



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

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IN REPLY REFER TO
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Dear Representative:

This week the House is scheduled to take up four bills to amend the Occupational Safety and Health Act of 1070 - H.R. 739, H.R. 740, H.R. 741 and H.R. 742. The UAW opposes each of these anti-worker bills and urges you to vote against them.

H.R. 742, the "Occupational Safety and Health Small Employer Access to Justice Act," would require taxpayers to pay the legal costs of employers with 100 or fewer employees and worth up to \$7 million who win administrative or enforcement cases brought by OSHA or any challenge to an OSHA standard, regardless of whether OSHA's actions were "substantially justified." The UAW is deeply concerned that this legislation would have a tremendous chilling effect on the ability of OSHA to enforce workplace health and safety protections. In addition, this bill would reverse the time-honored rule of American jurisprudence that requires litigants to bear their own costs and fees. There is no need for such legislation because the Equal Access to Justice Act already protects parties from administrative overreaching by compensating them in cases where the government is not "substantially justified" in bringing a law enforcement action, or under other "special circumstances."

The other three bills, **H.R. 739, H.R. 740 and H.R. 741**, all relate to the Occupational Safety and Health Review Commission (Commission or OSHRC). In considering these bills, the UAW urges the House to bear in mind that OSHRC functions as an intermediate appeal for employers, between decisions of the Occupational Safety and Health Administration (OSHA) and the U.S. Courts of Appeal. During the time a case is on appeal to OSHRC, employers do not have to pay any assessed penalties, nor do they have to abate the violations for which they were cited. Thus, procedural delays at OSHRC serve only to postpone justice and to delay the correction of workplace safety and health violations.

H.R. 739, despite being mislabeled the "Occupational Safety and Health Small Business Day in Court Act," is **not** limited to small businesses. Instead, it would effectively eliminate the statutory time period within which all employers - not just small employers - must contest an OSHA citation or assessment before it becomes a final order of the Commission. This bill would excuse employers from the fifteen-day deadline for contesting OSHA citations and lead to more litigation.

The purpose of the fifteen-day requirement is to give all parties a reasonable amount of time to take action and to move cases along as quickly as possible so that hazards can be abated in a timely manner. The bill excuses employers from missing their fifteen-day deadline but does not extend the same

provisions to an employee who challenges the period for abatement in a citation. This provision is one-sided and unfair to employees. Under the statute, an employer contests by simply mailing a letter to the OSHA office. Therefore, contestation is not burdensome, and the statutory time period should be retained.

The federal courts already provide relief, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, for employers who can show that their failure to meet filing deadlines was due to mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or misconduct by an adverse party, so long as the employer can show the existence of a meritorious defense. There is a body of established case law pursuant to Rule 60(b) that would be subject to wasteful re-litigation if H.R. 739 were enacted.

H.R. 740, the "Occupational Safety and Health Review Commission Efficiency Act," would expand the number of OSHRC commissioners to five from three and authorize sub-panels of three members to exercise all of the powers of the Commission. It would also authorize commissioners to hold their position at the expiration of their six-year term, until a successor has been nominated by the President and confirmed by the Senate. Finally, it would add a new requirement that Commissioners must have legal training.

The UAW submits that the only good to come from adding two commissioners to OSHRC would be the creation of two more jobs to an economy that has already lost millions of industrial jobs. Otherwise, it is wasteful and unnecessary to expand OSHRC, which has been composed of three members since it was established in 1970. Indeed, the UAW believes that Congress should give consideration to **abolishing** all of the OSHRC commissioners' positions, allowing appeals to go directly from the decision of the Commission's Administrative Law Judges to the Courts of Appeals, as is done with Social Security Administration appeals. The UAW also objects to the legal training requirement because it would work against persons with workplace health and safety expertise. Furthermore, we object to the provision allowing commissioners to retain their position after the expiration of their term because it deprives the Senate of its Constitutional advice and consent role.

H.R. 741, the "Occupational Safety and Health Independent Review of OSHA Citations Act," would overturn a 1991 Supreme Court decision holding that OSHRC's interpretation of a health or safety standard may not be substituted for the interpretation of the Secretary of Labor. The bill explicitly provides, "The conclusions of the Commission with respect to all questions of law shall be given deference if reasonable." Because it is for all practical purposes only employers who appeal cases to OSHRC, there is never an instance when the Commission would be expanding workers' rights by substituting its interpretation for the Secretary's. In other words, H.R. 741 would give unprecedented and unwarranted authority to the OSHRC to take away workers' workplace health and safety protections.

For all of the reasons set forth above, the UAW strongly opposes H.R. 739, H.R. 740, H.R. 741 and H.R. 742. We urge you to vote against these anti-worker bills that would undermine workplace health and safety.

Sincerely,



Alan Reuther
Legislative Director