



**COALITION FOR WORKPLACE SAFETY
STATEMENT FOR THE RECORD**

Hearing in the House Education and Labor Committee

Workforce Protections Subcommittee

*“Protecting America’s Workers Act: Modernizing OSHA Penalties”
March 16, 2010*

The Coalition for Workplace Safety (CWS) is a broad coalition comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The Coalition believes that workplace safety is everyone’s concern. Improving safety can only happen when all parties—employers, employees, and OSHA—have a strong working relationship. We thank you for this opportunity to express our views on the Protecting America’s Workers Act (PAWA), and, specifically, the proposed changes being discussed here today.

Workplace Safety Is Improving

Workplace safety has steadily improved over the last 40 years and BLS data shows that workplaces are safer than now than they have ever been. Workplace fatalities have declined 23 percent since 1994. This drop occurred even as the workforce expanded, with the economy adding 23 million new jobs over the same time period. Workplace injury and illness rates have shown a

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similar drop. Since 1994, the total case rate has declined by 50 percent and the lost days from work rate has declined by 44 percent. While the government's reporting system may not capture every workplace injury or illness, the data undeniably reveals the trend of declining workplace injury and illness rates.

This decline is the product of various factors, including employers, employees, OSHA, insurers, safety experts and business and professional associations working together to increase understanding about safe work practices and their importance and how employers and employees can reduce workplace accidents. The advent of modern communications and the internet have also facilitated sharing information and safety related guidance.

CWS applauds OSHA for its role in decreasing injuries, illnesses and fatalities, in particular its work in the last 15 years to promote workplace safety through outreach and education. Since its inception, OSHA has established standards employers must meet through its regulations and enforcement activities. For the first 25 years, the agency did not, however, focus on assisting employers and employees to understand OSHA standards and related safe work practices. Beginning in the Clinton Administration, this changed and OSHA developed an array of approaches that focused on educating and working cooperatively with employers to improve workplace safety. The CWS is committed to supporting these approaches as they have contributed to the increase in workplace safety—as indicated by the BLS workplace injuries and illness rates.

PAWA Will Not Improve Workplace Safety

CWS is concerned about several of the provisions in the Protecting America's Workers Act (S. 1580/H.R. 2067). PAWA is unnecessary and will not improve workplace safety. It focuses on increasing penalties and enforcement and does nothing to assist employers in their efforts to make workplaces safer. Increasing penalties on employers will only serve to increase litigation, drain OSHA and DOL resources and harm our economy and hinder job growth.

Experience with the Mine Safety and Health Administration (MSHA) reinforces this point. A hearing in the Education and Labor Committee on February 23, revealed that as a result of the increased penalties from the MINER Act passed in 2006 and MSHA's regulations taking effect in 2007, the backlog at the review commission is now 16,000 cases worth \$195 million, and expected to rise further as the current policy at MSHA is to not engage in settlements. This backlog has impacted safety in the mining industry by absorbing an unprecedented amount of MSHA resources which would otherwise be devoted to field and other activities. Increasing OSHA's penalty regimes in a similar way will neither increase safety in the workplace nor give employers the tools necessary to create solutions towards workplace safety. Our concerns with some of the specific aspects of PAWA that are being discussed today are set forth below in more detail.

Abatement of Hazards Pending Contest

The change to Title III, Abatement of Hazards Pending Contest, eliminates the employers' right to use the administrative appeals process to thoroughly

investigate its obligation to abate serious hazards. This is a dangerous diminishment, if not outright elimination, of due process protections for employers. Mandating abatement before a review process can be completed is like asking a defendant in a court case to pay a fine or serve a sentence before the completion of the trial. Additionally, requiring abatement prior to a full investigation may lead to inaccurate changes to be made, which can lead to unnecessary costs for employers. Conversely, allowing due process to proceed in the normal order will allow employers—especially small businesses—the time and resources needed to find solutions to any workplace safety issues. This is the best way to keep workers safe on the job. OSHA already has the ability to seek injunction in cases where there is an imminent danger and the employer refuses to abate the hazard.

Penalty Changes

The proposed changes to criminal penalties under Title III would alter the mental state requirements for criminal penalties from “willful” to “knowing.” While we agree those who intentionally violate the law should be held accountable, this is a significant change to 40 years of settled law that will cause uncertainty among employers, employees, compliance officers, prosecutors and adjudicators. The uncertainty about potential liability would cause employers to engage in a more defensive posture with OSHA and on workplace safety issues. Not only will this inevitability result in increased litigation, but would severely disrupt the cooperative approach towards workplace safety that has been so successful over the past 15 years.

Furthermore, the language changes the definition of employer in the currently proposed PAWA from “any responsible corporate officer” to “an officer or director.” The original PAWA language will create unprecedented confusion and disincentives to being a corporate officer, but this new language is a startlingly vague change that will result in a further focus on litigation avoidance and not workplace safety. This proposed change would have a chilling effect on how employers dedicate staff and resources that maintain safety programs.. These changes do nothing to give employers—especially small businesses—the tools to stay well-informed of safety concerns in the workplace. Increasing penalties and lawsuits does not get to the heart of the problem necessary to find solutions in the workplace.

The bill would also increase civil penalties dramatically which will also lead to more contested cases with the associated impacts already noted above.

Conclusion

The Coalition on Workplace Safety continues to stand ready to work with OSHA and Congress to enhance workplace safety. However, PAWA—and the changes presented here— undermine efforts to promote cooperative engagement between employers and the agency, and will not assist employers in making workplaces safer. We will continue to work towards the goal of increasing workplace safety by working together through cooperation, assistance, transparency, clarity, and accountability.