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THE IMPLEMENTATION AND PHILOSOPHY OF THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970*

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The Williams-Steiger Occupational Safety and Health Act of 1970 was signed into law by President Nixon on December 29, 1970. The next four months were spent in task force development on how the Department of Labor would implement the Act. On April 28, 1971, the Act went into effect. The Act is the most comprehensive law ever designed for insuring safe and healthful conditions in the American workplace; it applies to approximately 60 million employees in more than 4 million establishments.

The Act is not a totally new concept, rather, it is the logical result of more than sixty years of involvement by the federal government, the state governments, by employers, and by employees to assure American workers a safe and healthful job environment. Past accomplishments have not been adequate. Each year more than 14,000 are killed or die as the result of injuries incurred on the job. Another 2 million workers suffer disabling injuries, and according to a recent estimate by the Surgeon General of the United States about 400,000 more are stricken by occupationally related illnesses.

A major factor in past failures to create relatively hazard free workplaces may be that these efforts were fragmented. The Act, in an attempt to unite all sectors of the working community, calls upon the resources of the federal and state governments, of employers, and of employees. The leadership role rests with the federal government. Administration of the Act is shared among the United States Departments of Labor and Health, Education, and Welfare and the newly created Occupational Safety and Health Review Commission. The Commission is a quasi-judicial body that reviews violations, citations, and penalties issued by the Department of Labor under the Act.

The Occupational Safety and Health Administration (OSHA) is headed by Assistant Secretary George C. Guenther. Both the national office in Washington, D.C. and the field offices are staffed with individuals with special expertise in the fields of occupational safety and health. OSHA is a decen-

*A Seminar discussing Current Issues in The Law of Labor Relations, Safety and Health, Pay and Price Controls, held at the University of Florida College of Law on May 10, 1972. Among those presenting papers were: Earl D. Heath, Joseph E. Casson, and Ellihu Platt.

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tralized organization with ten regional, forty-nine area, and two district offices. Our structure is based on responding to the needs of citizens at the local level. Thus, the bulk of our personnel are in the field; and regional and area officials help to set national policy.

Operating Philosophy

Secretary Hodgson, in a speech at the National Safety Congress on October 27, 1971, made four points regarding OSHA's operating philosophy. These bear repeating:

> (1). What is done willingly is done well. This means that we, in government, cannot do the job alone. We depend on the willingness of others—the willingness of employees, organized labor, business and industry.
>
> (2). The Labor Department is charged with enforcing the law, and we are going to. I think it is fair to say, however, that we will be guided as much by the spirit of the law as by the letter.
>
> (3). We are doing all we can to encourage the states to assume their responsibilities under the Act because we believe this is the best way to make the program work.
>
> (4). Our whole training and education effort is so important that the OSHA program will stand or fall on it.

In implementing these policies OSHA has undergone three phases. During phase 1 of OSHA's operation the major project was the selecting, reviewing and issuing of the initial group of occupational safety and health standards. Phase II of our operation was the initiation of compliance safety and health visits. OSHA is now in phase III, which is the involvement of the states in the implementation of the Act.

Occupational Safety and Health Standards

The initial standards package incorporated existing federal standards from the Walsh-Healey Act, the Maritime Safety Act, and others. The package also incorporated national consensus standards developed by such organizations as the American National Standards Institute (ANSI) and the National Fire Protection Association (NFPA). By definition, a standard as applied to this subject is a rule or regulation established in accordance with law or other competent authority, which designates safe and healthful conditions or practices by which work must be performed to prevent injury or illness.

Several different types of standards are employed. The differences between them stem mainly from the source from which they were developed. One form of standard is called a "consensus standard." It is so called because it was developed by recognized standards producing organizations through procedures requiring group approval and providing for comment. ANSI and NFPA are two such primary groups.

Another form of standard is the proprietary standard. This is a standard prepared by experts and issued by industrial or professional organizations. The procedures used in developing these standards do not allow for the opportunity for presenting opposing views as do standards produced under the consensus rules. Examples are those produced by organizations such as the Compressed Gas Association, Underwriters Laboratories, et cetera.

A third form of standard is known as the federal standard. This consists of standards established by act or by agencies that were in effect at the time the Act was passed. These are:

(a). federal supply contracts (Walsh-Healey),
(b). federal service contracts (McNamara-O'Hara),
(c). contract work hours and safety (construction),
(d). longshoreman and harbor workers, and
(e). national foundation on the arts and humanities.

A fourth group of standards consists of regulations established by other agencies, which are not included within the OSHA standards' scope of coverage. Included are those of the Department of the Interior's Bureau of Mines, among them the Federal Coal Mine Health and Safety Standards and the Federal Metal and Non-Metallic Mine Standards. Additionally, there are those of the Department of Transportation and the Department of Agriculture — particularly the Consumer and Marketing Service regulations covering the manufacture of meat products.

