

**STATEMENT OF
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BEFORE THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON REGULATORY AFFAIRS AND
FEDERAL MANAGEMENT**

U.S. SENATE

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Introduction

Chairman Lankford, Ranking Member Heitkamp and distinguished Members of the Subcommittee, thank you for inviting me here today. As Deputy Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA), I am honored to testify before you about how the Department works with regulated entities and other partners to assure the health, safety and dignity of America's workers.

Under the Occupational Safety and Health (OSH) Act of 1970, employers have the responsibility to provide a workplace free of recognized hazards and to comply with OSHA safety and health standards. This law created OSHA and provided the agency with a range of tools and strategies to ensure employers comply with these requirements and we work to apply them effectively and efficiently.

This year marks the 45th anniversary of the establishment of OSHA, and, by any measure, this agency has been one of the true successes of government efforts to protect workers and promote the public welfare. Only 45 years ago most American workers did not enjoy the basic human right to be safe in their workplace. Instead, employees were given a choice: they could continue working under dangerous conditions, risking their lives, or they could move on to another job. Passage of the OSH Act laid the foundation for the great progress we have made in worker safety and health since those days.

Working together, OSHA, our state partners, employers, unions, trade organizations and health and safety professionals have made great strides in reducing the incidence of workplace injuries, illnesses and fatalities. In 1970, an estimated 14,000 workers were killed on the job, an annual rate of 18 per 100,000 or about 38 workers every day. Today, with a workforce almost twice as large, that rate has fallen to 3.3 per 100,000, or about 13 workers killed every day according to the Bureau of Labor Statistics Census of Fatal Occupational Injuries. Injuries and illnesses also are down dramatically – from 10.9 per 100 workers in private industry per year in 1972 to 3.2 per 100 workers in 2014.

While these advances represent great progress, 13 deaths a day is still 13 too many. In addition to workplace fatalities, according to the Bureau of Labor Statistics (BLS), private and public sector employees experienced almost 4 million serious job related injuries and illnesses in 2014. Another estimated 50,000 Americans died from occupational diseases, resulting in a loss of 150 workers each day from hazardous working conditions. It is now widely recognized that these statistics, although alarmingly high, are an underestimate – that most occupational illnesses go uncounted and that the actual number of workers who are injured or sickened on the job annually is substantially higher.¹

¹ See, for example: Wuellner, S. E. and Bonauto, D. K. (2014), "Exploring the relationship between employer recordkeeping and underreporting in the BLS Survey of Occupational Injuries and Illnesses." *Am. J. Ind. Med.*, 57: 1133–1143. doi: 10.1002/ajim.22350. See more at: <http://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/archive/2014/08/29/new-study-points-to-significant-underreporting-of-injuries-to-bureau-of-labor-statistics.aspx#sthash.7xn3UQJk.dpuf>

Workplace injuries and illnesses cause an enormous amount of physical, financial and emotional hardship for individual workers and their families. Combined with insufficient workers' compensation benefits, these injuries and illnesses cannot only cause physical pain and suffering but also loss of employment and wages, burdensome debt, inability to maintain a previous standard of living, loss of home ownership and even bankruptcy. At the same time, costs to employers of workplace injuries and illnesses are also substantial, including workers' compensation payments, decreased productivity, lower employee morale and the costs of replacing injured workers.

These harsh realities underscore the urgent need for employers to provide a safe workplace for their employees as the law requires. That is why OSHA continues to work with employers, workers, community organizations, unions and others, with the goal of enabling all workers to go home safely at the end of every work day.

Overview of OSHA

OSHA's mission is to assure safe and healthful working conditions for working men and women by setting and enforcing standards and providing training, guidance, outreach, education, and compliance assistance. With a budget of approximately \$550 million, OSHA has a staff of 2,200, including over 1,000 inspectors. States with OSHA-approved state job safety and health plans have at least an additional 1,100 inspectors. Field activities are directed by ten regional administrators, who supervise approximately 85 local area offices throughout the United States. OSHA has approximately 350 staff in the National Office.

The OSH Act covers employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and other U.S. territories. Coverage is provided either directly by the Federal OSHA or by an OSHA-approved state job safety and health plan. The OSH Act defines an employer as any "person engaged in a business affecting commerce who has employees, but does not directly cover public employees." State plan states cover public employees, and federal employees are covered by OSHA under Executive Order 12196, Occupational Safety and Health Programs for Federal Employees.

