



Happenings On The Hill

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Congress Takes Short Break with No Budget in Sight!

For some reason, Congress seems to believe that enacting a budget is not all that important. With negotiations between the Democrats and the Republicans – the Senate and the House – going nowhere, Congress decided to take another week off. And if you think they have plenty of time before a new budget is needed (October 1) realize that Congress will be taking off the entire month of August. That doesn't leave much time to get things in order.

What does all of this mean? More than likely there will be either a government shutdown after September 30 or Congress will have to approve a Continuing Resolution (CR) to give authority to the government to continue operating. This would likely only last until December – after the elections. (Oh yeah, Congress will also be taking off the entire month of October to campaign.) Come December the debate starts in again. Either another CR or an omnibus spending bill that would provide funding for the government but with the threat that Congress could enact “riders” on individual budgets. Remember, the House attempted to place a “rider” on the OSHA budget this past year that would have prohibited OSHA from spending anything on the silica standard.

So, we sit back and wait. Haven't had an actual budget in several years and I don't expect to see one this year either. And Congress wonders why the voters are frustrated with Washington!

TSCA Reform Still Alive

The Senate and the House are still trying to get together to pass a bill that would amend the Toxic Substances Control Act. While numerous attempts to amend TSCA have taken place over the last few years, this may be the best opportunity to actually see results.

Both the House and the Senate have passed separate bills to amend TSCA, with the tough work now trying to get together on one bill. Easier said than done! The advantage with this latest effort is that this is a bi-partisan effort with both sides of the aisle in support of amending TSCA. However, insiders believe that EPA isn't really preparing for amendments to the Act which makes it much more difficult to enact.

But don't count out action on this issue. While Congress is tied up with the budget problem, the Supreme Court vacancy and the upcoming election, TSCA reform may be on the table as an opportunity to show that both sides can agree on something.

Quick Look -

- Republicans are attempting to stop a Presidential Executive Order that would make it more difficult for companies that violate labor and safety laws to acquire government contracts. The Order applies to violations within the previous three years and contracts worth more than \$500,000. The Republicans have placed a "rider" in the Defense Authorization Act to prevent this order from applying to the Defense Department. No idea whether or not the rider may stay when the appropriations bill is finalized, but I believe it will be difficult to keep the rider in there.
- Voluntary Protection Program. Senator Mike Enzi and Senator Michael Bennet have introduced legislation in the Senate to make the Voluntary Protection Program (VPP) a permanent program within OSHA. The bill, S 2881 is a companion measure to HR 2550 introduced earlier. AIHA has written letters of support for the legislation.
- "Common Sense" OSHA Reform. The House Republican budget plan has issued a report stating that Congress "make common sense reforms to OSHA". The reform mentioned is that OSHA would no longer be able to fine employers for "non-serious infractions" in some circumstances. The fines would be waived if the non-serious infractions are corrected within the time allotted in the citation or by the end of the final appeals process. Sounds like a good idea but on the other side is the view that this would allow employers a free pass before they address an infraction. Don't think this idea will fly!
- AIHA recently submitted comments on the OSHA Draft Guidance on Data Evaluation for Weight of Evidence Determination. You can read AIHA's comments at <https://www.aiha.org/government-affairs/PublicPolicy/OSHA%20Guidance%20on%20Evaluation%20for%20WoE-05-02-16.pdf>

Silica Standard Challenged in Court

Lots to report concerning the silica standard.

