



Happenings On The Hill

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Washington at Work!

That's right, you had better sit down because Washington is actually getting something done. (Well, not so much getting something done but they sure are trying.) The last few weeks has seen more activity than in the previous couple of years combined. Not only that, we have also seen movement on a number of issues impacting occupational safety and health – from both Congress and OSHA.

And to top it off, the approval rating of Congress has nearly doubled in the past six months. But be careful how you interpret that piece of news as it simply means the approval rating went from 10 percent to a whopping 19 percent.

But all of this has to be good news for those who have waited for Washington to at least look as if it is accomplishing something. With lots to report, let's get right to it.

Congressional Issues

Protecting America's Workers Act. Sen. Al Franken (MN) and Rep. Joe Courtney (CT) have introduced what one can say is the "OSHA reform bill". The bills, S 1112 and HR 2090, are very similar to bills that have been introduced in each of the last three sessions of Congress. There is a lot in this bill, but to summarize, the legislation would expand OSHA coverage to those workers not currently covered, increase penalties (both civil and criminal) to those who break the law and do not follow OSHA regulations,

provide additional protection to whistleblowers, clarify an employer's duty to provide a safe worksite for all workers onsite, and provide additional rights to victims of workplace hazards.

Will the legislation stand any chance of passage? Very doubtful as both measures were introduced by Democrats. Matter of fact it will be difficult for the legislation to even have a hearing. But hey, it's something! AIHA is in the process of developing comments on the bill as we need to address these issues as we have in the past.

Grace Period to Abate Violations. HR 1932 has been introduced that would allow employers a grace period to abate certain occupational health and safety violations before being subject to a penalty. This issue has been more prevalent in the states with several states addressing the issue in the last couple of years. The bill has been introduced by Rep. Vicky Hartzler (MO) so stands a somewhat chance of passage.

MSHA Issues. Bills have been introduced in both the House and the Senate addressing several compliance issues with mine safety and health laws, also empowering miners to raise safety concerns. Again though, introduced by Democrats the bill stands little chance of passage.

Federal Budget. Still in the early stages of debate over the FY 2016 federal budget, it looks like it will be difficult for all sides to get together on a final figure. This means we may be looking at another long-term Continuing Resolution (CR). But we still have time. To avoid any potential problems, the FY 2016 budget doesn't have to be adopted until September 30.

The President's budget proposal is considered "dead on arrival" on the Hill. The Republicans have been working on their budget version which is opposed by the President. The biggest concern is whether or not the Republicans will continue down the path of "sequestration". Yes, that term is still around as the law requires the government to continue to cut spending unless overruled by Congress. The problem – the Republicans want to override sequestration cuts for defense spending but continue cuts in other areas. The President says he will not allow this to happen. He wants Congress to either comply with sequestration across the board or override all of the cuts. That will be the debate in the coming months.

And as if that isn't bad enough, the President has released guidance to every federal agency that as the agencies begin to determine needed spending for the FY 2017 budget, the request should include at least a five percent reduction from what they put forth in the FY2016 budget request..

Things will get very difficult next year as the President has nothing to lose in his last year of office. Don't expect him to give in on many things - or the Republicans. It's going to be interesting!

Toxic Substances Control Act. Legislation to amend the Toxic Substances Control Act (TSCA) is moving forward. The latest version of the legislation (after numerous attempts in previous sessions of Congress) is moving through the House Energy and Commerce Committee. The bill would force EPA to complete risk assessments for dangerous chemicals within three years, issue risk management rules within 90 days of completing an assessment and preserve states' rights to issue their own protections.

In past years the legislation went nowhere, but this time could be different. There seems to be an awful lot of support for this version. I give it a 50-50 chance of passage.

Regulation through Guidance. Seems the recent Supreme Court decision affirming agencies do not have to undergo notice-and-comment rulemaking when they issue guidance is not going to be accepted by all. This issue has been debated for several years and doesn't seem to be going away. Several Republican Senators have announced plans to investigate the approach that is used by many federal agencies, including OSHA. Opponents of the use of "guidance" say the process does not allow the public to have input on what may be significant regulations. Supporters of the process say use of guidance is needed because the process for regulatory action just takes too long and that employers want to know how agencies plan on addressing and enforcing regulations.