General Duty Clause

Section 5 of the Act states in part:

> Each employer shall furnish to each of his employees, employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

Assistant Secretary Guenther had this to say about the use of the general duty clause during the ninety-day familiarization period following initial publication of the standards:

> The general duty clause was used only in serious cases involving recognized hazards where it seemed OSHA's clear duty to issue a citation and where, at that time, there was no effective standard. The use of the general duty clause, prior to the effective date of the standards [August 27, 1971] was a conscious one on our part to meet critical program needs at that time, but under no circumstances should be interpreted as an indication that it is our general intention, now that the standards are effective, to continue issuing citations based on the general duty clause. The general duty clause shall be used only in cases involving alleged serious violations where (1) no standard exists and (2) where the specific and stringent requirements of the general duty definition [involving "recognized" hazards and "death or serious physical harm"] are met.

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When the initial standards package was published on May 29, 1971, employers not previously covered by existing statutes such as those under the Walsh-Healey Federal Supply Contracts Act were given ninety days to familiarize themselves with the standards. The standards became generally effective August 27, 1971, and finally, on September 4, 1971, detailed rules for implementing the inspection, citation, and penalty provisions of the Act were published, based on many public comments and with recommendations from the National Advisory Committee on Occupational Safety and Health.

During the ninety-day familiarization period OSHA launched a major campaign of orientation and consultation for all of those affected by the Act. Our staff participated in thousands of meetings. One specific example was the technical assistance we extended to the National Association of Manufacturers in their sponsorship of a closed circuit, video taped television broadcast on June 10, 1971, explaining the Act. More than 10,000 business representatives in twenty-seven cities viewed the program, the largest audience ever for a presentation of this kind. In cases of imminent danger during this period, we moved immediately to protect employees. In addition, it should be noted that those standards previously promulgated under other federal laws were effective immediately under OSHA and did not share the familiarization period with other standards in the initial package.

In reality, section 5a of the Act may be considered to comprise a permanent standard primarily because it is intended to cover areas where there are no existing standards. Where there are no such standards the employer must furnish employment and a place of employment free from "recognized hazards" that are likely to cause death or serious harm. Such recognized hazards do not require technical or testing devices to detect. The failure of an employer to comply with the recognized hazard obligation or duty could result in a citation, notice of violation, and the possible imposition of a penalty.

How Employers Can Help in the Standard Setting Process

In a speech before the American Meat Institute on October 3, 1971, Governor Howard Pyle, President of the National Safety Council commented upon the standards setting process:

> Standards will be the backbone of this program. Herein lies a principal opportunity for all industry. The law provides that by April 28, 1973, the Secretary of Labor must consider all national consensus standards for promulgation under the Act. In effect, the Secretary of Labor must promulgate national consensus standards without going through the extensive hearing procedure otherwise provided in the law, unless he affirmatively finds them undesirable for stated reasons. Therefore, for two years, the voluntary safety movement, the standards organizations, and industry in general will have an opportunity to develop whatever mandatory standards may be needed under the Act. The federal establishment, by its own admission, does not possess

the expertise required for the development of standards for all industries. Most of such expertise lies within the private sector. Thus, business management will want to make available to standards producing organizations those experts who possess the capability of developing meaningful standards. If standards thus developed by industry generally can become national consensus standards within the two-year period, the result can be highly beneficial. It will help determine the rules by which you will be governed under the Act as well as helping to guide its administrators on the right course.

COMPLIANCE VISITS

The compliance visit is conducted for the purpose of determining whether the employer is in compliance with the occupational safety and health standards promulgated by the Secretary of Labor under the Act. Inspections are made by agents of the Secretary of Labor who are known as "compliance safety and health officers (CSHO's)." These personnel are authorized to:

(a). Enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer.

(b). Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials.

(c). Question privately any employer, owner, operator, agent, or employee, and

(d). Review records (that is, occupational injuries and illnesses log, et cetera) required by the Act and regulations issued thereunder and other records that are directly related to the purpose of the inspection.

Generally, it is illegal to give advance notice of inspections. Where advance notice is necessary to perform an effective inspection, authorization must be obtained by the CSHO from the area director, unless there are indications of an imminent danger situation and the area director is not immediately available. The situations where advance notice is permissible are:

(a). imminent danger to expedite the abatement of the danger as quickly as possible,

(b). when the inspection will be conducted after regular business hours or in circumstances where special preparation is necessary,

(c). when necessary to assure the presence of representatives of employers, employees, or the appropriate personnel needed to aid in the inspection, and

(d). in other circumstances where the area director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

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Except for imminent danger situations, or other unusual circumstances such as classified areas, authorized advance notice will not exceed twenty-four hours. When advance notice is given it is the responsibility of the employer to notify promptly the authorized employee representative, if that individual is known.

