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*Past IFDA Chair

July 13, 2010

The Honorable George Miller
Chairman
Committee on Education and Labor
2175 Rayburn HOB
Washington, D.C. 20515

The Honorable John Kline
Ranking Member
Committee on Education and Labor
2175 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Miller and Ranking Member Kline:

We are writing to express our opposition to H.R. 5663, the Miner Safety and Health Act of 2010. The International Foodservice Distributors Association (IFDA) is the non-profit trade association that represents businesses in the foodservice distribution industry. IFDA's members are located across North America and internationally, and include leading broadline, system, and specialty distributors. They operate more than 700 distribution facilities and represent annual sales of more than \$110 billion. Our members help make the food away from home industry possible, delivering food and other related products to restaurants and institutions. IFDA and its member companies have devoted substantial efforts to enhance workplace safety and health programs in the foodservice industry, and to share with their industry counterparts the expertise gained in implementing injury and illness prevention activities at individual worksites.

IFDA has routinely focused on workplace safety compliance requirements for foodservice distributors, as well as proactive measures that reduce injuries and illnesses within our member companies' operations. However, the amendments to the Occupational Safety and Health Act (OSH Act) included in H.R. 5663 will not advance the goal of preventing workplace injuries and illnesses. Instead, the legislation will only lead to more costly litigation and a misdirection of resources by both the Occupational Safety and Health Administration (OSHA) and employers. The legislation, although primarily seeking to overhaul mine safety laws, would dramatically alter the enforcement, abatement, whistleblower and penalty provisions of the OSH Act. Unfortunately, the bill represents the wrong approach to maintaining safe and healthy workplaces, a goal to which IFDA and its member companies are committed.

Assistance for employers, large and small, to understand and implement a culture of compliance is critical to preventing workplace accidents. However, H.R. 5663 does nothing to provide employers with the compliance assistance and resources they need from OSHA to do so. Rather, the bill is predicated on the view that enhanced penalties and enforcement will drive safety advancements.

Such a misguided approach to workplace safety will foster a more adversarial relationship between employers and OSHA as it imposes significant costs on companies trying to retain and create jobs in the challenging economic environment. These costs come in the form of a disruptive abatement and stay process that deprives employers of their due process rights, complicated and unnecessary new whistleblower procedures, and increased civil and criminal penalties. Such changes to the OSH Act will create a culture of litigation, not the culture of compliance that is necessary to prevent injuries and illnesses from occurring. For these and other reasons discussed below in further detail, IFDA opposes the legislation.

Mandatory Abatement and Stay Procedures that May Shut Down Business Operations are Unnecessary, Disruptive and Deprive Businesses of Proper Due Process. Section 703 would require employers to correct, or abate, any serious, willful or repeated citation immediately upon its receipt. In a significant departure from current law, employers would not be able to contest the validity of the citation or the mandated change before having to implement the correction. As a result, OSHA inspectors may force employers to shut down operations or enact other costly and unnecessary changes without allowing employers proper recourse to challenge the citation. Although the provision would allow employers to seek to stay the period for correction, the standard for obtaining the stay is so onerous as to effectively deprive the employer of its due process rights.

This provision would confer upon an OSHA inspector unfamiliar with the workplace the authority to disrupt business operations before an employer's objections to the validity of the citation can be heard. Not only is this provision an assault of the due process rights of the employer, it threatens the viability of the employer's business operations. The work stoppage or disruption that may be mandated by the OSHA inspector could be a costly and unnecessary economic blow to employers struggling to retain workers and to the employees who may face layoffs accordingly. An enforcement tool with such consequence demands proper recourse, recourse that this provision fails to provide.

New Whistleblower Procedures are Unnecessary, Complicated and Costly. Section 11(c) of the OSH Act currently provides protections for employees who have been inappropriately discharged or discriminated against because they filed a complaint about an injury or unsafe condition or participated in a proceeding related to health and safety. Without a justifiable basis for altering the whistleblower protections afforded by current law, Section 701 of the bill would create new whistleblower procedures designed to promote litigation rather than workplace safety. Notably, an employee may bring a de novo action on federal district court based solely on an administrative law judge or review board failing to meet the 90-day deadline for issuing a decision and order, regardless of the merits of the case. In addition, the prospect of unlimited compensatory and exemplary damages available for bringing a whistleblower complaint under this new whistleblower procedure will serve to encourage litigation. These provisions, as well as the prohibition on pre-dispute arbitration agreements, may indeed advance long-standing objectives of trial lawyers. However, they fail to advance the goal to prevent injuries and illnesses in the workplace.

Enhanced Penalties and Vague, Broad Standards for Criminal Conduct will Increase Litigation and Costs for Businesses, but will Not Improve Workplace Safety: Sections 705 and 706 of the bill significantly increase civil and criminal penalties under the OSH Act. Increasing penalties for a violation after an injury or fatality has already occurred will do nothing to promote the culture of compliance and prevention necessary to maintain safe and healthy workplaces. We believe that proactive measures to prevent injuries and accidents from occurring in the first place generate the safety improvements that penalties cannot. Quite simply, a draconian penalty structure will not accomplish our shared goal of improving workplace safety.

The bill not only dramatically increases criminal penalties; it also expands the definition of individuals who may be held liable for fines and/or imprisonment. The term “employer” includes “any officer or director” without any further guidance or requirement for a nexus between the “officer or director” and the violation. The bill also imposes criminal liability on employers for “knowing” violations, in contrast to the “willful” standard currently used. The introduction of this presumably lower-level and ill-defined “knowing” standard creates serious uncertainty and concern. This lack of clarity coupled with potential exposure to increased criminal penalties will likely fuel more litigation and a redirection of resources away from the safety and health advancements we all seek.

IFDA is committed to improving workplace safety through proactive measures that reduce injuries and illnesses. We believe that H.R. 5663 will not accomplish this goal. Instead of fostering a culture of cooperation, compliance and prevention, it will create only a culture of litigation. The resulting costs and uncertainty would undermine employer’s efforts to improve safety and health in their workplaces and harm job creation.

Please contact Heather Doucet at 703-962-9940 or hdoucet@ifdaonline.org for additional information.

Sincerely,



Jonathan B. Eisen
Senior Vice President, Government Relations

Cc: Education and Labor Committee Members