



Happenings On The Hill

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Washington in Full Election Mode

Not a heck of a lot of news to report from Capitol Hill as Congress is just about ready to call it quits for 2016. I know – it's only February! But this is a presidential election year and Congress has scheduled only 111 days to be in session. You can look for them to be "out of town" by October so everyone can go home and campaign. Remember, we not only have an election for President, but 34 Senator seats are up and all 435 seats in the House.

Speaking of Presidential politics – this is building up to be one of the most interesting elections in history, and I'm sure everyone knows what I mean. We have anti-establishment candidates, establishment candidates, self-proclaimed socialists and progressives, just about anything and everything. And despite what you, I or anyone else thinks of the candidates, one huge positive in this race is the interest it has generated. Debates setting all kinds of viewership records, the Iowa caucus setting records for both the Democrats and the Republicans; and we aren't even into mid-February.

As for occupational safety and health activity in Congress, keeping our eyes on what may or may not happen with legislation amending the Toxic Substances Control Act. Both the House and Senate have enacted legislation; however both versions are different so they must get together and see if they can work out their differences.

Another issue we are watching closely is the many bills addressing the issue of regulatory reform. There must be three dozen bills introduced to reform the regulatory process. Some are ideas that will never be considered but there are one or two that just may make their way into law before all is said and done. Let's face it – we all know the regulatory process is broken. Just not sure I have seen any of the bills introduced that will fix the problem.

One other thing we are keeping close tabs on – the budget. Getting a little more than concerned about the OSHA budget and the fact the agency just doesn't seem to be getting adequate resources to do the job. Perhaps we will get a better look at what 2017 will look like when the President releases his 2017 budget proposal this month. In addition to that, the House Education and Workforce Committee (the committee with OSHA oversight) will be submitting what is called the "Views and Estimates Budget Letter" to the House Budget Committee this month. This is important because it will give some insight into what the House Republicans want to do with the OSHA budget moving forward.

In summary - Fasten your seat belts and enjoy the ride!

Congress Fails to Address Major Economic Problems

So, you thought everything was going fine in Congress after they finally adopted a budget through September 2016 right? Well, if you thought that you better sit down because things don't look real bright for the future. And remember, Congress always seems to make things sound great in an election year – right before the bottom falls out!

Here's the straight talk on the budget from the Congressional Budget Office:

- Congress bypassed sequestration again by not only overriding the required cuts in spending but INCREASED spending by some \$80 billion dollars.
- After falling to a post-recession low of \$439 billion in 2015, the deficit will rise to \$544 billion in 2016 and will rise every year in the future, with trillion-dollar deficits returning by 2022. By 2026 the deficit is projected to be \$1.37 trillion.
- The debt, what we owe - not the deficit, will rise by \$10.7 trillion between 2015 and 2026, from \$13.1 trillion to \$23.8 trillion. Nearly one quarter of this debt will be from interest we must pay on the debt.

And here we are in an election year with about a dozen candidates for President, 34 Senators seats and all 435 House seats up for election and you hear very little about just how we are going to pay for all of the things they have already promised and those items everyone seems to promise for the future. Pretty overwhelming!

Congress and States Address Safe Patient Handling

In a continue effort to address the issue of safe patient handling, legislation has again been introduced in Congress to require OSHA to issue a standard. Senate Bill 2408 and House Bill 4266 have been introduced, but stand little chance of being enacted in this session of Congress. These bills have been introduced several times over the last few years and have yet to move on either side of the Capitol. AIHA is in the process of developing a position statement on the most recent version of the legislation.

But Congress isn't alone in attempting to address this issue. While several states have already enacted legislation or issued regulations regarding the issue, 2016 is seeing additional efforts. So far the District of Columbia and the states of Florida, Massachusetts and Minnesota have pending legislation.

Occupational Safety and Health State Plans in the News

There continues to be considerable activity regarding OSHA State Plans and the coverage afforded by these plans. Here's a short update on recent activity:

- There are 22 State Plans that cover the private sector, as well as state and local government workers.
- There are six states and territories (Maine, Illinois, Connecticut, New Jersey, New York, and the Virgin Islands) that administer safety and health programs for state and local government workers only. New Jersey became the sixth state when its program was certified in January.
- Indiana has pending legislation to repeal its State Plan.
- Kansas and Missouri have pending legislation to develop a new State Plan.
- Virginia has pending legislation to expand its state plan to include public employees
- West Virginia has pending legislation to develop a state plan to include employees of the Department of Corrections and the Division of Health.
- Tennessee has pending legislation to expand its state plan to cover individuals under the Longshoremen's Harbor and Workers Compensation Act.

In addition to the various legislative measures repealing, creating or expanding state plans there are also bills introduced in at least ten states addressing such issues as increasing penalties for violations, addressing workplace inspection issues, the discharge of employees and several other areas.