Thus, we are a small agency with a very large mission – the safety and health of roughly 130 million workers, employed in somewhere between 7 and 8 million workplaces all across the country. OSHA and its state partners are accomplishing the gains discussed above with relatively fewer personnel. In the late 1970s, there were about 36 federal and state compliance officers for every million covered workers. Currently, there are fewer than 20 inspectors for every million covered workers.

We carefully leverage our limited resources for maximum impact. OSHA recognizes that most employers want to keep their employees safe and protect them from workplace hazards. But there are still far too many employers that knowingly cut corners on safety and neglect well recognized OSHA standards and common sense safety measures. For these employers, avoiding OSHA penalties remains an effective incentive to comply with the law and protect their employees.

We also don't want to waste taxpayer dollars or employers' valuable time inspecting workplaces that are already doing the right thing. For that reason, OSHA's enforcement program strives to target the most dangerous workplaces, where workers are most likely to be hurt on the job. OSHA's

penalty system takes into account the size and behavior of employers, with higher fines for repeated and willful violations, and substantial discounts for small employers.

At the same time, OSHA provides extensive assistance to employers who want to protect their workers, through our website and publications, webinars, training programs and more, many geared toward small- and mid-sized employers. In addition, OSHA provides free and confidential on-site consultations for small- and medium-size employers that request assistance in protecting their workers and complying with OSHA standards. OSHA also provides additional cooperative programs designed to encourage, assist and recognize efforts to eliminate hazards and enhance workplace safety and health practices.

The OSH Act Provisions and Requirements

The OSH Act assigns OSHA two principal functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods, or processes reasonably necessary and appropriate to protect workers on the job.

Compliance with standards may include implementing engineering controls to limit exposures to physical hazards and toxic substances, implementing administrative controls, as well as ensuring that employees have been provided with, have been effectively trained on, and use personal protective equipment when required for safety and health, where the former controls cannot be feasibly implemented. The OSHA standard setting process is lengthy and complex, with multiple opportunities for public input at various stages of the process.

Federal OSHA Standards are grouped into four major categories: general industry (29 CFR 1910); construction (29 CFR 1926); maritime - shipyards, marine terminals, and longshoring (29 CFR 1915-19); and agriculture (29 CFR 1928). While some standards are specific to just one category, others apply across industries. Among the standards and regulations with similar requirements for all sectors of industry are those that address access to medical and exposure records, personal protective equipment, and hazard communication.

OSHA's safety and health standards – including rules for asbestos, fall protection, cotton dust, trenching, machine guarding, benzene, lead and bloodborne pathogens – have prevented countless work-related injuries, illnesses and deaths. For example, OSHA's 1978 Cotton Dust standard helped drive down the rates of brown lung disease among textile workers from 12 percent to 1 percent. Since OSHA enacted the grain handling standard in the late 1980s, there has been a significant reduction in grain explosions resulting in far fewer worker injuries and deaths. Since OSHA revised the excavation and trenching standard in 1989, fatal trenching injuries have decreased significantly, even as construction activities have increased. OSHA's Bloodborne Pathogens Standard and the Needlestick Safety and Prevention Act have made occupationally acquired Hepatitis B infections a thing of the past for healthcare workers.

The OSH Act also encourages states to develop and operate their own job safety and health programs. OSHA approves and monitors these "state plans," which operate under the authority of state law. There are currently 28 OSHA State Plan States, of which 22 states and jurisdictions operate complete state plans (covering both the private sector and state and local government employees) and six (Connecticut, New Jersey, New York, Illinois, Maine, and the Virgin Islands)

that cover state and local government employees only. States with OSHA-approved job safety and health plans must have programs that are at least as effective as the federal program.

OSH Act Penalties

Under the OSH Act, OSHA is authorized to conduct workplace inspections and investigations to determine whether employers are complying with standards and regulations issued by the agency for safe and healthful workplaces. OSHA also enforces Section 5(a)(1) of the OSH Act, known as the “General Duty Clause,” which requires that every working man and woman must be provided with a safe and healthful workplace. OSHA has very detailed inspection and citation processes that are outlined in OSHA’s Field Operations Manual, publicly available on the OSHA website and discussed in greater detail later in my testimony.²

The OSH Act authorizes OSHA to issue penalties for hazards and violations that threaten the health and safety of workers and sets forth the types and amounts of potential penalties. OSHA penalties are not specific to the standard being violated; they are instead specific to the nature of the violation. The OSH Act specifies different types of citations including serious, other-than-serious, willful, or repeated.

