THE STATE OF WORKERS' SAFETY AND HEALTH

This 2011 edition of "Death on the Job: The Toll of Neglect" marks the 20th year the AFL-CIO has produced a report on the state of safety and health protections for America's workers. The report includes state-by-state profiles of workers' safety and health and features state and national information on workplace fatalities, injuries, illnesses, the number and frequency of workplace inspections, penalties, funding, staffing and public employee coverage under the Occupational Safety and Health Act (OSH Act). It also includes information on the state of mine safety and health.

This year is historic for worker safety and health. It is the 100th anniversary of the Triangle Shirtwaist Factory fire, where 146 workers—most of them young immigrant women—were killed, trapped behind locked doors with no way to escape. This year is also the 40th anniversary of the establishment of the Occupational Safety and Health Administration (OSHA) and the right of workers to a safe job.

Since 1970, when the OSH Act was passed, workplace safety and health conditions have improved. But too many workers remain at serious risk of injury, illness or death, as demonstrated by the series of major workplace tragedies that occurred during this past year: a horrific explosion at the Massey Energy Upper Big Branch mine in West Virginia that killed 29 coal miners—the worst coal mine disaster in 40 years; an explosion at the Kleen Energy Plant in Middletown, Conn., that killed six workers, and another at the Tesoro Refinery in Washington State that killed seven workers; and the BP/Transocean Gulf Coast oil rig explosion that killed 11 workers and caused a massive environmental and economic disaster.

In 2009, 4,340 workers lost their lives on the job as a result of traumatic injuries, according to preliminary data from the Bureau of Labor Statistics (BLS). Each day in this country, on average 12 workers die because of job injuries—women and men who go to work, never to return home to their families and loved ones. This does not include those workers who die from occupational diseases, estimated to be 50,000 each year—an average of 137 deaths each day.

In 2009, more than 4.1 million workers across all industries, including state and local government, had work-related injuries and illnesses that were reported by employers, with 3.3 million injuries and illnesses reported in private industry. Due to limitations in the injury reporting system and underreporting of workplace injuries, this number understates the problem. The true toll is estimated to be two to three times greater—or 8 million to 12 million injuries and illnesses a year.

The cost of these injuries and illnesses is enormous—estimated at $159 billion to $318 billion a year for direct and indirect costs of disabling injuries. But these estimates are based only on injuries that are disabling and that are reported by employers, and understate the full extent of occupational injuries and illnesses and their associated costs.

Eight years of neglect and inaction by the Bush administration seriously eroded safety and health protections. Standards were repealed, withdrawn or blocked. Major hazards were not addressed.

The job safety budget was cut. Voluntary compliance replaced strong enforcement. In the absence of strong government oversight and enforcement, many employers cut back their workplace safety and health efforts.

Under the Obama administration, the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) have returned to their mission to protect workers' safety and health. The president has appointed strong, pro-worker safety and health advocates to head the agencies—Dr. David Michaels at OSHA and Joe Main at MSHA.

The Obama administration has moved forward with new safety and health standards on job hazards and new initiatives to strengthen enforcement. The administration has increased the job safety budget and hired hundreds of new inspectors, restoring the cuts made during the Bush administration.

But with the election of a Republican majority in the House of Representatives in 2010, progress in safety and health is threatened. Business groups and Republicans are trying to block new regulations and have targeted key OSHA and MSHA rules. Attempts already have been made in this Congress to slash OSHA's budget with proposed cuts that would decimate OSHA's already inadequate enforcement.

Workers in the United States need more safety and health protection, not less. Forty years after the passage of OSHA, there is much more work to be done.

JOB FATALITIES, INJURIES AND ILLNESSES

More than 431,000 workers now can say their lives have been saved since the passage of the OSH Act in 1970.[1] Unfortunately, too many workers remain at risk. On average, 12 workers were fatally injured and more than 11,344 workers in private industry and state and local government were injured or made ill each day of 2009. These statistics do not include deaths from occupational diseases, which claim the lives of an estimated 50,000 workers each year.

Job Fatalities

According to preliminary data from the BLS, there were 4,340 workplace deaths due to traumatic injuries in 2009, a decrease of 874 deaths from the 5,214 deaths reported in 2008. The rate of fatal injuries in 2009 was 3.3 per 100,000 workers, down from 3.7 per 100,000 workers in 2008. According to the BLS, economic factors played a major role in this decrease, as the recession resulted in declines in hours worked, particularly in construction and other industries that historically have experienced high numbers of fatalities.[2] The 2009 data is preliminary, and the number of deaths is expected to increase when final data is released this spring.

[1] Calculated based on change in annual fatality rates and employment since 1970. Fatality rate data for 1970 to 1991 is from National Safety Council Accident Facts, 1994. Fatality rate data for 1992 to 2009 is from the Bureau of Labor Statistics, Census of Fatal Occupational Injuries. Annual employment data is from the Bureau of Labor Statistics Current Population Survey.

[2] Bureau of Labor Statistics, News Release, National Census of Fatal Occupational Injuries in 2009 (Preliminary Results), Aug. 19, 2010.

Montana led the country with the highest fatality rate (10.8 per 100,000), followed by Louisiana (7.2) tied with North Dakota (7.2), Wyoming (6.8) and Nebraska (6.1). The lowest state fatality rate (0.9 per 100,000) was reported in New Hampshire, followed by Rhode Island (1.4), Arizona (1.8), Delaware (1.8) and Massachusetts (1.8).[3] Thirteen states saw an increase in either the rate or number of fatalities between 2008 and 2009.

In 2009, a number of states experienced large increases in fatality rates from their 2008 rates. New Mexico led the way with a 41 percent increase, followed by Montana (30 percent), Oregon (27 percent) and Wisconsin (27 percent).

The construction sector had the largest number of fatal work injuries (816) in 2009, followed by transportation and warehousing (579) and agriculture, forestry, fishing and hunting (551). Industry sectors with the highest fatality rates were agriculture, forestry, fishing and hunting (26.0 per 100,000), mining (12.7 per 100,000) and transportation and warehousing (12.1 per 100,000).

The number of deaths in construction decreased to 816 deaths in 2009 compared with 975 in 2008, likely as a result of the recession and a decrease in the numbers of hours worked, but the fatality rate in 2009 was the same as that in 2008 (9.7 per 100,000). In manufacturing, the number of fatalities decreased, with 304 deaths reported in 2009, compared with 411 deaths in 2008. The fatality rate in manufacturing decreased in 2009 (2.2 per 100,000) compared with 2008 (2.5 per 100,000). The mining industry saw a decrease in fatalities, from 176 deaths reported in 2008 to 101 deaths reported in 2009. Within the mining industry, in 2009 BLS reported 17 deaths in oil and gas extraction, 28 deaths in mining and 55 deaths in mining support activities. According to separate statistics reported by MSHA, in 2009 there were 18 deaths in coal mining and 16 deaths in metal and nonmetal mining.

Transportation incidents, in particular highway crashes, continue to be the leading cause of workplace deaths, responsible for 1,682 or 39 percent of all fatalities in 2009, although this number was down from 2008. Highway crashes continue to account for 20 percent of the fatal work injury total (882).

Fatalities from falls declined by 12 percent from 700 fatal falls reported in 2008, compared with 617 fatal falls in 2009.

From 2008 to 2009, there were decreases in the number of workplace deaths caused by assaults and violent acts (from 816 to 788).

In 2009, the number of workplace homicides remained essentially the same in 2009, with 521 homicides compared with 526 in 2008. However, workplace suicides decreased from 237 in 2009 compared with 263 in 2008.

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[3] State fatality rates have not yet been calculated by BLS. The AFL-CIO calculated preliminary 2009 state fatality rates per 100,000 workers using the preliminary numbers of deaths reported by BLS for 2009 and the preliminary data on the employment status of the civilian non-institutional population 2009 annual averages from the BLS Current Population Survey (CPS).

Transportation and material moving occupations had the highest number of fatalities with 988 deaths, followed by construction and extraction occupations with 818 fatal injuries. The occupations at greatest risk of work-related fatalities were fishers and related fishing workers (200.0 per 100,000), logging workers (61.8 per 100,000) and aircraft pilots and flight engineers (57.1 per 100,000).

Fatal injuries to Hispanic or Latino workers declined but continue to be a serious problem, with 668 fatal injuries among Hispanic workers in 2009. This compares with 804 fatalities among Hispanic workers in 2008. Since 1992, when BLS started the fatality census, the number of fatalities among Hispanic workers has increased by 25 percent, from 533 fatalities in 1992 to 668 in 2009. At the same time, the overall number of workplace fatalities dropped from 6,217 in 1992 to 4,340 in 2009.

In 2009, 59 percent of the fatalities (393 deaths) among Hispanic or Latino workers were among workers born outside of the United States. The states with the highest number of Hispanic worker fatalities were Texas (185), California (127) and Florida (49).

The rate of fatal injuries to Hispanic or Latino workers decreased from 4.2 per 100,000 workers in 2008 to 3.7 per 100,000 workers in 2009. The fatality rate among Hispanic or Latino workers in 2009 was 16 percent higher than the fatal injury rate for all U.S. workers.