Employer Objection

An employer may refuse to permit a CSHO to perform an inspection. In this event the CSHO limits his activities to those about which there are no objections. Meanwhile, he attempts to learn the reasons for the objection and reports immediately to the area director who in turn notifies the regional administrator and the regional solicitor. These officials are required to take prompt action for the accomplishment of the inspection, including compulsory procedures if necessary.

Inspection Priorities and Procedures

Inspections or investigations, or both, are conducted on a priority basis. First, are investigations of catastrophies and fatalities; second, are investigations of valid employee complaints; third, are investigations or inspections of establishments in the target industry and target health hazard classifications; and fourth, are inspections of a random cross section of establishments in the area.

A CSHO, once he is assigned to inspect an establishment, follows this procedure:

(a). He presents his credentials to whomever is in charge at the workplace or establishment and explains the nature, purpose, and scope of the inspection, and the records he wishes to see.

(b). He has authority to take environmental samples, to take or obtain photographs, employ other investigative techniques, and *privately* question the employer, any representatives, or employees.

(c). He must comply with all safety and health rules and practices, including the wearing of personal protective equipment, and must observe all precautions in taking photographs.

(d). He must not create unreasonable operational disruptions.

(e). At the conclusion of the visit, he shall hold a closing conference with the employer or any employer representative who might be designated, and inform him of any apparent violations. The employer at this time may bring any pertinent information concerning workplace conditions to the attention of the CSHO. No employee or employee representative is present at this conference.

During the walk around an employer and employee representative may accompany him to aid in the inspection. The employee representative is

chosen by the employees, not by the CSHO. Where no employee representative is selected, the CSHO consults with a number of employees concerning safety and health conditions in the workplace.

Whenever a CSHO discovers a condition that could reasonably cause serious harm or death before its elimination through normal enforcement procedures, he is required to inform both the employer and the employees. Trade secrets must be protected by the CSHO.

Citations

A citation is not issued by the CSHO. He reports his inspection findings to the area director who determines whether a citation will be issued and, if so, the type of citation. There are four types of citations: imminent danger, serious violation, non-serious violation, and de minimis notice.

Imminent danger consists of "any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such danger can be eliminated through the normal enforcement procedures."

A violation is considered serious if there is a substantial probability that death or serious physical harm will result. Serious physical harm is that which would cause permanent or prolonged impairment of the body in that either a part of the body would be permanently removed, or a part of an internal bodily system would be inhibited in its normal performance to such a degree as to shorten life or cause reduction in physical or mental efficiency. The main difference between imminent danger and a serious violation is immediacy.

A non-serious violation is one in which an incident or occupational illness resulting from violation of a standard would probably not cause death or serious harm, but which would have a direct or immediate relationship to the safety or health of the employees. A violation is termed "de minimis" where it involves a standard that has no immediate or direct relationship to safety or health. A notice, rather than a citation, is issued in this event.

Where an investigation reveals a violation, an employer is issued a written citation describing the specific nature of the violation. All citations fix a reasonable time for abatement of the violation and each citation issued by the Department of Labor must be posted prominently at or near each place where a violation referred to in the citation occurred.

Notices, in lieu of citations, may be issued for de-minimis violations that have no direct or immediate relationship to safety or health. No citation may be issued after the expiration of six months following the occurrence of any violation.

Notification of Proposed Penalty

Within a reasonable time after issuance of a citation for a job safety or health violation, the Department of Labor is required to notify the employer

by certified mail of the penalty, if any, that is proposed to be assessed. The employer then has fifteen working days within which to notify the Department that he wishes to contest the citation or proposed assessment of penalty. If the employer fails to notify the Department within such time that he intends to contest the citation or proposed assessment of penalty, the citation and the assessment shall be final, provided no employee files an objection to the time allowed for abatement.

If the employer notifies the Department within such time that he does wish to contest, the Secretary will so advise the Occupational Safety and Health Review Commission, and the Commission will afford an opportunity for a hearing. The Commission then will issue orders affirming, modifying, or vacating the citation or proposed penalty. Orders of the Commission are final thirty days after the issuance. Review of Commission orders may be obtained in the United States Court of Appeals.

The Review Commission's rules of procedure provide affected employees (or representatives thereof) an opportunity to participate as parties to hearings under section 10 (c) of the Act.

