bill introduced in February. Still in House Committee.

Massachusetts – Two bills, one addresses ergonomics in schools. Both bills pending.

Michigan – Bill introduced in 2007, still pending.

Minnesota – Three separate bills. All three still pending.

Missouri – Bill introduced in January. Pending in House Committee.

New Jersey – Bill introduced in January. Withdrawn from further consideration.

Vermont – Two bills introduced in 2007. Still pending.

AIHA will be watching this issue closely. If action is to be taken on most of these bills it must be soon as most of these legislatures will adjourn their sessions by the end of May.

Hex Chrome

When OSHA issued the final standard lowering permissible exposure limits for hexavalent chromium back in 2006, the agency faced several lawsuits. While most of these lawsuits have been settled, at least one remains. However, that does not invalidate the rule and OSHA has now issued a new compliance directive to provide enforcement guidance for the final rule. The directive includes procedures, guidance and requirements for employers to protect employees from exposure to hex chromium.

Crystalline Silica

OSHA continues to use its authority to implement National Emphasis Programs by publishing a new directive for a NEP addressing exposure to crystalline silica. The directive provides guidance to all OSHA regional and area offices and to state programs.

Asbestos

MSHA recently announced it has lowered the asbestos exposure limit at metal, nonmetal and underground coal mines. The new rule matches OSHA protections that are already in place for almost all other workers. The new rule was proposed back in 2005.

As for the attempt by Congress to ban a broad range of asbestos-containing products, the House is still considering the next step. If you recall, Senate Bill 742 was passed by the Senate last October. However, the House has yet to take any action and it now looks as if a House Committee wants to make some changes to the legislation, specifically because several lawmakers believe the legislation is not protective enough. Even though the bill passed the

Senate on a voice vote, the issue seems to be a little more complicated than some believed. Whether or not this session of Congress can enact the legislation remains to be seen.

Chemical Safety Board

The Senate has confirmed John Bresland to a five-year term as chairman and chief executive officer of the US Chemical Safety Board. Bresland served as a board member for the past five years. Many hope Bresland will continue the increased activity undertaken by the Board over the course of the last several years. Bresland replaces Carolyn Merritt as Chairman.

NIOSH Strategic Plan

NIOSH has placed its updated version of its Strategic Plan for NIOSH Nanotechnology Research on its website and made it available for comment. The document provides a look at current projects, takes a look at research planning to 2012 and has four goals for research. The plan is available for comment until June 1.

On a side note, NIOSH is also seeking comments on the NIOSH Personal Protective Equipment for Healthcare Workers Action Plan. This document is intended to help guide the effort to prepare the nation's health care workers face an influenza pandemic. Comments are due June 1.

New York Legislative Issue

"No news is good news!" That's the word on the legislative measure before the City of New York that would require the registration of air monitoring equipment and individuals. Following hearings on the bill (Int 650), AIHA was made aware that an amended version was drafted, as well as draft regulations. However, no action has been taken on the measure since January. Hopefully, the City Council understood the many objections and simply allowed the issue to die, but I don't think we're that lucky.

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. 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.