



AMERICAN SOCIETY OF SAFETY PROFESSIONALS

April 22, 2019

EXECUTIVE SUMMARY AMERICAN SOCIETY OF SAFETY PROFESSIONALS **(COMMENTS ON HR 1074, PROTECTING AMERICA'S WORKERS ACT**

Public Sector Employee Protections

Section 101 of the PAW Act expands federal OSHA coverage to include state, county and municipal employees and employees of the federal government. Currently, workers in OSHA state-plan states have workplace safety and health protections (typically federal OSHA rules that are enforced by the states, or state rules that are more protective than those of federal OSHA) that can be enforced by the state agencies, with accompanying abatement requirements and civil penalties. This leaves 8.5 million public sector workers in 24 states without any enforceable workplace safety protections.

Enhanced Whistleblower Protections

Currently, the statute of limitations period for filing a whistleblower complaint with OSHA is only 30 days following any adverse action arising from protected safety activity under Section 11(c) of the OSH Act. Section 201 of the PAW Act would expand OSHA's 30-day statute to 180 days, aligning it with the majority of the whistleblower statutes from other agencies that OSHA is also tasked with enforcing. I

Modification of the General Duty Clause

Section 301 would expand employer liability for violations under the General Duty Clause of the OSH Act of 1970 [Section 5(a)(1)] to encompass hazards to which workers of another employer are exposed, as well as to situations where the employer's own workers are at risk. OSHA's multiemployer worksite enforcement doctrine, recently reaffirmed by the U.S. Court of Appeals in the *Hensel Phelps* case, permits OSHA to issue citations to employers who: 1) control the worksite; 2) create a hazard that exposes workers to death or serious injury/illness; 3) expose their workers to a hazardous situation created by a different employer; or 4) are required (by contract or practice) to correct hazardous conditions. However, this multiemployer policy only applies to codified standards and not to violative conditions cited under the General Duty Clause. In today's fissured workplace, where it is common to outsource hazardous activities to staffing agencies or subcontractors, public policy supports bridging this gap in worker protections.



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Update of National Consensus Standards Enforced by OSHA

As the secretariat for a large number of national consensus standards, including the ANSI A10 standards addressing construction safety, ASSP endorses the utilization of the most current standards as these tend to be most protective and reflective of current technology and safety engineering. Eliminating references to standards that may now be up to 50 years old is in the public interest and will advance worker protections and eliminate confusion among the employer community as to which rules are applicable. As a matter of public policy, ASSP urges OSHA and Congress to consider support for increased utilization of current and properly promulgated consensus standards and the negotiated rulemaking process.

Statutory Adoption of E-Recordkeeping, Continuing Violation and Severe Injury Rules

It would restore the requirements of the 2016 Electronic Recordkeeping Act and rescind the 2019 amendments that took effect in February 2019. Those provisions are currently the subject of multiple court battles.

ASSP invites Congress to explore some additional issues as it evaluates current and prospective OSHA activities and considers additional statutory modifications to the organic law. The following items are among the topics that could be explored during oversight or stakeholder informational hearings. ASSP pledges its support in sharing information with the appropriate committees and with the agency in support of these policy considerations.

- A shift to risk-based approaches for safety and health management in the workplace
- Broader implementation of effective OSH management programs, such as the I2P2 initiative considered by OSHA in previous administrations and as adopted by several state OSHA agencies
- Expansion of third-party auditing to leverage OSHA's limited resources by utilization of qualified OSH professionals to inspect workplaces, recommend solutions, and establish implementation timetables
- Utilization of control banding to address critical gaps in chemical protections is now being implemented in European countries
- Increased collaboration between OSHA and NIOSH for improved guidance, and identification of emergent health hazards or areas such as nanotechnology
- Codification of the Voluntary Protection Programs (and SHARP) to protect this valuable positive recognition program from the vagaries of annual appropriations battles
- Integration of Total Worker Health into OSHA programs