Fatalities among foreign-born or immigrant workers decreased but continue to be a serious problem. In 2009, there were 680 workplace deaths reported among immigrant workers, compared with 835 deaths in 2008. Since 1992, fatalities among foreign-born workers have increased by 7 percent, from 635 deaths to 680 deaths in 2009.

Texas, California and Florida had the greatest number of foreign-born worker fatalities in 2009, with 124, 100 and 64 deaths, respectively. Of the foreign-born workers who were fatally injured at work in 2009, 58 percent were Hispanic or Latino, 18 percent were white, 16 percent were Asian, native Hawaiian or Pacific Islander and 7 percent were black or African American. Of the foreign-born workers who were injured fatally at work in 2009, 40 percent were from Mexico. Twenty-seven percent of the foreign-born fatalities resulted from transportation incidents, 25 percent resulted from assaults and violent acts, 19 percent were a result of falls and 17 percent resulted from contact with objects and equipment.

The number of fatalities among black or African American workers decreased to 407 in 2009, down from 533 deaths in 2008.

Job Injuries and Illnesses

In 2009, 3.3 million injuries and illnesses were reported in private-sector workplaces, a decrease from 3.7 million in 2008. The Bureau of Labor Statistics (BLS) survey also included data on work-related injuries and illnesses among state and local government workers. BLS reported that an additional 862,900 state and local government workers nationwide were injured or made sick in 2009, for a total of 4.1 million workers experiencing an injury or illness.

The national injury and illness rate for the private sector in 2009 was 3.6 per 100 workers, while the rate for all industries, including state and local government workers, was higher at 3.9 per 100 workers. The injury and illness rates for state and local government workers combined was considerably higher at 5.8 per 100 workers, with state government workers alone at 4.6 per 100 workers and local government workers at a rate of 6.3 per 100 workers, nearly double that of the rate in private industry.

Manufacturing accounted for 16.1 percent of the nonfatal workplace injuries and illnesses in private industry in 2009. The health care and social assistance industry accounted for 20.4 percent of injuries and illnesses, followed by the retail trade industry at 14.9 percent. Construction experienced 7.7 percent of all private-sector injuries and illnesses in 2009.

The industries with the highest rates of nonfatal workplace injuries and illnesses were fire protection (local government, 15.3 per 100), pet and pet supplies stores (private industry, 13.6 per 100), heavy and civil engineering construction (local government, 13.1 per 100), police protection (local government, 12.7 per 100) and iron foundries (private industry, 11.3 per 100).

Thirty-one percent of all cases of injuries and illnesses involving days away from work, job transfer or restriction in private industry occurred in the trade, transportation and utilities industry, followed by education and health services at 19 percent, manufacturing at 17 percent and construction at 8 percent. Occupations in private industry with the highest number of injuries involving days away from work were laborers and materials movers, heavy and tractor-trailer truck drivers, nurses' aides and orderlies, light and delivery truck drivers and retail salespersons.

The median number of days away from work for lost-time injury cases in private industry was eight days in 2009, with 26.7 percent of all days away from work cases resulting in 31 or more days away from work.

Musculoskeletal Disorders

For 2009, BLS reported 283,800 musculoskeletal disorder (MSD) cases resulting in days away from work in the private sector. MSDs account for 29 percent of all injuries and illnesses involving days away from work and remain the biggest category of injury and illness.

The occupations reporting the highest number of MSDs involving days away from work in 2009 were laborers and freight, stock, and material movers, handlers (22,060); nursing aides, orderlies and attendants (21,460); and truck drivers, heavy and tractor-trailer (12,500). The median number of days away from work for MSDs in 2009 was 10 days.

Industries with the highest incidence rates of musculoskeletal disorders involving days away from work in 2009 were air transportation (204.4 per 10,000 workers), couriers and messengers (99.5 per 10,000 workers), nursing and residential care facilities (89.2 per 10,000 workers), warehousing and storage (74.8 per 10,000 workers), hospitals (71.6 per 10,000 workers) and truck transportation (65.2 per 10,000 workers). The MSD incidence rate across all industries in the United States was 31.3 per 10,000 workers in 2009.

It is important to recognize the numbers and rates of MSDs reported by BLS represent only a part of the total MSD problem. The BLS MSD data are limited to cases involving one or more days away from work, the cases for which BLS collects detailed reports. Similar detailed reports are not collected for injuries and illnesses that do not involve lost work time or those that result in job transfer or restriction but not in time lost from work. Based on the percentage of days away from work cases involving MSDs (29 percent) in 2009, there were an estimated 206,506 MSDs that resulted in restricted activity or job transfer, 490,216 MSD cases that resulted in days away from work, restricted activity or job transfer, and a total of 963,644 MSDs reported by private-sector employers.

Moreover, these figures do not include injuries suffered by public-sector workers or postal workers, nor do they reflect the underreporting of MSDs by employers. Based on studies and experience, OSHA has estimated that MSDs are understated by at least a factor of two—that is, for every MSD reported, there is another work-related MSD that is not recorded or reported.[4] However, a recent study that examined undercounting of injuries and illnesses found that underreporting is even greater, with two additional injuries occurring for every injury that is reported.[5]

Reported Cases Understate Problem

In recent years there has been increased attention to and concern about the accuracy and completeness of the injury and illness data reported by employers that form the basis for the BLS Annual Survey on Occupational Injuries and Illnesses. While government statistics show that occupational injury and illness are declining, numerous studies have shown government counts of occupational injury and illness are underestimated by as much as 69 percent.[6] A study published in the April 2006 *Journal of Occupational and Environmental Medicine* that examined injury and illness reporting in Michigan made similar findings.[7] The study compared injuries and illnesses reported in five different databases—the BLS Annual Survey, the OSHA Annual Survey, the Michigan Bureau of Workers' Compensation, the Michigan Occupational Disease reports and the OSHA Integrated Management Information System. It found that during the years 1999, 2000 and 2001, the BLS Annual Survey, which is based upon employers' OSHA logs, captured approximately 33 percent of injuries and 31 percent of illnesses reported in the various databases in the state of Michigan.

A similar study published in 2008 comparing the injuries reported to state workers' compensation systems with those reported to the Bureau of Labor Statistics Annual Survey in six

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[4] 64 F.R. 65981 and 65 F.R. 68758.
[5] Rosenman, K.D., Kalush, A., Reilly, M.J., Gardiner, J.C., Reeves, M. and Luo, Z., "How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System?" *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 4, pp 357–367, April 2006.
[6] Leigh, J. Paul, James P. Marcin, J. and Miller, T.R., "An Estimate of the U.S. Government's Undercount of Nonfatal Occupational Injuries," *Journal of Occupational and Environmental Medicine,* Vol. 46, No. 1, January 2004.
[7] Rosenman, op. cit.

states for the years 1998–2001 found similar results.[8] The study, which examined reporting in Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin, found the BLS survey captured 50 percent to 75 percent of the injuries and illnesses that occurred, missing half to a quarter of the injuries and illnesses that occurred in these states. As with the Michigan study, more injuries and illnesses were reported to the state workers' compensation systems than to the BLS survey.

The BLS data underestimate the extent of workplace injuries and illnesses in the United States for a variety of reasons. First, the data exclude many categories of workers (self-employed individuals; farms with fewer than 11 employees; employers regulated by other federal safety and health laws; federal, state and local government agencies; and private household workers). This results in the exclusion of more than one in five workers from the BLS Annual Survey.

In addition to the built-in exclusions, there are several other factors that may contribute to underreporting by employers:

- Concern about increased workers' compensation costs for increased reports of injuries;
- Fear of being denied government contracts due to high injury rates; and
- Concern about being targeted by OSHA for inspection if a high injury rate is reported.

There also are many reasons why workers may not report an injury or illness to their employer:

- Economic incentives can influence workers. Employer-implemented programs that offer financial rewards for individuals or departments for going a certain number of days without an injury may discourage workers from reporting. A 2006 report by the California state auditor documented one such case where the use of economic incentives on the San Francisco-Oakland Bay Bridge project was identified as a likely cause of significant underreporting of injuries.[9]
- Employees do not want to be labeled as accident-prone.
- Employers implement programs that discipline or even terminate workers when they report an injury, discouraging workers from reporting.
- Workers may be reluctant to apply for workers' compensation; many others do not know how to use the workers' compensation system.
- Foreign-born workers, whether in the country legally or not, face additional barriers to reporting. They may not know how or to whom to report the injury. They may fear being fired or harassed or being reported to the Bureau of Citizenship and Immigration Services.

In 2008 and 2009, the problems of underreporting of workplace injuries and illnesses were the subject of congressional attention and action. In June 2008, the House Education and Labor Committee held an oversight hearing to explore the extent, causes and impact of injury underreporting. In conjunction with the hearing, the committee released a report—*Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses*—that documented the widespread

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[8] Boden, L.I. and A.Ozonoff, "Capture-Recapture Estimates of Nonfatal Workplace Injuries and Illnesses," *Annals of Epidemiology*, Vol. 18, No. 6 (2008).