1. **Serious**: According to the OSH Act, “A serious violation shall be deemed to exist if there is a substantial probability that death or serious physical harm could result”.
2. **Other-than-Serious**: Other-than-serious violations are not statutorily defined, but OSHA characterizes violations as other-than-serious in situations where the injury or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of employees. For example, failure to designate a “Caution” area specifically with yellow markings, as required by 29 CFR 1910.144(a)(3) would most likely be an Other Than Serious violation. A failure to give employees information on respirators to those employees voluntarily using dust masks would most likely be an Other Than Serious violation of 29 CFR 1910.134(c)(2)(i).
3. **Willful**: A willful violation exists where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety and health.
4. **Repeat**: An employer may be cited for a repeat violation if that employer has been cited within the previous five years for the same or a substantially similar condition or hazard and the citation has become a final order of the Occupational Safety and Health Review Commission. Substantially similar conditions may include a violation of the same hazardous condition but in different circumstances, such as two different types of unguarded machines. Although the hazard is the same, the way the employee is exposed to the hazard can be different. For example, a violation can be substantially similar even though the initial violation and hazard involved a different type of machine (e.g. unguarded press brake versus an unguarded drill press).

² https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-159.pdf

Under Section 17 of the OSH Act, OSHA penalties for “willful” or “repeat” violations have a maximum civil penalty of \$70,000 but not less than \$5,000 for each willful violation.³ Penalties for “serious” violations have a maximum of \$7,000 per violation.⁴ Until recent Congressional action, these figures have remained static since 1990, and have not been properly indexed to inflation. However, the budget bill passed by Congress and signed by the President in November 2015 provides an opportunity for the penalties to be increased and appropriately indexed to inflation going forward.

The purpose of the penalties is deterrence. Funds collected by OSHA for employer fines are deposited with the U.S. Treasury as required under the OSH Act, which states that “[c]ivil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States.”⁵ OSHA does not have authority to use penalty funds for agency operations.

OSHA carefully considers the impact of our penalties on small businesses. The OSH Act requires OSHA to take into account several factors in setting penalties, including size of the employer, history and good faith. In setting a penalty, OSHA generally reduces penalties for small employers, as well as for employers who are shown to be acting in good faith or have a history of no OSHA citations over the previous 5 years. Good faith penalty reductions are not applied to “high gravity serious,” “willful,” “repeat” and “failure to abate” violations. For serious violations, OSHA may also reduce the proposed penalty based on the gravity of the alleged violation. The current average OSHA penalty for a serious violation is currently very low at around \$2,000 for all employers.

Inspections and Citation Process

Workplace inspections and investigations are conducted by OSHA compliance safety and health officers (CSHOs or compliance officers) who are safety and health professionals trained in the disciplines of safety and industrial hygiene. OSHA CSHOs are given strict procedures that they must follow.

OSHA conducts two general types of inspections: programmed and unprogrammed. Programmed inspections accounted for 46% of FY 2015 OSHA inspections and target specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses. For instance, Special Emphasis Programs (SEPs) are the primary means by which OSHA attempts to focus on the most dangerous workplaces. SEPs provide for programmed inspections of establishments in industries with high injury or illness rates and are also based on potential exposure to health hazards. Before any enforcement activities begin under any emphasis program, OSHA conducts robust and comprehensive outreach activities, educating employers about the program and providing ways to get help to abate hazards.

In addition, unprogrammed inspections accounted for 54% of OSHA inspections and are initiated for several reasons, including:

³ 29 U.S.C. §666.

⁴ Id.

⁵ Id.

- Worker complaints of hazards or violations.
- Referrals of hazards from other federal, state or local agencies, individuals, organizations or the media. (For example, if OSHA is informed of a hazard, injury, or fatality through a news report, the Agency may open an investigation. Likewise, if another agency informs OSHA about a hazard, injury, or fatality that it has observed, OSHA may initiate an investigation.)
- Employer reports of fatalities, inpatient hospitalizations, amputations, or loss of an eye.
- Follow-up inspections to check for abatement of violations cited during previous inspections.

Preparation

Before conducting an inspection, OSHA compliance officers research the inspection history of a worksite and review the operations and processes in use and the standards most likely to apply. They also gather appropriate personal protective equipment and testing instruments to measure potential hazards.

Opening Conference

The on-site inspection begins with the presentation of the compliance officer's credentials, which include both a photograph and a serial number. The compliance officer will begin by explaining why OSHA selected the workplace for inspection and describe the scope of the inspection, how it will be conducted, employee representation, and employee interviews.

