



# AMERICAN SOCIETY OF SAFETY PROFESSIONALS

## **Managing Risk, Expanding Options, and Eliminating Inefficiency** **A Blueprint for Reforming Workplace Safety and Health** *Spring 2017*

### **Introduction**

Our nation is in a period of widespread change and heightened political opportunity. The voice of the professional safety and health community is always needed with respect to promulgating the regulation and legislation of workplace safety and health. Given the prominence of the American worker in so many of today's national conversations, that need is particularly great today.

The American Society of Safety Professionals (ASSP) sees this moment as an opportunity to create a better American workplace, safer and healthier than ever before. For the Occupational Safety and Health Administration (OSHA), this is an opportunity to reduce injuries, illnesses and fatalities by embracing innovation and collaboration.

ASSP is the oldest society of safety professionals in the world. Founded in 1911, we represent more than 37,000 professionals advancing workplace safety and health in every industry, in every state, and around the globe. ASSP members have set the OSH community's standards for excellence, ethics and practice for more than 100 years.

Our members have worked within (and beyond) the regulatory framework of OSHA since its creation in 1970. Since then OSHA's approach has yielded significant reductions in injuries, illnesses, and occupational fatalities, but these numbers have essentially plateaued over the last 10 years. Nearly 5,000 occupational fatalities occurred in 2016. Every day in the United States, 13 men and women lose their lives as the direct result of an accident or exposure at work.

The current regulatory approach toward safety and health in the workplace needs improvement. ASSP has developed a blueprint of data-driven and experienced-tested recommendations, vetted by safety professionals across many industries and occupational perspectives.

To begin we recommend a much-needed shift in approach from solely managing compliance to also reducing risk, bringing American OSH practices in line with global trends. We then offer four recommendations to leverage OSHA's limited resources for maximum impact, followed by two areas in which OSHA coverage must be expanded. We also suggest two ways to strengthen OSHA-NIOSH (National Institute for Occupational Safety and Health) collaboration and we close with three ways OSHA could clarify its focus.

## **Manage Risk**

### **Adopt a risk-based approach and require safety and health programs**

Moving from a compliance model to an integrated risk-based approach is the single most impactful policy shift OSHA could make. A risk-based approach takes a systemic view of an organization, proactively identifying, assessing, mitigating, and communicating risk levels (with both strengths and opportunities). This approach requires safety leadership and constant vigilance in targeting and eliminating workplace hazards. Risk-based approaches have been refined and widely adopted all over the world (many originating in Europe, South Korea, Australia, New Zealand, etc.) and have been shown to be more effective than simple compliance with local and federal laws in reducing injuries, illnesses and fatalities.

One impactful way to move toward a risk-based approach would be to require all employers to implement a safety and health program (SHP). SHPs are management systems that focus on core elements of management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training, and program evaluation and improvement. This comprehensive approach to hazard assessment and control directs organizations to “find and fix” hazards, thus minimizing the need for other prescriptive and burdensome regulations that tie up OSHA’s resources.

A 2012 OSHA White Paper described SHPs as “an effective, flexible, common sense tool . . . that can dramatically reduce the number and severity of workplace injuries and illnesses.” Research demonstrates that such programs are effective in lowering incident rates, strengthening employee relations and improving workplace processes. By OSHA’s own estimations the implementation of SHPs will reduce injuries by 15% to 35% for employers who do not currently have safety and health programs. SHPs manage the full risk picture by employing a systems-level methodology, thereby avoiding the myopic after-the-fact perspective that occurs when focusing only on injury and illness rates. Our members also see that in addition to directly protecting workers, SHPs can reduce losses and make American businesses more competitive. ASSP applauds OSHA’s development of tools such as “Safety Pays” that assist organizations in developing the business case for proactive OSH management.

ASSP acknowledges the regulatory and statutory complexity of incorporating a risk-based approach; nevertheless we recommend starting now. Managing risk is the future of safety. ASSP strongly advocates for OSHA to move toward a risk-based approach, expanding on the recently released Guidelines for Safety and Health Programs and requiring the implementation of an SHP for all employers.

### **Leverage Existing Resources**

In a time of contracting budgets and major regulatory reform, OSHA must explore creative ways to leverage existing resources for maximum impact. This means first focusing resources on the primary causes of workplace fatalities, and second, taking advantage of existing initiatives and expertise in the OSH sector. Expanding options for employers to better their safety programs and harnessing the knowledge of the safety community to improve rulemaking are innovative ways to stretch resources while also engaging the expertise of the professionals facing these challenges every day.

