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Occupational Health and Safety  
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## **HAPPENINGS FROM THE HILL**

### **American Industrial Hygiene Association Government Affairs Department**

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**May 1, 2007**

### **OSHA Oversight – “We’ve Only Just Begun”**

As expected, Congress has fulfilled its promise to take a closer look at OSHA and its effectiveness on worker health and safety.

This past week, Congress held two important hearings on OSHA. The first hearing (in the House Subcommittee on Workforce Protections) looked at the standard setting process of OSHA, focusing on the continuing problems that OSHA seems to have with standard setting. Ed Foulke, Assistant Secretary of Labor for OSHA, testified that OSHA is fulfilling all of its responsibilities when it comes to standard setting, while other witnesses testified that OSHA has had a total “breakdown” when it comes to setting standards.

The second hearing (in the Senate Subcommittee on Employment and Workplace Safety) looked at OSHA from a broader perspective, focusing on whether or not OSHA was working. This hearing also took OSHA to task for what some perceive as failing in protecting workers. The testimony covered a broad range of issues, from standard setting to appropriations to enforcement.

Expect more of these hearings as time goes on.

### **Kennedy and Woolsey Introduce OSHA Legislation**

Also as expected, OSHA reform legislation has been introduced in both the House and the Senate. Senator Edward Kennedy has introduced S 1244 in the Senate and Representative Lynn Woolsey has introduced the companion measure, HR 2049 in the House.

The bills are nearly identical to what Senator Kennedy has introduced in the past; however with the Democrats in charge the bills will undoubtedly receive serious consideration. The legislation is entitled the “Protecting America’s Workers Act”.

Major parts of the legislation:

- Would extend OSHA coverage to the millions of state and municipal employees who are not covered by the OSHA Act. Only those government employees in states where there are State OSHA plans have coverage at this time. Note: Nearly everyone agrees that all workers should be covered. Separate legislation, HR 1517 has been introduced to cover these employees. AIHA supports this legislation on the condition that Congress appropriates adequate resources to OSHA and local governments to provide this coverage.
- Increases protection for whistleblowers. Note: This has long been an issue with Senator Kennedy.
- Increase criminal penalties. This section would increase the penalties for those who willfully violate provisions of the OSHA Act and these violations results in a fatality or serious incident. As an example, violations resulting in a death would now result in a penalty of \$50,000 to \$250,000. Again, AIHA supports increasing the criminal penalties to a felony for these willful violators; however we are also concerned that those individuals on the front line of health and safety are not made the “scapegoats’ for violations.
- Employers would be forced to pay for employee’s personal protective equipment. Note: Separate legislation has also been introduced on this issue. However, that legislation has been put on hold pending OSHA’s announcement that they will voluntarily finalize the PPE standard by November of this year.

Also of note should be the fact that this legislation makes no mention of ergonomics. Some insiders had predicted that this bill would also require OSHA to draft a new ergonomics standard.

Will the bill be enacted? Hard to say at this time, but it will be very difficult. The bill contains a lot of separate issues which makes it harder to pass. Some have stated that Senator Kennedy and Rep. Woolsey would be much better off to introduce separate legislative measures on each of these issues. Several years ago, Senator Michael Enzi did just that and was successful with individual measures as compared to one big bill. We shall see!

## **Democrats Discuss Other Issues**

In addition to the issues found within the OSHA reform legislation and those discussed at the recent hearings, a few others have been receiving discussion on the Hill.

- ✓ Rep. Lynn Woolsey has announced that she hopes to provide some momentum on the issue of updating the Permissible Exposure Limits (PELs). Whether or not anything will come of this remains to be seen.
- ✓ Rep. Woolsey also indicated that Congress would remove the existing ban on OSHA from enforcing the annual respirator fit-testing for TB. AIHA also supports the lifting of this ban.
- ✓ There has been considerable talk about OSHA’s refusal to issue an emergency temporary standard on the hazards of diacetyl, commonly referred to as the “popcorn flavoring issue”. OSHA has stated they will begin inspecting all microwave popcorn

- plants by the end of the year
- ✓ There has also been much discussion about why OSHA has not moved quicker on the issue of the pandemic flu. Here again, OSHA refused to adopt an emergency temporary standard. OSHA has published some guidelines and expects to publish more detailed guidelines in the coming months.

## **OSHA Announces Updated Semi-Annual Regulatory Agenda**

Federal agencies came out with their updated semi-annual regulatory agenda late last week and, as expected, the OSHA regulatory agenda remains considerably smaller than it did several years ago. While many have criticized OSHA for the lack of agenda items, the agency defends the list by stating that this list is more realistic about what can be accomplished.

A quick look at the agenda items of major interest to AIHA:

### Prerule Stage –

- Occupational Exposure to Silica. Effects and Risk Assessment to be completed by 09/07.
- Occupational Exposure to Beryllium. Small Business Report to be completed by 09/07.
- Ionizing Radiation. Stakeholder meetings now underway.
- Emergency Response and Preparedness. Request for information to be completed by 07/07.
- Lead in Construction. OSHA to complete review by 07/07.

### Proposed Rule Stage –

- Updating OSHA Standards Based on national Consensus Standards. Notice of Proposed Rulemaking to be out by 05/07, direct final rule by 06/07.
- Standards Improvement. Record being analyzed.
- Hazard Communication. Peer review of economic analysis by 08/07.

### Final Rule Stage –

- Employer Payment for Personal Protective Equipment. Final action by 11/07.

### Long-Term Actions –

- Hearing Conservation Program for Construction Workers. Next Action Undetermined.

## **Summary of AIHA Government Affairs Activity January 1-April 30:**

Reviewed 2,871 State legislative measures  
158 of these measures were passed on to local sections  
Reviewed 2,079 House and 1,253 Senate Bills in Congress  
AIHA monitoring 11 of these bills.

## **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.**