Physical Inspection

Following the opening conference, the employer selects a representative to accompany the compliance officer during the inspection. An authorized representative of the employees, if the employees select one, also has the right to go along. In all inspections, the compliance officer will select and privately interview a reasonable number of employees during the inspection. The compliance officer and the employer and employee representatives will then walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness. The compliance officer will also review worksite injury and illness records and ensure the posting of the official OSHA poster. Compliance officers attempt to minimize work interruptions during the inspection and will keep confidential any trade secrets they observe.

During the walkaround, compliance officers may point out some apparent violations that can be corrected immediately. While these hazards are still cited, prompt correction is a sign of good faith on the part of the employer, and may result in penalty reductions under OSHA's "Quick-Fix" incentive program. "Quick-Fix" is an abatement incentive program meant to encourage employers immediately to abate hazards found during an OSHA inspection, and thereby, quickly prevent potential employee injury, illness, and death. "Quick-Fix" does not apply to all violations. For example, "Quick-Fix" incentives only apply to violations classified as "other-than-serious," "low-gravity serious" or "moderate gravity serious", and not to "high gravity serious," "repeat," "willful," or "failure to abate" violations. Only corrective actions that are permanent and substantial, not temporary or cosmetic, are eligible for "Quick-Fix" penalty reductions.

Closing Conference

After the walkaround, the compliance officer holds a closing conference with the employer and the employee representatives to discuss the findings. The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with OSHA or contesting possible citations and proposed penalties. The compliance officer also discusses consultation services and employee rights.

Results

OSHA inspectors do not themselves issue citations or assess fines; they report conditions found during an inspection to their Area Director who may issue citations and propose fines. OSHA must issue any citation and proposed penalty within six months of the violation's occurrence. Citations describe OSHA requirements allegedly violated, list any proposed penalties and give a deadline for correcting the alleged hazards.

In FY 2015, OSHA issued 63,575 violations, of which 74% were cited as serious. Based on FY2015 inspection activity, more than 9,300 hazards associated with illnesses in construction and general industry were abated. Each of these means that one or more workers were removed from hazards that could have injured or possibly killed them.

Appeals

OSHA's primary goal is correcting hazards and maintaining compliance rather than issuing citations or collecting penalties. When OSHA issues a citation to an employer, it also always offers the employer an opportunity for an informal conference with the OSHA Area Director to discuss citations, penalties, abatement dates or any other information pertinent to the inspection. The agency and the employer may work out a settlement agreement to resolve the matter and to eliminate the hazard. In FY 2015, 65% of inspections with a citation resulted in informal or expedited settlements between the employer and OSHA and the average penalty reduction resulting from an informal settlement agreement was around 41.3%.

Alternatively, employers have 15 working days after receipt of citations and proposed penalties to formally contest the alleged violations and/or penalties by sending a written notice to the Area Director. In FY 2015, employers contested violations and/or penalties in 7.4% of cases. OSHA forwards the contest to the Occupational Safety and Health Review Commission (OSHRC) for independent review. Citations, penalties and abatement dates that are not challenged by the employer or settled become a final order of the OSHRC. Employers and other parties may appeal commission rulings to the appropriate U.S. Court of Appeals. Note that if a violation is contested, OSHA cannot order abatement and payment of penalties for those items contested until the OSHRC proceedings are concluded.

Whistleblower Protections

To help ensure that workers are free to participate in safety and health activities, Section 11(c) of the OSH Act prohibits any person from discharging or in any manner retaliating against any worker for exercising rights under the OSH Act. These rights include raising safety and health concerns with an employer, reporting a work-related injury or illness, filing a complaint with OSHA, seeking

an OSHA inspection, participating in an OSHA inspection and participating or testifying in any proceeding related to an OSHA inspection. Protection from retaliation means that an employer cannot retaliate by taking “adverse action” against workers, for example, by firing, blacklisting, demoting, threatening, or reducing pay for a whistleblower. Employees who believe they are facing retaliation for exercising their rights must file a retaliation complaint with OSHA within 30 calendar days from the date of the alleged retaliation.

Compliance Assistance

Another major component of OSHA's strategy to protect workers is compliance assistance. OSHA maintains a substantial and diverse compliance assistance program that provides extensive assistance to employers of all sizes, but particularly to small businesses. Our commitment to compliance assistance continues to be strong, despite fewer appropriated funds for these activities since sequestration.

There are several principles under which our compliance assistance program operates:

- We believe that no employer, large or small, should fail to provide a safe workplace simply because it can't get accurate and timely information about how to address workplace safety or health problems or how to implement OSHA standards.
- All workers, no matter what language they speak or who their employer is, should be knowledgeable about the hazards they face, the protections they need and their rights under the OSH Act.
- Employers that achieve excellence in their health and safety programs should receive recognition.