Can Workplace Safety Violators be Prosecuted?

The answer to this question is a resounding YES! The problem is that many times it is difficult because of the criminal penalties allowed under OSHA. Well, that may change in the future because of two separate decisions.

- 1) In the recent budget agreement, Congress provided a change in the law to allow OSHA to increase agency maximum penalties by up to 82 percent by August of this year. This would bring these maximum penalties in line with where they would have been if they had been allowed to increase each year based on inflation. For some reason OSHA penalties were excluded from automatic increases. Not only that, but beginning in 2017 the penalties will automatically increase at the rate of inflation. Will OSHA increase the penalties the full 82 percent? The agency is waiting for guidance from the White House but most believe the agency will not increase the penalties the full 82 percent.
- 2) A second decision will impact prosecution of health and safety violator. This is a recently signed agreement between the Departments of Labor and Justice. This agreement would allow criminal prosecution for safety and health violations to be prosecuted by using laws aimed at fraud and environmental hazards. This agreement definitely adds teeth to prosecution. As an example, the maximum criminal penalty for violating the OSHA Act is a

six-month prison term and a misdemeanor conviction. Breaking fraud or environmental laws can produce felony convictions and multi-year prison sentences.

The Regulatory Outlook for Remainder of 2016

Because of the upcoming November election, regulatory activity from OSHA and other federal agencies is receiving a lot of scrutiny from both sides of the aisle. Not only from Congress, but the White House has also gotten involved.

The Obama administration has advised federal agencies to finish their highest priority rulemakings this summer to avoid a burst of “midnight regulations” before President Obama leaves office. A January memo from the White House Office of Information and Regulatory Affairs (OIRA) asks agencies to adhere closely to the dates in the regulatory agenda and avoid any extensions if possible. OIRA reviews all federal regulations before they are made final. Putting this in simple terms – OIRA is saying things need to be completed around July 1 if an agency expects the regulation to be issued in 2016.

So where are things today with some of the ongoing OSHA regulations?

- Silica. The final rule for a new standard was sent to OIRA in December. OIRA has 90-120 days to review the rule and send back to the agency. Most expect this standard to be issued by OSHA sometime in the next few months. Whether or not the rule is halted by legal maneuvers remains to be seen; however most insiders believe the standard will be issued prior to the end of the Obama administration.
- Beryllium. OSHA will be holding a public hearing in late February to hear of any remaining concerns with the OSHA proposal to cut the exposure limit for beryllium. Following the hearing OSHA will allow 45 days for additional comments. Here’s the problem – After all of this the agency must then make any changes to the proposal it wishes to make and then forward the proposal to OIRA for review. While the process moves on, so does time! It will be very difficult for the agency to finalize this proposal prior to the end of the Obama administration. In other words, don’t hold your breath waiting for it!
- Safety and Health Management Guidelines. OSHA hopes to update these guidelines, first published in 1989 and has published an updated draft for comment. Comments were supposed to be submitted by February 15, but the agency has now extended the comment period to February 22. The agency has also scheduled a day-long roundtable discussion on the draft to be held March 10. OSHA should be able to conclude this update in 2016.
- Combustible Dust. Not unexpected, OSHA isn’t likely to push forward on a combustible dust standard this year. OSHA says it is due to the complexity of the hazard.
- Recordkeeping Rule. Commonly referred to as the electronic reporting rule, this OSHA proposed rule has been sitting at OIRA since October. Will it be finalized in 2016? The jury is out on this one. OSHA says it will be finalized yet other insiders say the rule has no chance of being finalized, and if it is, will face considerable legal challenges and possible Congressional intervention.

Quick Read

- Oregon's Occupational Safety and Health Administration has decided to get a little more involved with outdated Permissible Exposure Limits (PELs). The agency says it will work to encourage employers to consider more up-to-date levels for exposure and also address four to six of the most outdated PELs on a state level. The agency hopes to bring together a group to offer advice on which limits are the most outdated and present the greatest risk to workers.
- Better late than never – OSHA announced at the end of 2015 that it now has an online method to report injuries and fatalities – an online form – that addresses the rule requiring hospitalization and injury notification that took effect January 1, 2015.
- Hmm! Not quite sure what to make of it but the Department of labor Office of Inspector General has initiated an audit of the OSHA Rulemaking Process.
- OSHA has increased its work to address the issue of whistleblower protection the last couple of years. But OSHA is not alone. The Ontario (Canada) legislature has passed into law new prohibitions against employers trying to prevent workers from reporting workplace injuries and illnesses. The law creates a new offense and doubles the penalty for corporations convicted of an offense under the act. The law even requires appointment of a fair practices commissioner as an ombudsman for injured workers. Will be interesting to see how it works.

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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