Regulatory Reform Legislation. If there is one issue that seems to be on everyone's radar in Congress it is "regulatory reform". To date, I count no less than a dozen separate bills that have been introduced to supposedly "reform" the process in some way. While not going into too much detail here (more in a later issue), here is quick look at some of the recommendations:

- Require federal agencies to submit rules that annual impact of \$100 million or more to Congress for approval
- Require federal agencies to issue the "least costly" regulation
- Require agencies to cut or modify existing regulations before they can issue new ones
- Require any proposed regulation to include the internet address of a 100-word, plain-language summary
- Require publication of project costs and benefits for at least six months before a new rule can take effect
- Direct agencies to review existing rules to determine those that are obsolete, duplicative, unnecessary or conflicting with other rules

Chance of passage on any of these? Who knows. In years past one could say none would stand a chance but times have changed. I wouldn't be surprised to see one or two of these bills passed and actually signed by the President.

OSHA Moving Forward on Several Issues

Congress isn't the only place in Washington where it seems activity has picked up. OSHA has been quite busy on numerous fronts:

Confined Spaces Rule

The OSHA confined spaces rule for general industry has been in place since 1993, but expanding this rule to the construction sector has been harder to accomplish. However, on May 4, after nearly twenty years in the making, OSHA published the confined spaces in construction final rule. This new rule largely follows the general industry regulations with a few changes specific to the construction industry and other changes made by technological advances in safety. OSHA expects the new rule to protect nearly 800 construction workers a year from serious injuries and reduce life-threatening hazards.

Now, a little admission here. When the Obama administration came into office in 2009, I predicted that the confined spaces in construction rule would be the first thing approved at OSHA. Obviously, here we are in 2015 and it is just now being approved. On the other hand, not much else has been approved so technically I was pretty close to this being the first thing approved.

Beryllium

The OSHA draft of this proposed rule to reduce the exposure to beryllium remains at the Office of Management and Budget (OMB) – under review. To refresh your memory, the OMB is required under Executive Order to review and return any proposed rule to the agency submitting the proposal within 90 days of receipt. They are allowed to extend this by up to 30 days. Well, the beryllium proposal has now been at OMB for more than eight months. What makes this even more frustrating is the fact that a major industry player in the beryllium industry and a labor union agreed long ago on an acceptable exposure limit.

OMB is now getting a little pressure to complete the review, return the proposal to OSHA, and allow the agency to publish the proposal for public input. A group of Democratic lawmakers on the Hill recently sent a letter to OMB requesting this proposal be sent back to OSHA. As a follow-up, AIHA also sent a letter to OMB supporting efforts to return the proposal to OSHA. Bottom line – it's time OSHA be allowed to publish its proposal and provide the public with the opportunity to comment.

Silica. No word on when, or if, OSHA might move on the silica rule. Time is of the essence on this one as Congress would likely get involved and attempt to stop the rule. That would leave little time for the President to override Congress via veto. There are still many who think this final rule is forthcoming.

Infectious Diseases Rule. Hope is fading that OSHA might be able to conclude this rule in the remaining time of the Obama Administration. So many things on the OSHA plate that this one just might fall off.

Fatality Rate Continues to Decline

One fatality is too many! But good news from the Bureau of Labor Statistics that the U.S. workplace fatality rate set a record low in 2013, dropping to 3.3 deaths for every 100,000 full-time equivalent workers. This is the lowest since 2006. In announcing the statistics, BLS noted that private construction had the highest count of fatal injuries in 2013 (828), but the agriculture, forestry, fishing and hunting sector had the highest fatal work injury rate.

The States

California

California recently updated its standard for preventing heat illness in the workplace.

New York

The Governor of New York has created a multi-agency task force to address nail salon hazards. This issue receiving a lot of press and pressure for federal OSHA to become more involved.

Maine

The State of Maine has requested approval from federal OSHA (likely to be approved) to establish its own state program to cover the health and safety of public workers. Maine does not wish to have control over private sector employees or any federal workers. If you recall, Illinois did the same thing back in 2009. When approved, Maine would be the 26th state to establish a program that includes oversight of public employees.

Virginia

The Governor of Virginia has scheduled a ceremony to sign legislation that makes Virginia the only state with a law making the Voluntary Protection Program a permanent program within the state. The legislation was supported by AIHA and AIHA was invited to attend the signing ceremony. Don't be surprised to see other states enact similar legislation.

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. Simply go to the AIHA home page. Click on "government affairs", located on the "stay connected" tab at the top of the page. Once in government affairs, click on "Federal Legislation Action Center". Also available within this Action Center is the opportunity for any member to directly contact their elected officials in Washington simply by inserting their zip code. You can send an email or learn how to contact them by phone or mail. Take a look!

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each State site is access to the various state agencies, including the Governor's office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

See You in Salt Lake City!

For information on any of the items in this report, please contact Aaron Tripler.