[9] California State Auditor, Bureau of State Audits. *San-Francisco-Oakland Bay Bridge Worker Safety: Better State Oversight Is Needed to Ensure That Injuries Are Reported Properly and That Safety Issues Are Addressed.* Report 2005–119. February 2006. Report available at www.bsa.ca.gov/pdfs/reports/2005-119.pdf.

problem of underreporting.[10]

The Senate Labor Appropriations subcommittee reviewed the injury underreporting issue during the hearing on the FY 2009 Department of Labor appropriations bill. The committee then acted to provide funding for a number of initiatives on underreporting. The final FY 2009 omnibus funding bill provided $1 million for an enhanced OSHA recordkeeping enforcement program, $1 million for the Bureau of Labor Statistics to further study problems of injury underreporting and $250,000 for National Institute for Occupational Safety and Health (NIOSH) research on underreporting. Similar funding was provided in the FY 2010 Labor-HHS Appropriations bill.

In October 2009, the Government Accountability Office (GAO) released a report on an in-depth evaluation on injury and illness reporting and employer injury recordkeeping practices.[11] The study found OSHA's procedures to audit the accuracy of employer injury records were deficient, and that in many workplaces there were significant pressures on workers not to report injuries. As part of the review, GAO conducted a survey of more than 1,000 occupational physicians and other occupational health professionals. Sixty-seven percent of those surveyed reported they had observed fear among workers of disciplinary action for reporting injuries. Fifty-three percent of the health practitioners reported pressure from company officials to downplay the seriousness of injuries and illnesses, and more than one-third had been asked by employers or workers not to provide needed medical treatment to keep the injury from being recorded.

In response to congressional oversight and the GAO study, OSHA, BLS and NIOSH are moving forward on initiatives to investigate and address the underreporting of injuries and illnesses. BLS and NIOSH are conducting research to use other data sources to evaluate the extent of job injuries and to compare those results with data from the BLS survey. OSHA is conducting a national emphasis program to investigate injury reporting and recording practices, targeting its efforts at firms in high-risk industries that are reporting very low injury rates. In addition to reviewing the accuracy of employers' injury logs, this initiative is examining whether employers are employing discipline policies, incentive programs or other practices that discourage the reporting of injuries by workers.

Hopefully these initiatives will provide additional information on the extent and sources of injury and illness underreporting and lead to changes in government regulations to ban policies and practices that undermine the reporting of workplace injuries.

Cost of Occupational Injuries and Deaths

The cost of occupational injuries and deaths in the United States is staggering. In March 2011, Liberty Mutual Insurance, the nation's largest workers' compensation insurance company, released its 2010 Workplace Safety Index on the leading causes and costs of compensable work injuries and illnesses based on 2008 data.[12] The report revealed the most disabling workplace

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[10] http://www.cste.org/dnn/Portals/0/House%20Ed%20Labor%20Comm%20Report%20061908.pdf.
[11] Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data, GAO-10-10, Oct. 15, 2009, www.gao.gov/new.items/d1010.pdf.
[12] 2010 Liberty Mutual Workplace Safety Index. Report available at: www.libertymutualgroup.com/omapps/ContentServer?c=cms_document&pagename=LMGResearchInstitute%2Fcm

injuries cost U.S. employers more than $53 billion—more than $1 billion per week—in direct costs alone (medical and lost wage payments). Based on calculations used in its previous Safety Index, the Liberty Mutual data indicate businesses pay between $159 billion and $318 billion annually in direct and indirect (overtime, training and lost productivity) costs on workers' compensation losses (indirect costs are estimated to be two to five times direct costs).[13] These figures are derived using disabling incidents (those resulting in an employee missing six or more days away from work). These cases represent only the most serious injuries, and relying only on these cases significantly underestimates the overall cost of injuries and illnesses. Moreover, Liberty Mutual bases its cost estimates on BLS injury data. Thus all of the problems of underreporting in the BLS system apply to the Liberty Mutual cost estimates as well.

OSHA ENFORCEMENT AND COVERAGE

When it comes to job safety enforcement and coverage, it is clear OSHA lacks sufficient resources to protect workers adequately. A combination of too few OSHA inspectors and low penalties makes the threat of an OSHA inspection hollow for too many employers. More than 8.2 million workers still are without OSHA coverage.

The Obama administration has moved to enhance enforcement and increase the inspection staff. But OSHA's resources remain inadequate to meet the challenge of ensuring safe working conditions for America's workers. In FY 2010, there were at most 2,218 federal and state OSHA inspectors responsible for enforcing the law at approximately 8 million workplaces.[14] In FY 2010, the 925 federal OSHA inspectors conducted 41,018 inspections (1,961 more than in FY 2009), and the 1,293 inspectors in state OSHA agencies combined conducted 57,321 inspections (3,989 fewer than in FY 2009).

At its current staffing and inspection levels, it would take federal OSHA 129 years to inspect each workplace under its jurisdiction just once. In six states (Arkansas, California, Delaware, Florida, Georgia and Louisiana), it would take 150 years or more for OSHA to pay a single visit to each workplace. In 17 states, it would take between 100 and 149 years to visit each workplace once. Inspection frequency is better in states with OSHA-approved plans, yet still far from satisfactory. In these states, it now would take the state OSHAs a combined 67 years to inspect each worksite under state jurisdiction once.

The current level of federal and state OSHA inspectors provides one inspector for every 57,984 workers. This compares with a benchmark of one labor inspector for every 10,000 workers recommended by the International Labor Organization for industrialized countries.[15] In the states of Arkansas, Delaware, Florida and Louisiana, the ratio of inspectors to employees is greater than 1 per 100,000 workers.

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s_document%2FShowDoc&cid=1138365240689.

[13] April 16, 2002, News Release, Liberty Mutual Research Institute for Safety.

[14] This reflects the number of federal inspectors plus the number of inspectors reflected in the FY 2010 state plan grant applications. It does not include compliance supervisors.

[15] International Labor Office, Strategies and Practice for Labor Inspection, G.B.297/ESP/3, Geneva, November 2006. The ILO benchmark for labor inspectors is one inspector per 10,000 workers in industrial market economies.

Federal OSHA's ability to provide protection to workers has greatly diminished over the years. When the AFL-CIO issued its first report "Death on the Job: The Toll of Neglect" in 1992, federal OSHA could inspect workplaces under its jurisdiction once every 84 years, compared with once every 129 years at the present time. Since the passage of the OSH Act, the number of workplaces and number of workers under OSHA's jurisdiction has more than doubled, while at the same time the number of OSHA staff and OSHA inspectors has been reduced. In 1975, federal OSHA had a total of 2,435 staff (inspectors and all other OSHA staff) and 1,102 inspectors responsible for the safety and health of 67.8 million workers at more than 3.9 million establishments. In FY 2010, there were 2,335 federal OSHA staff responsible for the safety and health of more than 128.6 million workers at 8.8 million workplaces.

At the peak of federal OSHA staffing in 1980, there were 2,951 total staff and 1,469 federal OSHA inspectors (including supervisors). The ratio of OSHA inspectors per 1 million workers was 14.8. By 2009, there were only 1,016 federal OSHA inspectors, or 7.3 inspectors per 1 million workers.

The number of employees subject to federal OSHA inspections was 1.4 million in FY 2010, up slightly from 1.3 million in FY 2009. The average number of hours spent per inspection increased between FY 2009 and FY 2010, from 18.5 hours to 19.0 hours per safety inspection, but decreased from 34.8 hours to 33.8 hours per health inspection.

In the state OSHA plans, in FY 2010, there were 2,372,415 employees subject to inspections, with safety inspections averaging 16.5 hours and health inspections 26.5 hours.

Penalties for significant violations of the law have increased somewhat under the Obama administration, but remain low. In FY 2010, serious violations of the OSH Act carried an average penalty of only $972 ($1,052 for federal OSHA, $858 for state OSHA plans). A violation is considered "serious" if it poses a substantial probability of death or serious physical harm to workers. In FY 2009, the average penalty for a serious violation for federal OSHA was $965, and for state OSHA plans it was $781. In FY 2010, South Carolina had the lowest average penalty for serious violations at $298, while California continued to have the highest average penalty at $4,631 per serious violation.

The number of willful violations issued by federal OSHA increased substantially from 395 in FY 2009 to 1,513 in FY 2010. The average penalty per repeat violation increased from $3,871 in FY 2009 to $4,368 in FY 2010. The average penalty per serious violation increased in FY 2010 to $1,052 compared with $965 in FY 2009, and the average penalty for a willful violation increased substantially in FY 2010 to $54,135 from $34,271 in FY 2009.

In the state OSHA plan states, in FY 2010, there were 274 willful violations issued, with an average penalty of $37,076, and 2,055 repeat violations, with an average penalty of $2,005 per violation.

OSHA enforcement in cases involving worker fatalities also is quite weak. According to OSHA inspection data, the average total penalty in a fatality case in FY 2010 was just $17,105 for

federal and state OSHA plans combined. However, averages can distort the real picture of fatality penalties in situations in which large cases with very high penalties raise the averages substantially. Using median penalties that capture the point where half of the penalties are below and half the penalties are above the median provides a better picture of the typical penalties in cases involving worker deaths.