- First of all, the standard takes effect on June 23. However, compliance dates are more than a year away – June 23, 2017 for construction and June 23, 2018 for general industry and maritime. Oil and gas hydraulic fracturing compliance begins June 23, 2021.
- OSHA wants states to adopt the rule's requirements within six months. Federal law gives the state plans six months to adopt the federal regulations or a rule that is at least as effective. Several states have already begun the process to adopt the federal standards.
- Seven lawsuits have already been filed in six different federal appeals courts. Five of these lawsuits were filed on behalf of industry and two on behalf of labor. The lawsuits have now been consolidated and will be heard by the U.S. Court of Appeals for the District of Columbia. There may be even more filed before the end of May. The reasons for the lawsuits – pretty varied. Industry claims the rule is not technically or economically feasible and relied on out-of-date data, as well as overall cost. The unions claim the medical surveillance requirements can be improved as well as the fact that provisions for medical removal protection is insufficient.
- Dr. David Michaels, Assistant Secretary of Labor for OSHA, stated he believes the silica rule will withstand the legal challenges and that lives will be saved. Dr. Michaels said that within a few years many will wonder why it took so long to implement this rule and recognize the good that will have come from the rule.
- In mid-April, Congress got involved with the issue for the first time since final enactment. A hearing was held in a House subcommittee that was really an attempt by industry to convince Congress to block the silica rule and force OSHA to undergo more review before enacting a new one. The House had placed an appropriations rider on OSHA last year but the Senate removed the rider. That rider would have prohibited OSHA from spending any dollars on the rule, effectively killing the rule. The House hearing heard plenty of industry witnesses recommending the same thing this year.
- Finally, if you would like to read a bit more about OSHA and the silica rule, the Congressional Research Service has published a 14-page report that summarizes silica's issues, the history of regulating exposure, and recent actions. You can find the report at <https://www.aiha.org/government-affairs/Documents/CRS%20Silica%20Report-04-16.pdf>

So what does this all mean – I believe there will be an attempt in Congress to stop the rule but not sure it will succeed. Actually might be better odds that the courts stop compliance with the rule until the lawsuits are settled.

Recordkeeping Rule Moving Forward

This past week OSHA was given the word that the agency can move forward with its controversial electronic recordkeeping rule. The proposal was approved and returned to the agency by the Office of Management and Budget.

That means the agency will likely issue the final rule very shortly. And the chance for Congress to stop the rule through the Congressional Review Act will likely not work. The only chance to stop the rule will be through the appropriations process, a “rider”, or through the courts.

The whole idea of this rule is to provide OSHA a better way to collect injury and illness data through electronic reporting. The agency claims business will not have to record anything different than is currently recorded. However, the difference for industry is that the data will be made public and require disclosure of all records regardless of value. In addition industry believes it is unfair to distribute this data if an accident is the result of worker negligence. There are several concerns with the rule, another one being concern that this rule could result in employers underreporting injuries and illnesses.

The rule will likely be finalized shortly but look for the lawsuits to show up immediately.

OSHA Fines to Increase

If you recall, last year’s omnibus spending measure provided OSHA with the right to increase penalties up to 82 percent to catch up with the cap that had been placed on the penalties for several years. OSHA announced it would wait for guidance from the Office of Management and Budget on what the increase should be. Well OMB has now provided OSHA with guidance.

OSHA will raise penalties by about 78 percent resulting in a maximum repeat or willful violations fine of \$124,709 compared to the previous \$70,000. Serious and other-than-serious violations fines will now be capped at \$12,471 compared to the previous cap of \$7,000.

While those amounts will be the cap, what may be more interesting in the guidance is how the fines will be applied. OSHA will apply the new penalty levels to any fines assessed on or after August 1. However, because OSHA can wait as long as six months following the start of an inspection to issue citations and proposed penalties, employers inspected as early as this past February could be fined using the new amount.

Worker Fatality Rate Increases

The Labor Department has announced the workplace fatality rate in the U.S. increased slightly in 2014. The rate was 3.4 deaths per 100,000 full-time-equivalent workers, the first increase since 2010. There were a total of 4,821 workplace deaths in 2014, up about 5 percent from 2013 and the most since 2008.

Statistics show that most workplace deaths occurred in construction, followed by transportation and agriculture. The highest injury rate was found in agriculture, mining and transportation.

OSHA and NIOSH Guidance to Zika Virus

An outbreak of Zika is spreading through Central and South America, Mexico, and parts of the Caribbean, including U.S. territories. Though Zika currently isn't spreading on the mainland through mosquitoes—the main route of transmission of the virus—employers and workers should take steps to prevent or minimize the risk of Zika infection if transmission starts to occur or if they work with travelers returning to the U.S. with Zika. An OSHA and NIOSH [interim guidance](#)* provides recommendations on protecting workers who may be at risk for Zika virus infection through on-the-job exposure to mosquitoes or the blood or other body fluids of infected individuals. Visit OSHA's [Zika webpage](#) for more information.

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.

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