## **Focus efforts on finding solutions to the primary causes of workplace fatalities**

The majority of workplace deaths are associated with a handful of well-known incident categories: motor vehicle incidents, slips/trips/falls, contact with objects/equipment, and workplace violence. We commend OSHA for recent efforts such as the National Safety Stand Down to draw more attention to these causes and encourage an expanded focus on these familiar tragedies.

ASSP recommends a new National Emphasis Program, or set of NEPs, on the leading causes of fatalities in these categories. The most egregious of these is motor vehicle incidents, which in 2015 alone accounted for nearly 43% of workplace fatalities. The frequency of motor vehicle incidents obscures how preventable they are, and OSHA can do more.

## **Expand third-party auditing**

Statistically the average employer can expect an OSHA inspection once every 140 years. For the small- and medium-sized businesses where most American workers are employed, this represents a lost opportunity for workplace safety and health assessments. OSHA has already begun developing guidance on the role and value of OSH professionals in helping small- and medium-sized businesses manage safety. ASSP advocates that OSHA expand on this coming guidance and leverage the OSH community expertise by establishing a policy on third-party auditing to allow such audits to augment the inspection and consultation capacity of OSHA.

These audits and consultation assistance could be performed by qualified safety professionals operating under rules and procedures established by OSHA, yet would be able to provide injury and illness prevention recommendations beyond the narrow and at times outdated scope of OSHA regulations. Auditors could perform inspections and provide employers with findings, recommended solutions and implementation timetables. Whereas OSHA inspections focus primarily on violations of established standards, a third-party auditing system could provide guidance to assist employers with abatement options. This system could leverage OSHA's limited enforcement and consultation assistance resources into a much larger presence while also providing employers with more education and options for compliance.

## **Expand options for employers in settlement agreements**

When settling citations and litigation with noncompliant employers, OSHA will occasionally award credit against the citation fee to employers who commit to working with qualified third-party safety and health professionals. Unlike a stand-alone monetary penalty, this option increases the likelihood of positive and long-lasting change to an organization's safety culture. ASSP recommends that OSHA formalize a policy to provide this option to employers in settlement agreements, informal conferences, and notices of contest. In addition, OSHA could adopt a more robust and deliberate policy of directing the cited company's penalty fees back into safety and health improvements.

## **Embrace expanded use of consensus standards and negotiated rulemaking**

The OSH Act specifies the process by which OSHA promulgates safety and health standards. Unfortunately, the process is arcane and unwieldy, which results in standards that consistently lag behind technological and material changes in the workplace. An expanded use of consensus

standards and negotiated rulemaking could help OSHA maintain up-to-date standards without exhausting resources.

National consensus standards represent the most current information available and reflect the expertise of management, labor, and safety professionals from all levels in public and private sectors. This balanced insight produces standards crafted to benefit and protect employees while taking management concerns into account. Consensus standards offer fewer procedural burdens, represent a significant cost savings to OSHA, and are naturally equitable toward competing interests. There are a number of organizations external to OSHA producing quality safety and health standards, including the American National Standards Institute (ANSI), ASSP as an ANSI accredited standards developing organization, the National Fire Protection Association (NFPA), the International Organization for Standardization (ISO) and Underwriters Laboratory (UL).

Negotiated rulemaking is an option provided by the OSH Act. In essence, negotiated rulemaking takes place when OSHA establishes a group of stakeholders most familiar with a given topic and tasks the group with developing an enforceable standard. This method produces high-quality standards that are more readily enforced and understood by employers. From an OSHA resources perspective, negotiated rulemaking is a faster process than traditional rulemaking, and the heavy stakeholder involvement leaves OSHA less vulnerable to legal challenges. Negotiated rulemaking has been selectively used, and its expansion is a promising route to maintaining current standards and regulating emerging hazards. As an example, NACOSH recently had success using a form of negotiated rulemaking with the emergency response community to develop recommendations to OSHA for a standard.

ASSP urges OSHA to increase utilization of consensus standards and negotiated rulemaking in the formulation of legislation and regulation for occupational safety and health as an efficient alternative to traditional rulemaking.

## **Address Coverage Gaps**

Regardless of political climate, there are some areas in which OSHA coverage must be expanded. In particular, public worker coverage and better management of chemical and physical hazards are two critical and long overdue initiatives.

### **Provide coverage for all public workers**

Most states under federal OSHA jurisdiction do not offer OSH coverage to public sector workers. In 2015, state and local government workers reported a 70% higher injury and illness rate than private industry workers. There are 8.5 million public sector employees without coverage. These employees keep our state, county and municipal governments functioning on a daily basis yet do not receive the same workplace safety and health protections that the private sector or federal employees receive. These employees are no less deserving of the benefits of OSHA protections than their private industry or federal counterparts. ASSP recommends that the OSH Act be amended to expand coverage to these state and local government workers.