The median penalty per fatality investigation conducted in FY 2010 is currently $5,600 for federal OSHA and the median current penalty is $4,543 for the state OSHA plans combined, according to enforcement data provided by OSHA in December 2010. This compares with a median penalty of $5,000 for federal OSHA in FY 2009, and a median penalty of $5,000 in FY 2009 for the state OSHA plans. These data, both averages and median penalties, also include enforcement cases that still are under contest, and it is likely that after settlements and final resolution these penalty levels will be much lower.

A state-by-state analysis of fatality investigations shows penalties in cases involving worker deaths vary widely from state to state. In FY 2010, Oregon had the lowest median current penalty for fatality investigations, with $1,500 in penalties assessed; followed by Wyoming ($2.063) and Kentucky ($2,275). New Hampshire had the highest median current penalty ($142,500), followed by Minnesota ($26,050) and Missouri ($21,000).

These latest data show little change in penalties for fatality cases in recent years. An April 2008 report on OSHA enforcement in fatality cases prepared by the majority staff of the Senate Committee on Health, Education, Labor and Pensions also found penalties in cases involving worker deaths were extremely low. For all federal OSHA fatality investigations conducted in FY 2007, the median final penalty (after settlement) was $3,675. For willful violations in fatality cases, the final median penalty was $29,400, less than half the statutory maximum of $70,000 for such violations.[16]

The Obama administration has moved to strengthen OSHA enforcement, with an emphasis on the most serious violations and repeated violators. In FY 2010, there were 164 significant cases (classified by OSHA as those cases having total penalties of greater than $100,000), up from 120 significant cases in FY 2009. Within the last year, OSHA has launched several initiatives to further strengthen enforcement.

The Severe Violator Enforcement Program (SVEP), initiated in June 2010, replaced the Bush administration's Enhanced Enforcement Program (EEP), which had been criticized severely by the U.S. Department of Labor's Office of Inspector General as deficient.[17] The new SVEP focuses on the most persistent and egregious violators who have a history of willful, repeated or failure to abate violations, particularly related to fatalities, major occupational safety and health hazards or underreporting of injuries or illnesses. The program provides for more frequent

[16]Discounting Death: OSHA's Failure to Punish Safety Violations That Kill Workers, Majority Staff, Committee on Health, Education, Labor and Pensions, April 29, 2008.
[17]U.S. Department of Labor, Office of Inspector General–Office of Audit, "Employers with Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program," March 31, 2009, Report Number: 02-09-203-10-105.

inspections, public notification and other measures at workplaces identified as severe violators and provides for enhanced scrutiny of other establishments of the same employer.

As of February 2011, OSHA had logged 118 SVEP cases, of which 74 cases (63 percent) were in the construction industry. Seventeen of these cases resulted in egregious violations.[18] OSHA also has modified its penalty policy so that penalties more appropriately reflect the gravity of the violation and provide a greater deterrence. The new policy changes the formulas for calculating penalties to utilize more fully OSHA's statutory authority for assessing penalties, (e.g., a $7,000 maximum penalty for serious violations and a maximum of $70,000 for willful and repeat violations), and to ensure deep discounts are not given for the most serious of violations.

The new penalty policy went into effect on Oct. 1, 2010, so only limited data regarding its impact is available. Initial results indicate the new policy has resulted in a twofold to threefold increase in the average initial penalty for a serious violation.[19]

OSHA is attempting to expand the impact of its inspections by seeking to require correction of similar hazards and violations at multiple establishments of the inspected employer. While OSHA has utilized such an approach for many years through corporatewide settlement agreements, in 2010 in an enforcement action against the U.S. Postal Service, OSHA sought an order from the Occupational Safety and Health Review Commission to require 350 locations of the USPS to correct electrical safety violations, based upon inspection findings at multiple locations. The USPS has contested the violations and settlement talks still are under way.

Criminal enforcement under the Occupational Safety and Health Act has been and remains exceedingly rare. According to information provided by the Department of Labor, since the passage of the Act in 1970, only 84 cases have been prosecuted under the Act, with defendants serving a total of 89 months in jail. During this time, there were more than 360,000 workplace fatalities, according to National Safety Council and BLS data, about 20 percent of which were investigated by federal OSHA. In FY 2010, there were 14 cases referred by DOL for possible criminal prosecution. To date, the Department of Justice (DOJ) has declined to prosecute one of these cases; the other 13 still are under review by DOJ.[20]

By comparison, EPA reported in FY 2010 there were 346 criminal enforcement cases initiated under federal environmental laws and 289 defendants charged, resulting in 72 years of jail time and $41 million in penalties—more cases, fines and jail time in one year than during OSHA's entire history.[21] The aggressive use of criminal penalties for enforcement of environmental laws and the real potential for jail time for corporate officials serve as a powerful deterrent to environmental violators.

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[18]Fairfax, Richard, SVEP, Corporate Settlement Agreements, Penalties and Significant Cases, PowerPoint Presentation, American Bar Association, Occupational Safety and Health Committee, New Orleans, La., March 2011.
[19]OSHA Initial Penalties in Construction and General Industry, Q1, FY2008–2011.
[20] Personal communication, Office of the Solicitor, U.S. Department of Labor, April 14, 2011.
[21] www.epa.gov/compliance/resources/reports/endofyear/eoy2010/criminal/index.html.

The criminal penalty provisions of the OSH Act are woefully inadequate. Criminal enforcement is limited to those cases in which a willful violation results in a worker's death or where false statements in required reporting are made. The maximum penalty is six months in jail, making these cases misdemeanors. Criminal penalties are not available in cases in which workers are endangered or seriously injured, but no death occurs. This is in contrast to federal environmental laws, where criminal penalties apply in cases where there is "knowing endangerment" and make such violations felonies.

As a result of the weak criminal enforcement provisions of the OSH Act, in recent years the Justice Department launched a new Worker Endangerment Initiative. This initiative focuses on companies who put workers in danger while violating environmental laws, and prosecutes such employers using the much tougher criminal provisions of environmental statutes. Under the initiative, the Justice Department has prosecuted McWane Inc., a major manufacturer of cast iron pipe, responsible for the deaths of several workers; Motiva Enterprises for negligently endangering workers in an explosion that killed one worker and caused major environmental releases; British Petroleum for a 2005 explosion at a Texas refinery that killed 15 workers; W.R. Grace for knowing endangerment of workers exposed to asbestos-contaminated vermiculite in Libby, Mont.; and Tyson Foods for exposing employees to hydrogen sulfide gas, which resulted in the poisoning of several workers at multiple facilities.[22,23]

Under the Bush administration, OSHA placed great emphasis on the expansion of OSHA's voluntary programs, particularly OSHA's program of alliances and Voluntary Protection Programs (VPP). The resources devoted to these programs increased and the number of voluntary programs increased significantly. Under the Obama administration, the emphasis has changed to focus more on strengthening enforcement programs. Voluntary programs still are part of the OSHA program but are viewed as supplemental to, not a replacement for, enforcement. In FY 2010, OSHA formed 27 new alliances, down from 64 in FY 2009, bringing the total number of active alliances to 341, down from 395 in FY 2009. In OSHA's Voluntary Protection Program (VPP), 174 new VPP sites were approved, essentially the same as the 172 new approvals in 2009, bringing the number of federal OSHA VPP sites to 1,729.[24]

For FY 2011, the Obama administration proposed to shift funding and 35 positions from voluntary programs to enforcement to focus these resources on high-risk employers that continue to violate the law, as opposed to large firms that have good safety records, as is the case under the VPP program.[25] Instead, OSHA proposed to fund the VPP program through non-governmental resources. This proposal was strongly opposed by VPP participants and by some in Congress and has been dropped by OSHA. [26]

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[22] Frontline: A Dangerous Business Revisited, March 2008, www.pbs.org/wgbh/pages/frontline/mcwane/penalty/initiative.html.
[23] Goldsmith, Andrew D., Worker Endangerment Initiative, PowerPoint Presentation, American Bar Association, Occupational Safety and Health Committee, Miami Beach, Fla., February 2009.
[24] OSHA Directorate of Cooperative and State Programs.
[25] FY 2011 Congressional Budget Justification, Occupational Safety and Health Administration, www.dol.gov/dol/budget/2011/PDF/CBJ-2011-V2-11.pdf.
[26] FY 2011 Congressional Budget Justification, Occupational Safety and Health Administration, www.dol.gov/dol/budget/2011/PDF/CBJ-2011-V2-11.pdf.

The current OSHA law still does not cover 8.2 million state and local government employees in 25 states and the District of Columbia, although these workers encounter the same hazards as private-sector workers and in many states have a higher rate of injury than their private-sector counterparts. In 2009, the state of Illinois adopted, and federal OSHA approved, a state plan extending full OSHA coverage to the 735,000 public employees in the state.