Recordkeeping Requirements

In order to carry out the purposes of the Act employers are required to keep and make available to the Secretary of Labor (and also to the Secretary of Health, Education, and Welfare) records on certain employer activities under the Act. Employers are also required to maintain accurate records (and periodic reports) of work-related deaths, injuries, and illnesses. Minor injuries requiring only first aid treatment need not be recorded, but a record must be made if they involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

Employers can also be required to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents that are required to be monitored or measured under section 6 (b) (7), and to promptly advise any employee of any excessive exposure and of the corrective action being taken. The Secretary of Labor, in cooperation with the Secretary of Health, Education, and Welfare, is authorized by the law to issue regulations in this area that will provide employees or their representatives with an opportunity to observe such monitoring or measuring, to have access to the records thereof, and to such records as will indicate their own exposure to toxic materials or harmful physical agents.

The new recordkeeping system will provide, for the first time, a reliable national profile of occupational fatalities, injuries, and illnesses. Before the law was passed Congress noticed a great lack of statistical information in the subject of occupational safety and health. Therefore, the Act places heavy emphasis on collecting this information. The Bureau of Labor Statistics has already mailed more than 7 million copies of the recordkeeping requirements to employers.

STATE PARTICIPATION

The Act encourages states to assume the fullest responsibility for administration and enforcement of their occupational safety and health laws by providing grants to the states. A specific disclaimer of federal preemption is included in order to permit any state agency or court to assert jurisdiction under state law over any occupational safety and health issue with respect to which no federal standard is in effect under this law. In addition, any state may assume responsibility for development and enforcement of occupational safety and health standards relating to any job safety and health issue covered by a standard promulgated under section 6 of the Act, if such plan is approved by the Secretary of Labor. The Secretary shall approve such a plan under the following conditions:

(a). An agency, or agencies, of the State must be designated or created to carry out the plan.

(b). The state standards (and enforcement thereof) must be at least as effective as the counterpart federal standards in providing safe and healthful employment.

(c). There must be effective provisions for rights of entry and inspection of workplace, including a prohibition on advance notice of inspections.

(d). Enforcement capacity must be demonstrated.

(e). Adequate funds for administration and enforcement must be assured.

(f). Effective and comprehensive job safety and health programs for all public employees within the state will be established to the extent permitted by the particular state's law.

(g). The state, and employers within the state, will make such reports as may be required by the Secretary of Labor.

The Secretary of Labor is authorized, after consultation with the Secretary of Health, Education, and Welfare, to make grants to states for experimental and demonstration projects consistent with the objectives of the Act, for administering and enforcing approved programs, for assisting them in identifying their needs, or in developing and administering programs dealing with occupational safety and health statistics, and otherwise improving the expertise of personnel or the administration and enforcement of state occupational safety and health laws consistent with the objectives of the Act.

If the Secretary of Labor rejects a state plan for development and enforcement of state standards, he shall afford the state submitting the plan due notice and opportunity for hearing before so doing. The law also permits the Secretary of Labor to enter into an agreement with any state, under which the state will be permitted to continue to enforce its own standards until approval of its plan for development and enforcement of occupational safety and health standards, or until December 29, 1972, whichever comes first.

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Following approval of a state plan for development and enforcement of state standards, the Secretary of Labor may continue to exercise his enforcement authority with respect to comparable federal occupational safety and health standards until he determines on the basis of actual operations that the criteria cited above are being applied. Once he makes such determination (and he cannot do so during the first three years after the plan's approval), the federal standards and the Secretary's enforcement of them become inapplicable with respect to the issues covered under the plan.

The Secretary is required, however, to make a continuing evaluation of the manner in which each state plan is being carried out and to withdraw his approval whenever there is a failure to comply substantially with any provisions. Such a plan shall cease to be in effect with receipt of notice by the staff of the Secretary's withdrawal of approval.

Concluding Remarks

I have given you some highlights of the Williams-Steiger Occupational Safety and Health Act of 1970. How well is it working? It is perhaps too early to say. However, when employers tend to feel that we are moving too fast, and some of organized labor tends to feel that we are moving too slowly, we may be doing things nearly correctly.

At this point I would like to review the compliance record for the first nine months of fiscal year 1972, that is, July 1, 1971, through March 31, 1972. Some 22,868 job safety and health inspections in 20,688 work establishments were conducted by the Occupational Safety and Health Administration by the end of March 1972. A total of 16,370 citations alleging 63,573 violations were issued by OSHA personnel. The total of proposed penalties was $1,444,686. Compliance of job safety and health standards submitted to OSHA totaled 2,710.

Our inspections covered establishments of all sizes and in all parts of the country. Of all the establishments inspected, some 4,859 or 23 per cent of the total were found to be in compliance with OSHA standards. The total number of cases contested before the Occupational Safety and Health Review Commission was nearing 660 as of March 31, 1972.