## **Reduce chemical and physical exposures through occupational hazard banding**

Since the establishment of OSHA Permissible Exposure Limits (PELs) in the early 1970s, thousands of new chemicals and materials have been introduced into the workplace. While there are approximately 85,000 chemicals in commercial use, enforceable PEL's exist for approximately 500 substances and agents. Most were developed with scientific data from the 1950s and 1960s. As the use of chemicals has expanded, so has the occupational safety and health community's understanding of chemical characteristics and their associated health effects and physical hazards. With the current rulemaking process, it is impossible for OSHA to develop individual standards for each substance and agent. The control of chemical and physical hazards in the workplace is especially acute for small- and medium-sized employers.

The technique of occupational hazard banding allows stakeholders to assess exposures and risks across broad chemical and physical hazard categories and establish predetermined hazard control strategies (or bands) based on the assessed risk. Occupational hazard banding has also been found to be a cost-effective method of protecting workers from chemical hazards because it focuses primarily on the implementation of control measures versus the traditional monitoring and assessment methodologies. NIOSH is in the process of gathering public comments on their own draft guidance on occupational exposure banding. ASSP urges OSHA to partner with NIOSH to commence a full review and collection of the available data to demonstrate the feasibility using this innovative technique in the future regulation of chemical and physical workplace hazards.

Occupational hazard banding has been adopted by progressive European countries and global pharmaceutical companies and has been demonstrated to successfully control workplace exposures, particularly in large companies. However, the control of chemical and physical hazards in the workplace is especially acute for small- and medium-sized employers and it is clear that additional compliance assistance and expertise in chemical control strategies and the implementation of best practices is necessary to protect workers in those enterprises.

## **Increase Collaboration**

Created jointly by the OSH Act, OSHA and NIOSH are meant to work in tandem to protect worker safety and health. We suggest two ways to reconceive OSHA-NIOSH collaboration, deepening ties between the agencies and breaking ground on emerging trends.

### **Increase collaboration with NIOSH for improved OSHA guidance**

According to the OSH Act, the Secretary of Labor and the Secretary of Health and Human Services should regularly consult on research, to “[enable] the Secretary [of Labor] to meet his responsibility for the formulation of safety and health standards under this Act.” NIOSH was established to identify and execute this research, as well as explore ways to bring it to practice.

Both these critical processes – rulemaking and research – are intensive, collaborative, and meticulous, and by necessity assume a great investment of time and financing to complete. With respect for each agency's discrete roles, timeframes and attention to detail, we submit that strengthened collaboration between OSHA's rulemaking guidance and NIOSH's research could be stronger, more efficient and better aligned.

This collaboration could take the form of increased communications between the Secretaries and agency heads. OSHA could provide more input to NIOSH through proposals to their extramural programs, as well as using more informal internal channels. OSHA could request that the National Advisory Council for Occupational Safety and Health (NACOSH) and the NIOSH Board of Scientific Counselors (NIOSH BSC) examine this issue and provide recommendations for strengthened cooperation and value-added deliverables between the two agencies.

NIOSH consistently produces careful, well-reasoned science, but there is often a disconnect between the theory of research and the operational reality of the workplace. In recent years, NIOSH has attempted to address this gap with their Research to Practice initiative; we believe increased collaboration with OSHA could bridge this gap further. OSHA's rulemaking should be informed by evidence-based, research-driven data. NIOSH can produce that data if its research agenda and funding more intentionally focus on the critical problems employers face in protecting workers.

### **Intensify Total Worker Health efforts**

The Total Worker Health (TWH) approach advocates for a holistic understanding of the factors that contribute to worker well-being. Although employees enter the workforce in highly variable states of personal health and well-being, the application of TWH ensures that employees are as healthy as possible as they participate in the workplace, making them less prone to injuries and illnesses from workplace risks.

While health has always been a part of the conversation about safety, TWH heightens the clarity surrounding the deep connection between health and safety. Likewise, it has become increasingly apparent that there is little to no distinction between a person's safety and health at work versus a person's safety and health outside of work. TWH begins with this transparent assessment and provides a more realistic framework for employers and employees to build a safety and health process. ASSP recommends that OSHA address and include TWH in its approach to advancing workplace safety.

