



Happenings From The Hill

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November 12, 2008

Democrats Win the White House and More Seats in Congress - What Now?

The long, long, long election season is finally over with the Democrats picking up a considerable number of seats in the House and the Senate as well as the White House. So what can we expect when it comes to occupational health and safety?

First, let's look at the White House –

President-elect Obama has given few recent signals as to what he hopes to accomplish when it comes to OH&S. But he has previously provided views on some of the important issues.

One was his co-sponsorship for the Protecting America's Workers Act introduced in the last session of Congress. This is a very broad bill that provided for increased criminal penalties for those who willfully violate an OSHA regulation that results in a fatality, expands coverage to those government employees not currently covered by OSHA, broadens whistleblower protections, increases victim's rights and provides for the right to contest citations and penalties. President-elect Obama has also indicated his support for an ergonomics standard and a combustible dust standard.

Expect a President Obama to continue to support these efforts, but it is doubtful that he will make them a priority in the Congress. His priority on behalf of workers will likely be

the “union organizing” issue. This is the issue whereby employees would make known their views on forming a union through a check-off card system rather than by secret ballot. Labor supports the check-off system and industry opposes such an effort. Labor may consider this the most important issue in the new Congress. While the other issues are also important to labor, a President Obama will have so many other priorities to consider that it is unlikely these issues will come up anytime soon.

Second, let's look at Congress –

In the Senate, it will be very interesting to see what happens with the Health, Education, Labor and Pensions Committee. Senator Edward Kennedy will remain as Chairman but because of his serious medical problems it will be interesting to see how much time he can provide to the committee and OH&S. Senator Kennedy's priority will be health care, but he is expected to reintroduce the Protecting America's Workers Act. The Subcommittee of this full committee is the Employment and Workplace Safety Subcommittee. Senator Patty Murray is expected to remain as chair of this subcommittee. One of her priorities will probably again be her effort to ban asbestos in the U.S. The bill passed the Senate the last time around but died in the House.

In the House, while Democrats picked up additional seats, we don't expect much to change. Rep. George Miller should remain as Chairman of the Education and Labor Committee unless he is chosen for some other position. There are rumors he is one of those being considered as Secretary of Labor. Here again, Rep. Miller has not shown an overwhelming interest in OH&S as much as he has other priorities. The Subcommittee on Workforce Protections will remain the subcommittee with OSHA oversight. Rep. Lynn Wolsey is the chair and will probably remain the chair. She is the co-sponsor of the Protecting America's Workers Act and we look for this to reappear. If there is one thing we would like to see changed in this subcommittee it is the number of Members. There are only eight members of this subcommittee while the other four subcommittees of the full committee average more than 20. We must increase the number of individuals with an interest in OSHA!

Somewhere in all of this, do not be surprised to see someone in Congress begin efforts on behalf of an ergonomics standard. There will be much debate on whether or not Congress can, or should, be involved in this, so don't expect the effort to move very fast. As far as legislation to require OSHA to enact a combustible dust standard or a diacetyl standard, we expect Congress to hold off and wait for OSHA to take action when a new OSHA director takes over.

And let's not forget the DOL “secret rule” pertaining to risk assessment procedures within OSHA that was proposed by the Bush administration. Not sure if Congress will need to address this issue or not. If it is determined that the Obama administration can rescind this rule there will be no need for Congress to get involved. If the administration can not rescind the rule Congress will address the issue. Either way, it is likely there will be a major effort to get rid of this rule.

Third, a look at OSHA –

Here, things are up in the air. It will take some time for OSHA to “get up and running” but when it does the agency will undoubtedly begin looking at several things. Among these are the previously mentioned combustible dust and diacetyl standards. But expect these to be only two of the many issues OSHA will at least consider in the coming year. Expect them to make some move on the silica and beryllium issues. But also expect

OSHA to make a concerted effort to seriously look at an ergonomics standard. And let's not forget the Globally Harmonized Standard (GHS) which deserves immediate attention. And can we look forward to updating the PELs? Unlikely in the short term but we hope to begin the discussion.