Similarly, millions who work in the transportation and agriculture industries and at Department of Energy contract facilities lack full protection under the OSH Act. These workers theoretically are covered by other laws, which in practice have failed to provide equivalent protection. The void in protection is particularly serious for flight attendants. The Federal Aviation Administration (FAA) has claimed legal jurisdiction for airline cabin crews but has refused to issue necessary workplace safety rules. Efforts by the FAA and OSHA initiated in 2000 to resolve this situation were jettisoned by the Bush administration, which instead announced a program limited to voluntary activities to be overseen by the FAA. The FAA Air Transportation Modernization and Safety Improvement Act passed by the Senate in February 2011, (S. 223) calls for the FAA, in consultation with OSHA, to develop milestones for completing the work initiated under the 2000 memorandum, and to develop a policy statement to set forth the circumstances in which OSHA requirements may be applied to aircraft crewmembers. Efforts by Senate Republicans to strip this provision from the bill failed. The companion House-passed bill (H.R. 658) has no similar provision, and it remains to be seen whether this provision will be included in the bill that emerges from the House-Senate conference.

REGULATORY ACTION

During the eight years of the Bush administration, rulemaking at OSHA virtually ground to a halt. In its first term, the administration repealed OSHA's ergonomics standard, and withdrew dozens of safety and health rules from the regulatory agenda, ceasing all action on the development of these important safety and health measures. During its second term, three significant final OSHA standards were issued—a standard on hexavalent chromium, an electrical safety standard and a rule requiring that employers pay for personal protective equipment (PPE) required by OSHA standards. The hexavalent chromium and PPE payment rules were only issued as a result of litigation brought by unions and other groups.

Other standards on OSHA's regulatory agenda languished or were significantly delayed, including rules on silica, beryllium, global harmonization for hazard communication and cranes and derricks. The Bush administration also declined to take action on other important hazards, denying union petitions for rules to protect workers from pandemic influenza, combustible dust and the chemical diacetyl, a butter flavoring agent used in microwave popcorn and other foods, that has caused a rare and fatal lung disease (bronchilitis obliterans) in exposed workers.

Under the Obama administration, the development and issuance of occupational safety and health standards to protect workers is a priority. Resources for standard setting have been increased. And the administration has an ambitious regulatory agenda that is focusing first on completing important rules that languished or were ignored under the Bush administration.

In August 2010, OSHA completed the cranes and derricks in construction rule that was recommended by a negotiated rulemaking committee in 2004. The agency has moved forward with a proposed rule on global harmonization of hazard communication, with a final rule expected in August 2011. Other major rules currently on OSHA's regulatory agenda include a proposed rule on silica that is scheduled for April 2011, and the development of rules on diacetyl, infectious diseases and combustible dust.

In addition, OSHA Assistant Secretary Dr. David Michaels has identified the development of an OSHA injury and illness prevention program rule as a priority. This rule would require employers to establish a program for identifying and correcting hazards in the workplace before workers are injured or made ill. It is similar to rules that exist in California and more than a dozen other states. The draft injury and illness prevention program rule is scheduled for review by a small panel, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), in June 2011.

To enhance information about the problem of musculoskeletal disorders (MSDs), in March 2010 OSHA proposed to reinstate a requirement that employers identify MSDs on the OSHA 300 log, a provision of the OSHA recordkeeping rule that was repealed by the Bush administration. This rule was scheduled for final promulgation in February 2011, but was delayed by the Obama administration due to objections from the business community to seek further input from small businesses.

In an attempt to strengthen protections for workers exposed to noise, in October 2010 OSHA proposed to change the interpretation of its existing noise standard in enforcement cases to require feasible engineering controls to be the primary method of control, as is the case for all OSHA standards. In response to a firestorm of opposition from employers, OSHA withdrew this proposal, and now is seeking input from noise experts, NIOSH and interested parties on developing a more comprehensive strategy to address noise and occupational hearing loss.

With the election of a Republican majority in the U.S. House of Representatives in 2010, the regulatory environment has become much more hostile. Business opposition to regulations has intensified and Republicans in Congress have launched a major assault on regulations, trying to block the development and issuance of new rules and roll back existing protections, claiming that these regulations kill jobs. Business groups have identified OSHA rules on injury and illness prevention programs, silica and MSD injury recording, and OSHA's interpretation on noise enforcement, as ones of greatest concern that they are seeking to stop.

In response to business concerns about the impact of regulations, the Obama administration has directed regulatory agencies to ensure the impacts of rules on businesses, particularly small businesses, are fully assessed, and to review the impacts of existing rules on businesses. At the same time, the administration has stated it is committed to developing rules that are needed to protect safety, health and the environment, and OSHA and other agencies are moving forward with the rulemaking agendas. But given the level of opposition to new regulations by business and Republicans in Congress, it remains to be seen what progress actually will be made in issuing new needed protections.

STATUS OF KEY SAFETY AND HEALTH ISSUES

Due to eight years of inaction during the Bush administration, the country fell further and further behind in protecting workers' safety and health on the job. The list of problems that need attention is long. But there are several issues with broad-based impacts that are of particular concern and that need attention.

Ergonomics

Ergonomic injuries still are the biggest job-safety hazard faced by workers. In 2009, musculoskeletal disorders accounted for 29 percent of all serious workplace injuries.

During the Bush administration, efforts to address ergonomic hazards suffered huge setbacks. In March 2001, the OSHA ergonomics standard was repealed under the Congressional Review Act. Soon after, the administration also repealed the OSHA recordkeeping requirement to identify all musculoskeletal disorders on the workplace injury and illness log. The Bush administration's "comprehensive plan" to address ergonomic hazards announced in 2002 turned out to be a sham. The administration issued just four ergonomics guidelines—for the nursing home industry, retail grocery stores, poultry processing and the shipbuilding industry. During the Bush administration, federal OSHA issued a total of 20 general duty clause citations for ergonomic hazards with only one ergonomic citation issued in 2005, no ergonomic citations issued in 2006 or 2007 and only three citations in 2008. The average penalty for these citations was $1,874.

At the state level, efforts to adopt ergonomic protections also have been met with great industry opposition. In 2003, industry groups led a successful ballot initiative to overturn the Washington State ergonomics rule. Efforts to enact ergonomics legislation stalled in Connecticut and Minnesota. In Michigan, an ergonomics standard has been under development since 2002 and has moved forward slowly in the face of intense industry opposition. A draft rule with minimum requirements for assessing and addressing ergonomic risk factors and for providing training was approved and recommended by the MIOSHA Ergonomics Advisory Committee on Jan. 30, 2008. The draft rule was considered by the Occupational Health Standards Commission and the General Industry Safety Standards Commission and approved with some small modifications on Jan. 14, 2009. The proposed rule was undergoing a regulatory impact evaluation and public hearings were anticipated following the evaluation. However, in March 2011 the new Republican governor signed a bill into law that prohibits MIOSHA from issuing an ergonomics standard.

One area in which there has been significant progress on ergonomics is the adoption of safe patient handling legislation. Nine states now have safe patient handing requirements—Hawaii, Maryland, Minnesota, New Jersey, New York, Ohio, Rhode Island, Texas and Washington. A number of additional states are considering similar legislation.

The Obama administration has not developed specific initiatives to address ergonomic hazards. With the repeal of the 2000 ergonomics standard under the Congressional Review Act (CRA), OSHA is prohibited from issuing a new rule that is substantially the same as the original rule

unless the new rule is authorized by Congress. In the current political environment the chance of such action is remote, and the development of even a different type of ergonomics regulation (e.g., a rule limited to high-risk industries) would be politically difficult. Enforcement against ergonomic hazards under OSHA's general duty clause remains extremely limited. According to OSHA's inspection database, under the Obama administration there have been only four federal OSHA enforcement cases with general duty clause citations for ergonomic hazards. OSHA has initiated a series of inspections for ergonomic hazards in response to complaints filed by the union UNITEHERE!, but the results of those investigations are pending. As noted above, OSHA has proposed to reinstate the MSD column on the OSHA 300 log, which would provide employers, workers and unions a useful tool for identifying and addressing MSDs. Hopefully this rule will be finalized shortly.

Pandemic Flu

In recent years, significant attention has been focused on the potential for an influenza pandemic that could have widespread serious consequences, resulting in the deaths of millions. These concerns became a reality in April 2009, when an outbreak of a novel H1N1 influenza virus was reported in Mexico, resulting in hundreds of deaths. The virus quickly spread to other countries, including the United States, and in June 2009, the WHO declared the outbreak had reached pandemic status. While not as lethal as first feared, as of February 2010, CDC estimated that in the United States more than 12,000 deaths had resulted from the H1N1 virus and that more than 265,000 people had been hospitalized, with younger people being particularly at risk.[27]

A major issue of concern for the unions and occupational health community is the risk posed to health care workers and emergency responders exposed to a novel influenza virus. Prior to the 2009 H1N1 outbreak, significant efforts were made to incorporate adequate worker protection measures into national and state pandemic influenza plans and to implement these measures in health care facilities. In 2005, AFSCME, along with the AFL-CIO and other labor organizations, petitioned OSHA to issue an emergency temporary standard to protect health care workers and other responders in the event of a pandemic. In 2007, OSHA denied the petition, claiming that an emergency standard was not warranted because "no human influenza virus exists at this time." Instead, the agency developed voluntary guidelines.