### **Clarify Roles**

Finally, we recommend three straightforward clarifications of OSHA's work:

1. Rescind the 2016 electronic recordkeeping rule;
2. Do more to recognize companies with exemplary OSH practice;
3. Cease activity beyond the scope of occupational health and safety.

### **Rescind the 2016 electronic recordkeeping rule**

OSHA's electronic recordkeeping rule to Improve Tracking of Workplace Injuries and Illnesses (document 81 FR 29623, revising 29 CFR 1902 and 29 CFR 1904) is a reinforcement and expansion of an already problematic recordkeeping approach. This rule is needlessly complex and has resulted in a great deal of confusion, particularly over the whistleblowing protection section and reference to drug-testing in the preamble. Rather than advance worker safety, this rule adds another layer of complexity to OSHA.

The rule's emphasis on data collected after injuries and fatalities occur incentivizes employers to focus energies only on these so-called lagging indicators. This is a step backward. ASSP advocates a

comprehensive risk-based approach that measures leading as well as lagging indicators. Leading indicators provide critical information about an organization's true commitment to safety and health, at times acting as a better gauge of a system's vulnerabilities or effectiveness than lagging indicators.

Publishing such limited lagging information misleads the public about an employer's true commitment to worker safety and health. Even worse, this misguided emphasis on lagging indicators encourages the public to view the absence of adverse injury and illness data as indicative of a highly functioning safe and healthy workplace when in fact the employer could be improperly classifying injuries and illnesses (intentionally or unintentionally) or simply lucky.

OSHA's excessive focus on lagging injury and illness data has at times acted as stumbling block to systemic safety program improvements by actively discouraging employers from embracing a holistic risk-based approach. ASSP members desire a balanced set of performance metrics that are intuitive, efficient, and provide data to aid safety professionals in assessing and mitigating workplace risks.

ASSP requests the new administration take quick action to rescind the electronic recordkeeping provision. OSHA could develop guidance on leading indicators and overhaul the recordkeeping system to utilize both leading and lagging indicators as indicators of the effectiveness of a business' safety and health management system.

### **Increase opportunities for positive recognition**

In the previous administration, OSHA relied heavily on a name-and-shame model of enforcement. On average, nearly 40 press releases a month publicized fines and enforcement actions taken against companies. Many times, these press releases have been based merely on allegations of violations and are published prior to companies being afforded a hearing. ASSP believes a better way to encourage strong OSH programs would be to showcase exemplary companies as an element of OSHA Cooperative Programs.

OSHA should consider the initiation of a national recognition program, providing positive publicity for employers who have gone far beyond compliance by instituting creative and progressive safety and health management systems. This program would provide incentive for VPP (Voluntary Protection Program), SHARP (Safety and Health Achievement Recognition Program) and STEPS (Service, Transmission, Exploration & Production Safety) employers to continue strengthening their programs, and could also recognize the many companies with extraordinary safety programs that do not fit into the VPP/SHARP/STEPS mold for whatever reason. This program would encourage innovation and position OSHA as the clearinghouse for cutting-edge safety and health management systems.

### **Focus on safety and health**

This recommendation ought to be the simplest of all. OSHA's mission is to ensure employers provide workers workplaces free of recognized hazards. The powers given to OSHA are in the service of providing workers with a safe and healthful workplace.

At times OSHA has used their authority to weigh in on various social issues de jour; for example, OSHA recently set policies regarding gendered restroom use. ASSP views such forays into social policy as beyond the scope of OSHA's proper authority. Likewise, OSHA should not be delving into

issues of labor management; other offices within the Department of Labor are better suited for addressing those questions.

OSHA's limited resources should be focused on occupational safety and health, nothing more and nothing less. An OSHA with a clearer focus is both pro-worker and pro-business.

## **Conclusion**

If enacted, we believe these suggestions will clear the path for a return to American pre-eminence in occupational safety and health and increase America's competitiveness. ASSP has been on the frontlines of worker safety and health for more than 100 years. We will continue our advocacy through this Administration and into the future.

We invite you to view this paper as the beginning of a conversation, and as an introduction to our 37,000+ members. These suggestions are data-driven and experience-tested by safety and health professionals whose only collective allegiance is to the professional practice of occupational safety and health and the reduction of injuries and illnesses in the workplace. We want an OSHA that works well for all involved, one that is transformative rather than transactional, nimble rather than sclerotic, cooperative rather than partisan.

We welcome your engagement and dialogue and encourage you to view ASSP as a significant resource for these and any other safety and health issues. The current shift in American politics represent an opportunity – for growth, for clarification, and for better, more practical, safety and health outcomes for all American workers. Let us begin.