All of these issues will be important, but reality will set in quickly as the agency faces the same problems it has encountered in the past – that being a standard-setting process that takes way too long. Expect lots of activity – and hopefully not the same result!

Who Will Be In Charge?

It is obvious there will be major changes at all levels of the federal government. As to who will be in charge of the areas that impact OH&S we will have to wait and see. However, the Obama transition team seems to be moving very quickly in many areas and the hope is that OH&S will be one of those areas.

At the Department of Labor, there are several names being mentioned as a possible Secretary. Among those are Rep. George Miller of California, former Representatives Richard Gephardt and David Bonior, and Andy Stern, president of the Service Employees International Union.

As for OSHA, names are also being discussed. Among these are Peg Seminario, director of occupational health and safety for the AFL-CIO; Michael Silverstein, former director of policy for OSHA during the Clinton administration; Mike Wright, and none other than Dr. John Howard, former head of NIOSH.

With the departure of Ed Foulke as head of the agency, OSHA in the interim is being led by Thomas Stohler, a Deputy Assistant Secretary of Labor at OSHA since this past May.

At NIOSH, things are just as cloudy, perhaps even more so. The only serious name being discussed as Secretary of HHS is former Senator Tom Daschle. The new HHS Secretary would then have to take a look at who should be running the CDC. And after all of that they could then consider a new leader at NIOSH. Sounds like a good deal of time may transpire before NIOSH is provided with a permanent leader. In the interim, the agency is being led by the very capable Christine Branche until such time as a permanent director is appointed.

Other Issues of Interest

There are a number of other issues that may appear on the horizon when the 111th session of Congress opens in January. While we expect most of these to face an uphill battle, it's worth noting that they have been around for some time and we expect them to reappear.

Among these are bills that would revise regulations concerning the recording and reporting of occupational injuries, safe-patient handling, separate bills on expansion of coverage and increasing criminal penalties, nanotechnology research, and making EPA a cabinet-level agency.

And last but not most important is the budget. Most of the federal government, including OSHA, MSHA and NIOSH are operating on a continuing resolution until March of 2009. The Democrats have hinted they may take a final budget as one of the first things in either the lame-duck session or right after the first of the year. Either way, we need more funding for OSHA, MSHA and NIOSH. But with the federal government in deep financial problems it will be difficult to fund everything that needs it.

Did Anything Pass in the 110th Session of Congress?

The answer is “very little” and depending on your point of view this was either good or bad. All of the issues mentioned above were introduced in the 110th Congress. AIHA was actually monitoring and/or involved with positions on 34 different bills. Of these bills, only two were enacted. One of these dealt with a requirement for methamphetamine laboratory cleanup guidelines and one bill addressed miner safety. Every other issue ended up on the “cutting room floor” as they say.

AIHA top issues for 2009-2010

In case you missed it, AIHA government affairs recently completed a member survey to determine the top public policy issues for 2009-2010. Not surprisingly, many of the same issues appeared at or near the top as in previous surveys. Among these were updating the PELs, the GHS, nanotechnology, professional recognition and laboratory accreditation. The survey also provided AIHA with member views on specific OSHA issues, general OSHA issues, legislative goals and national/international standards.

While many of the issues remain from previous surveys, there were a couple of surprises. One is the fact that nanotechnology continues to move up as a top public policy issue. The second is the fact that emergency preparedness and response did not show up as one of the top issues. Not sure whether this is because the further we move away from 9/11 the less importance; or the fact the membership believes the issue has been addressed. I tend to think it isn't that the membership believes the issue has been addressed.

What is also interesting is to read some of the goals of other organizations. In reviewing these goals we find that AIHA members are very much in line with what others out there think. Let's hope we can all get together to push for accomplishing some of these goals.

By the way, if you haven't seen the AIHA survey results you can find them on the AIHA government affairs web page or simply send me an email and I'll forward the results to you.

Federal and State Legislative Action Centers

The federal and state legislative action centers are being “cleaned up” in preparation for the new legislative sessions in January. When this is completed and the sessions begin, 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.