One of the major issues regarding worker protections for pandemic influenza is the level of respiratory protection that should be provided. NIOSH, OSHA, occupational health professionals and the unions support the use of N-95 NIOSH-approved respirators at a minimum for all individuals involved in direct patient care activities to protect against airborne exposures. But many infectious disease professionals and health care facilities do not think influenza is transmitted via airborne exposures and support the use of surgical masks instead.

During the 2009–2010 H1N1 outbreak, the level of respiratory protection needed to protect health care workers was a major issue of contention. The initial CDC guidelines on protecting health care workers from the H1N1 virus issued in April 2009 recommended the use of NIOSH-

[27] 2009 H1N1-Related Deaths, Hospitalizations and Cases:
Details of Extrapolations and Ranges: United States, Emerging Infections Program (EIP) Data, Centers for Disease Control, March 12, 2010.

approved respirators for all health care workers involved in direct patient care or who could come into close contact with patients confirmed or suspected as being infected with the H1N1 virus. As the outbreak progressed, and the lethality and virulence of the virus was determined to be less severe than feared, many in the infection control community and health care facilities urged CDC to reduce the recommended level of protection and to allow surgical masks, instead of NIOSH-certified respirators, except for certain high-risk procedures. OSHA, NIOSH, unions and others in the occupational health community urged the recommendation for respiratory protection be maintained based on scientific evidence demonstrating that influenza viruses were transmitted via airborne exposures.

In an attempt to resolve this issue, in July 2009 CDC and OSHA requested the Institute of Medicine to convene a panel to review the available scientific information on influenza transmission and the adequacy of various types of respiratory protection. Acting on a fast track, the panel conducted an expedited review and issued its report in September 2009.[28] The IOM panel concluded that available scientific evidence demonstrated influenza viruses could be transmitted via airborne exposures and that surgical masks were not designed and were insufficient to protect against these exposures. The panel recommended that the recommendation in the CDC guidelines for NIOSH-approved respirators to be used to protect health care workers from the H1N1 virus be maintained.

Despite years of planning, many health care facilities were not prepared for the outbreak of the 2009 H1N1 influenza pandemic. A survey by the AFL-CIO and unions released just weeks before the outbreak found more than one-third of the facilities were not adequately prepared to protect health care workers and that, due to this lack of readiness, 43 percent of the survey respondents thought most or some of their fellow workers would stay home.[29]

The experience with the 2009–2010 novel H1N1 influenza pandemic confirmed many deficiencies in safety and health measures to protect health care workers from infectious diseases. Many health care employers had not trained workers about potential risks and appropriate protective measures prior to the outbreak, and failed to do so after the pandemic emerged. In many facilities, there were inadequate supplies of respirators and other protective equipment, and the proper equipment was not provided. Infection control procedures failed to separate infected patients from those who were not, particularly during the earlier stages of the outbreak.

In the absence of a federal OSHA standard covering pandemic influenza, guidelines from CDC and OSHA provided the only worker protection measures. But these guidelines were voluntary, and were not followed by many facilities. In addition, a number of state health departments ignored the CDC guidelines and issued their own guidelines recommending reduced levels of

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[28] IOM (Institute of Medicine). 2009. *Respiratory protection for healthcare workers in the workplace against novel H1N1 influenza A: A letter report.* Washington, D.C.: The National Academies Press.

[29] AFL-CIO, et al., *Healthcare Workers in Peril: Preparing to Protect Worker Health and Safety During Pandemic Influenza, A Union Survey Report*, April 16, 2009. http://www.aflcio.org/issues/safety/upload/panflusurvey.pdf.

protection for health care workers (i.e., surgical masks instead of NIOSH-approved respirators). These varying guidelines created great confusion. In November 2009, in an attempt to provide national consistency, OSHA issued a compliance directive stating it would investigate and enforce CDC's guidelines in response to worker complaints. But few enforcement actions have been taken.

The experience with the H1N1 pandemic influenza virus has underscored the need for mandatory measures to protect health care workers and other workers at high risk from exposures. In May 2009, the California Occupational Safety and Health Standards Board adopted a Cal/OSHA standard on Airborne Transmissible Diseases that became effective Aug. 5, 2009. The standard, spurred initially by concern about avian influenza, covers all airborne transmissible infectious diseases. It requires covered health care employers to develop infection control plans, to utilize engineering controls and appropriate personal protective equipment, to provide training for workers and to develop and implement isolation plans for identified or suspected cases.

In the Fall 2009 Regulatory Agenda, federal OSHA announced it was considering the development of an infectious disease standard to protect health care workers and other workers from such diseases as tuberculosis, SARS and influenza. In 2010, OSHA issued a request for information to seek input from the public on such a rule. The agency is analyzing the comments and information received in response to that request, but has yet to announce its plans for moving forward with a proposed infectious disease rule.

Chemical Exposure Limits and Standards

Occupational exposures to toxic substances pose a significant risk to millions of American workers. According to NIOSH, occupational diseases caused by exposure to these substances are responsible for an estimated 50,000 deaths each year. One of OSHA's primary responsibilities is to set standards to protect workers from toxic substances. But since the OSH Act was enacted in 1970, OSHA has issued comprehensive health standards for only 29 substances. Most of these standards were set in the first two decades of the Act. In recent years, regulations for chemical hazards have ground to a halt. The last toxic substance standard that was issued, on hexavalent chromium in 2006, came only as a result of a court order.

The OSHA permissible exposure limits (PELs) in place under 29 CFR 1910.1000 that govern exposure for approximately 400 toxic substances were adopted in 1971 and codified the ACGIH Threshold Limit Values from 1968. Most of these limits were set by ACGIH in the 1940s and 1950s, based upon the scientific evidence then available. Many chemicals now recognized as hazardous were not covered by the 1968 limits. In 1989 OSHA attempted to update these limits, but the revised rule was overturned by the courts because the agency failed to make the risk and feasibility determinations for each chemical as required by the Act. The result is that many serious chemical hazards are not regulated at all by federal OSHA or are subject to weak and out-of-date requirements. Some states, including California and Washington, have done a better job updating exposure limits, and as a result workers in those states have much better protection against exposure to toxic substances.

Several years ago, the American Industrial Hygiene Association (AIHA), major industry groups and labor attempted to reach agreement on a new approach to update permissible exposure limits through a shorter process that would allow quick adoption of new limits that were agreed upon by consensus. Unfortunately, those efforts stalled when small business groups objected to an expedited process that would apply to a large number of chemicals and the Bush administration refused to take a leadership role in developing and advancing an improved process for setting updated exposure limits.

In 2007, the state of California moved to establish a new procedure for updating chemical exposure limits that utilizes a two-part advisory committee process to recommend revised or new permissible exposure limits.[30] Under the process, Cal/OSHA develops a list of candidate substances for proposed consideration by an advisory committee. A Health Expert Advisory Committee (HEAC) reviews scientific evidence on identified substances and recommends a permissible exposure limit based upon health effects. A separate Feasibility Advisory Committee (FAC) then considers technical and economic feasibility issues to determine whether the health-based recommended PEL should be modified. Cal/OSHA maintains the responsibility to recommend draft PELs to the Cal/OSHA Standards Board that has the authority to adopt final limits.

This process was intended to expedite the adoption of revised PELs, but the process has been slower than expected. To date, the HEAC has recommended revised PELs for 14 substances, and the FAC has accepted or recommended an alternative for 10 of these recommendations.[31] But the California Occupational Safety and Health Standards Board has yet to adopt any of these recommendations. In an earlier process covering 2001 to 2004, Cal/OSHA did manage to issue 48 new or revised exposure limits, although this process, too, was very slow. Some of these recommended exposure limits were not adopted by the Standards Board until 2009.

The American Industrial Hygiene Association, unions and others have identified updating OSHA permissible exposure limits as a top priority for the Obama administration. OSHA Assistant Secretary Dr. David Michaels is exploring ways to update exposure limits and enhance worker protection from toxic chemicals. In 2010, OSHA held a meeting to seek input and ideas from experts, and in August 2010, the agency sought input from the public on strategies for reducing worker exposures to hazardous chemicals. But to date, no specific plans for action have been announced.

MINE SAFETY AND HEALTH

The April 5, 2010, explosion at the Massey Energy Upper Big Branch (UBB) mine in West Virginia killed 29 miners in the worst coal mine disaster in the United States in 40 years. The Upper Big Branch disaster shocked and outraged the nation. It exposed serious problems at the Massey mine and deficiencies in mine safety laws and oversight.

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[30]Policy and Procedure for the Advisory Committee Process for Permissible Exposure Limit (PEL) Updates to Title 8, Section 5155, Airborne Contaminants, California Division of Occupational Safety and Health, March 2007. www.dir.ca.gov/dosh/DoshReg/PEL-Process-3-07-final-draft.pdf.

[31] Cal/OSHA PEL Project Status List (as of 1/2011), www.dir.ca.gov/dosh/doshreg/5155Meetings_2011.htm.

According to MSHA, the UBB mine had a history of serious violations. In 2009, 515 citations and orders were issued, and in 2010, prior to the explosion, there were 124 orders and citations issued for violations at the mine. These violations were serious. More than 39 percent of the citations issued at Upper Big Branch were for significant and substantial violations, and in 2009, MSHA issued 48 withdrawal orders at the mine for repeated significant and substantial violations.[32] These included violations for standards on ventilation, roof supports and coal dust. Most of these violations were contested by Massey.

Since the Upper Big Branch explosion in April 2010, MSHA has been conducting a massive investigation involving more than 100 enforcement personnel. While the investigation is not yet complete, MSHA's initial findings indicate that a small methane gas ignition transitioned into a massive explosion fueled by an accumulation of coal dust in the mine.[33] Don Blankenship, the head of Massey Energy who has since retired, disputed these findings, claiming the explosion was an "act of God" caused by a massive leak of natural methane.

The Department of Justice also has opened a criminal investigation into the UBB explosion. The U.S. attorney has indicted two former Massey supervisors for making false claims for lying to MSHA investigators and charged one of the supervisors with obstruction of justice for interfering with prior MSHA investigations and inspections.

The Massey mine disaster has raised serious questions about the adequacy of MSHA oversight and the mine safety law and regulations, particularly how a mine with such a significant history of violations could continue to operate.

Under the Mine Act, MSHA does not have the authority to permanently shut down a mine. But the agency does have the authority to withdraw miners or equipment from operations if the agency finds imminent danger conditions, if a mine operator fails to abate a cited hazard within the prescribed period or if the violation was a result of the operator's "unwarrantable failure" to comply with a safety rule. Over the past decade, the Upper Big Branch mine had received a number of withdrawal orders for these types of violations, including in 2009.

MSHA also has the authority to enhance penalties and institute withdrawal orders for a mine that is determined to have a "pattern of violations." But violations that are under contest by the operator do not count toward a pattern. By contesting the majority of significant and substantial violations, Massey avoided being designated as having a "pattern of violations" and the enhanced enforcement associated with this status.

This practice of contesting violations was not unique to Massey. Since MSHA stepped up enforcement following the 2006 disasters at Sago, Aracoma and other mines, coal operators have significantly increased their contest of violations. In 2009, operators contested 27 percent of

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[32] Briefing by the Department of Labor, Mine Safety and Health Administration on Disaster at Massey Energy's Upper Big Branch Mine-South, April 12, 2010. www.msha.gov/PerformanceCoal/DOL-MSHA_president_Report.pdf.

[33] Statement of Joseph A. Main, Assistant Secretary Of Labor for Mine Safety And Health Before the Committee On Health, Education, Labor And Pensions, United States Senate, March 31, 2011.

violations representing 66 percent of proposed penalties.[34] By contesting these violations, operators attempt to avoid being designated as having a "pattern of violations" and being subject to tougher penalties and enforcement actions, since until they become a final action, the contested violations do not count toward establishing a pattern. This high rate of contests overwhelmed MSHA and the Federal Mine Safety and Health Review Commission (FMSHRC) and led to a backlog of 16,000 contested cases before the commission. Supplemental funds provided by Congress have helped both MSHA and FMSHRC to start addressing this backlog.

In the wake of the Massey disaster, President Obama directed MSHA to improve its enforcement procedures and to work with Congress to strengthen enforcement. Since the explosion, MSHA has taken a number of actions. A new program of "impact" inspections has been launched to target mines with poor safety records or at high risk of explosions. As of February 2011, 228 impact inspections of mines had been conducted, resulting in 4,200 citations and 396 orders for violations, many of them for serious or life-threatening conditions.

MSHA also has moved to strengthen its procedures for addressing patterns of violations (POV). New screening criteria have been put in place to identify mines that have a history of repeated violations. MSHA has notified 14 mines of potential patterns using these new criteria, directing them to evaluate conditions and come up with a plan for addressing hazards and violations. MSHA also has pursued the use of a new enforcement tool—seeking a federal court injunction—to enforce against a pattern of violations against another Massey mine. MSHA has proposed a new regulation to revise the pattern of violation procedures so violations that are not yet final orders are considered in determining a pattern.

But even with these enhancements, changes in the law are needed to give MSHA subpoena power in conducting investigations, injunction authority to shut down dangerous mines, to further improve procedures for addressing patterns of violations and to strengthen civil and criminal penalties. Mine safety legislation to address these areas was introduced in the 111th Congress, but was not enacted. And with the election of a Republican majority in the House of Representatives, passage of such legislation in the 112th Congress is not likely. (See below).

In addition to strengthening enforcement programs, MSHA has been moving forward to develop and promulgate new mine safety and health standards. An emergency standard on rock dusting to prevent explosions in underground coal mines was issued in September 2010, and a final rule is in process. In October 2010, MSHA issued a proposed rule to reduce exposures to coal dust to reduce the risk of black lung, and a new silica standard is under development. MSHA also is soliciting input on the development of a safety and health management program standard to prevent injuries and illnesses.

[34] Statement of Joseph A. Main, assistant secretary of labor for mine safety and health , before the Committee on Education and Labor , U.S. House of Representatives, Feb. 23, 2010.

THE JOB SAFETY BUDGET

Funding for the nation's job safety and health programs historically has been limited, particularly when compared with the scope of responsibilities of the job safety agencies and the extent of the problems that need to be addressed. During the Bush administration there was a decrease in funding and staffing for the agencies, further limiting their capacity. The Obama administration has made funding for the job safety agencies, particularly the enforcement programs, a priority and has moved to restore the agencies to their FY 2001 levels of operation. But the new Republican majority in the House of Representatives has targeted the budgets of regulatory and enforcement programs, including OSHA, for significant cuts, threatening future funding for these agencies.

In FY 2010, the omnibus appropriations bill provided $558.6 million in funding for OSHA, $357.3 million for MSHA and $302.4 million for NIOSH. This compares with FY 2009 levels of $513 million for OSHA, $347 million for MSHA and $290 million for NIOSH.

Under the FY 2010 appropriation, OSHA's staffing was increased to a total of 2,335 positions, compared with 2,118 positions during the final year of the Bush administration. The biggest increase was in OSHA enforcement staffing, which was increased by 167 positions. The OSHA FY 2010 budget also included a $10 million increase in funding for the state OSHA plans, which had seen their funding frozen at FY 2001 levels under the Bush administration.

For FY 2011, the Obama administration proposed increases in the OSHA, MSHA and NIOSH programs. For OSHA, total funding of $573.1 million was sought, with increases in enforcement and standard setting.

For MSHA, a budget of $360,780 was proposed, with increases in enforcement in metal and nonmetal mines and in standard setting to develop new rules on coal dust and silica. And for NIOSH, $305.6 million was proposed, with an additional $150.1 million requested for the World Trade Center Health Program to provide medical monitoring and treatment for the 9/11 responders and community members now sick as a result of exposures from the collapse of the World Trade Center.

The FY 2011 budget was not finalized during the 111th Congress, and agencies continued to be funded at FY 2010 levels. Upon taking office in January, the new Republican House majority in the 112th Congress moved to significantly cut funding for many federal agencies, passing legislation in March to cut the budget by $61 billion for the remainder of FY 2011. That bill, H.R. 1, included a $99 million cut in OSHA's budget of $558.6 million, targeted largely at enforcement. These cuts, which equaled a 40 percent cut in OSHA's budget for the remainder of the fiscal year, would, if enacted, have resulted in a loss of 417 positions, including 200 compliance officers, and forced OSHA to shut down operations for several months.

The Obama administration and the Senate strongly opposed these cuts. The final continuing resolution (CR) for FY 2011 passed in April by the House and the Senate maintained OSHA

funding at its FY 2010 level of $558.6 million and increased MSHA's funding to $363.8 million, with an additional $6.5 million in funding to address the backlog of contested cases that has developed due to employers' increased contests of MSHA enforcement actions. The CR reduced NIOSH funding in FY 2011 by $49 million, with this reduction coming from the World Trade Center Health program. The WTC health program instead will be funded by mandatory funding as a result of the passage of legislation by Congress in December 2010.

For FY 2012, the Obama administration has proposed to increase funding for OSHA to $583.4 million and for MSHA to $$384.3 million. But for NIOSH, the Obama administration proposed $48 million in cuts for FY 2012. These cuts would come from the elimination of the program for agriculture, fishing and logging safety and health research, and the Educational Resource Center program to train occupational safety and health professionals. Both of these cuts would seriously harm safety and health efforts and are opposed by the AFL-CIO and the occupational safety and health community.

Given the strong push by Republicans to cut government spending, and with Democrats now focused on deficit reduction as well, it is unlikely there will be any significant increases in funding for government programs in FY 2012 or in coming years, and many agencies will face the threat of significant reductions in funding.

SAFETY AND HEALTH LEGISLATION

During the 110th and 111th Congresses with the Democrats in control of both the House and the Senate, there was enhanced oversight and legislative activity on job safety and health. The Massey mining disaster and other safety and health tragedies in 2010 heightened attention on the mining industry and other dangerous industries and spurred legislative activity.

In the first session of the 111th Congress, the Protecting America's Workers Act (PAWA), H.R. 2067 and S. 1580, was introduced in 2009 by Reps. Lynn Woolsey (D-Calif.) and George Miller (D-Calif.) in the House and by Sens. Patty Murray (D-Wash.) and Harry Reid (D-Nev.) on behalf of Sen. Edward Kennedy (D-Mass). The legislation addressed key deficiencies in the Occupational Safety and Health Act, and sought to strengthen OSHA by expanding coverage to uncovered workers, including the more than 8 million state and local public employees who lack coverage; enhancing whistleblower protections; increasing penalties for serious and willful violations and establishing higher penalties in cases of worker deaths; strengthening the criminal penalty provisions of the OSH Act; and strengthening worker, union and victim rights in the enforcement process. The House Education and Labor Committee held a series of legislative hearings on the measure and the Obama administration strongly endorsed the legislation.

After the April 2010 explosion at the Upper Big Branch mine that killed 29 miners, congressional oversight of and attention to mine safety intensified. Numerous hearings were held in the House and Senate. In July 2010, Rep. George Miller introduced legislation, the Robert C. Byrd Miner Safety and Health Act (H.R. 5663), to strengthen the Mine Safety and Health Act by revamping the provisions for patterns of violations, enhancing criminal and civil penalties, providing MSHA subpoena power and other enforcement tools and strengthening miners'

whistleblower protections. The bill also included major provisions from PAWA (H.R. 1580) for strengthening the Occupational Safety and Health Act. Similar legislation (S. 3671) was introduced in the Senate by Sen. John Rockefeller (D-WVa.), Tom Harkin (D-Iowa) and Patty Murray (D-Wash.).

H.R. 5663 was marked up and reported out of the House Committee on Education and Labor on July 21, 2010, on a party-line vote. H.R. 5663 did not come before the full House for a vote. But in December 2010, the House voted on H.R. 6495, legislation that incorporated many of the mine safety provisions from H.R. 5663, under a suspension of the rules. The vote on the bill was 214–93, but the bill failed to achieve the two-thirds vote necessary under the voting procedure.

Several other important safety and health measures were introduced in the 111th Congress, including a bill (H.R. 2199) sponsored by Rep. Tim Bishop (D-N.Y.) to strengthen OSHA's authority to shut down operations that pose an imminent danger to workers; legislation (H.R. 2133) sponsored by Rep. Phil Hare (D-Ill.) to require large corporate employers to maintain, certify and provide regular reports to OSHA on work-related injuries, illnesses and fatalities for each of their establishments; and a bill (H.R. 4864) introduced by Rep. Dina Titus (D-Nev.) to allow federal OSHA to exert concurrent enforcement jurisdiction in OSHA state plan states if the state OSHA program was found to have serious deficiencies. In addition, Rep. John Conyers (D-Mich.) introduced legislation (H.R. 2381) to mandate OSHA to issue a standard on safe patient handling to protect health care workers from injuries, and Reps. George Miller and John Barrow (D-Ga.) introduced legislation (H.R. 849) to require OSHA to issue a standard to protect workers from combustible dust explosions and fires.

The legislation on state plans (H.R. 4864) was incorporated by amendment to H.R. 5663, but none of the other bills was acted on in the 111th Congress.

The major legislative success on safety and health-related legislation in the last Congress came with the passage of the James Zadroga 9/11 Health and Compensation Act (H.R. 847). This legislation, first introduced in 2004, establishes a comprehensive health monitoring, treatment and compensation program for the tens of thousands of 9/11 responders and others who now are sick as a result of exposures at the World Trade Center. The legislation was marked up by the House Judiciary Committee in July 2009 and by the House Energy and Commerce Committee in May 2010. The bill was brought up in the House under a suspension of the rules in July 2010, but failed to receive the two-thirds vote necessary for passage, with a vote of 255–159. On September 29, 2010, the House once again considered the bill under regular rules, and the bill was passed on a bipartisan vote of 268–160.

The Senate finally took up H.R. 847 in December after much pressure from supporters and the public. After intense negotiations, a compromise was struck that limited the bill to a five-year program funded by $4.3 billion in mandatory funding not subject to yearly appropriations. In the last hours of the last day of the 111th Congress, the Senate adopted H. R. 847 unanimously by voice vote, and the House passed the amended version of the bill. On Jan. 2, 2011, President Obama signed the bill and the James Zadroga 9/11 Health and Compensation Act became law.

With the Republicans in the majority in the House of Representatives, the political environment for consideration of any worker protection legislation in the 112th Congress has changed dramatically. Major workplace safety and health bills—the Protecting America's Workers Act (H.R. 190), the Robert C. Byrd Mine and Workplace Safety Act (S. 153) and the Robert C. Byrd Mine Safety Protection Act (H.R. 1579) have been reintroduced, but prospects for action are slim.

Despite the major catastrophes of the past year, Republicans in both the House and Senate are pushing to block new protections, roll back existing measures and to radically alter the regulatory system, making it even more difficult for agencies to protect workers and the public. Workplace safety and health rules, environmental and consumer protections, health care regulations and financial safeguards are all major targets.

Corporations were invited by Representative Darryl Issa, chairman of the House Government Oversight and Reform Committee, to identify rules they find burdensome. Business groups have targeted OSHA rules on silica, safety and health programs, and recording MSDs on injury logs and MSHA's rule to limit coal dust exposure. Republican leadership has directed all House committees to conduct oversight on agencies and review all existing and proposed regulations for their impact on businesses.

Republicans have proposed to slash the budgets of OSHA, EPA and other regulatory agencies and to block new rules through budget riders or repeal them under the Congressional Review Act.

Legislation is being pushed in the House and the Senate to require Congress to review and approve all major rules before they can take effect. The "Regulations from the Executive in Need of Scrutiny Act" (REINS Act, H.R. 10, S. 299) would set up Congress as the gatekeeper on regulations. Politics, not scientific judgment or expertise of agencies, would dictate all regulatory actions.

Republicans have cloaked this crusade against regulations as a jobs initiative, claiming regulations are hampering investment and killing jobs. But there is little data to support this claim, and many studies show the benefits of regulations far outweigh their costs. [35] Rather, it appears these efforts are an attempt to roll back 40 years of progress and to fundamentally alter the government's role in protecting the public and stopping corporate abuses.

WHAT NEEDS TO BE DONE

Very simply, workers need more job safety and health protection. Eight years of inaction and

[35] For example, see Office of Management and Budget, Office of Information and Regulatory Affairs, "Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities," Washington, D.C., March 2011, p. 21. www.whitehouse.gov/sites/default/files/omb/legislative/reports/Draft_2011_CBA_Report_AllSections.pdf, and Shapiro, Isaac and John Irons, Regulations, Employment and the Economy: Fears of Job Loss are Overblown, Economic Policy Institute Briefing Paper #305, April 2011.

neglect by the Bush administration on major hazards and increased emphasis on employer assistance and voluntary compliance left workers' safety and health in serious danger. The Obama administration has restored OSHA and MSHA to their mission to protect workers, and the new leaders at the agencies are charting a new course and moving forward.

But much work needs to be done. Both OSHA and MSHA need to move quickly and aggressively to develop and issue new standards on serious hazards including silica, combustible dust, infectious diseases and rules to require workplace injury and illnesses prevention programs. Enforcement must be ramped up, particularly for employers who repeated violate the law. Funding and staffing at the agencies should be increased to provide for enhanced oversight of worksites and timely and effective enforcement.

The widespread problem of injury underreporting must be addressed and employer policies and practices that discourage the reporting of injuries through discipline or other means must be prohibited. OSHA needs to keep up with new hazards that face workers as workplaces and the nature of work change.

The serious safety and health problems and increased risk of fatalities and injuries faced by Hispanic and immigrant workers must be given increased attention.

At MSHA, in the wake of the Massey mining disaster, there must be increased attention on mines with a record of repeated violations and stronger enforcement action against mines with patterns of violations. Increased staffing is needed to clear out the huge backlog of contested enforcement cases. Tightening permissible exposures for coal dust should be a priority to protect miners from black lung disease, which is again on the rise.

Congress must strengthen the job safety laws to prevent tragedies like the Massey mining disaster and Tesoro Refinery and Kleen Energy explosions in the future.

Improvements in the Mine Safety and Health Act are needed to give MSHA more authority to shut down dangerous mines and to enhance enforcement against repeated violators.

The Occupational Safety and Health Act is now 40 years old and out of date. Congress should pass the Protecting America's Workers Act to extend the law's coverage to workers currently excluded, strengthen civil and criminal penalties for violations, enhance anti-discrimination protections and strengthen the rights of workers, unions and victims.

Rather than move forward, the new Republican majority in Congress is threatening to turn back the clock, block new protections and slash funding for the job safety agencies. These efforts to roll back and weaken worker protections must be stopped.

The nation must renew the commitment to protect workers from injury, disease and death and make this a high priority. We must demand that employers meet their responsibilities to protect workers and hold them accountable if they put workers in danger. Only then can the promise of safe jobs for all of America's workers be fulfilled.