On-site Consultation Program

OSHA's primary compliance assistance program is its On-site Consultation Program. We understand that most small businesses want to protect their employees, but often cannot afford to hire a health and safety professional. This help for small businesses is critical both for the health of these businesses and for the safety and health of the millions of workers employed by small businesses.

OSHA's On-site Consultation Program is designed to provide professional, high-quality, individualized assistance to small businesses at no cost. This service, budgeted at \$57.8 million, provides free and confidential workplace safety and health evaluations and advice to small and medium-sized businesses with 250 or fewer employees, and run by the states, separate and independent from federal or state OSHA's enforcement programs.

In FY 2015, OSHA's On-site Consultation Program conducted more than 27,800 free visits to small and medium-sized business worksites, helping to remove more than 3.5 million workers from hazards nationwide. A full 87% of those visits were to businesses with fewer than 100 employees.

This program doesn't just help protect workers; it also helps businesses save money. After numerous years of reporting relatively low injury cases, Chemung Advocacy, Resources and Care (ARC), of Elmira, New York, which was established by parents interested in providing support services for their developmentally disabled children, experienced a spike in recordable injuries and

requested a free consultation visit from OSHA's On-site Consultation Program, administered by the New York State Department of Labor.

Chemung ARC corrected all of the hazards identified by the consultant. By the following year, the company's Days Away from Work, Restricted Work or Job Transfer (DART) rate had dropped to 58% of the average rate reported by the BLS for the vocational rehabilitation services industry. In addition, the organization's Total Recordable Case rates dropped from 4.0 to 1.0 (compared to the industry incidence rate of 5.7 in 2014) over a two-year period. The reduction in recordable injuries had a direct impact on the company's workers' compensation costs – its premiums dropped 12.5% in the year following the free onsite consultation visit.

OSHA also continues its strong support for recognizing those employers who "get" safety. For small employers, the OSHA On-site Consultation Program's Safety and Health Achievement Recognition Program or SHARP program, recognizes small businesses that have achieved excellence. In addition, OSHA's Voluntary Protection Program (VPP) recognizes employers and workers in industry and federal agencies who have implemented effective safety and health management systems and who maintain injury and illness rates below the national average for their industries. In order to participate in these programs, employers commit to implement model safety and health program management systems that go far beyond OSHA's requirements. These employers demonstrate that "safety pays" and serve as a model to all businesses.

Outreach and Training

For the vast majority of employers who want to do the right thing, we want to put the right tools in their hands to maintain a safe and healthful workplace. That is why we invest in our compliance assistance materials. New OSHA standards and enforcement initiatives are always accompanied by web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, our compliance assistance specialists, found in most of our 85 Area Offices across the nation, supplement this with a robust outreach and education program for employers and workers.

A major initiative of this administration has been increased outreach to hard-to-reach vulnerable workers, including those who have limited English proficiency. These employees are often employed in the most hazardous jobs, particularly in construction, and may not have the same employer from one week to the next. We have particularly focused on Latino workers and others for whom English is not a first language. Latino workers suffer higher work related fatality and injury rates on the job than other workers, often because they are in the most dangerous jobs and do not receive proper training.

Another critical piece of our strategic effort to prevent workplace fatalities, injuries and illnesses is training about job hazards and protections. OSHA's Susan Harwood Training grant program provides funding for valuable training and technical assistance to non-profit organizations – employer associations, universities, community colleges, unions, and community and faith based organizations. This program focuses on providing training to workers in high risk industries and is also increasing its focus on organizations involved in training vulnerable, limited English speaking and other hard-to-reach workers to assure that those workers receive the training they need to be safe and healthy in the workplace.

Alliances and Strategic Partnerships

Where an extra effort is needed in an industry, or there are insufficient standards, OSHA often partners with employers, workers, professional or trade associations, labor organizations, and other interested stakeholders through alliances and strategic partnerships to encourage, assist, and recognize efforts to eliminate serious hazards and enhance workplace safety and health practices in specific industries.

For example, OSHA has worked through an alliance with the National Service, Transmission, Exploration & Production Safety (STEPS) Network and the National Institute for Occupational Safety and Health (NIOSH) to help employers reduce injuries and fatalities in the oil and gas industry. And, we've worked with the American Staffing Association to insist that both host employers and staffing agencies understand their responsibilities to protect temporary workers on the job, and provide them the same protections as all other workers.

We have also joined with stakeholders in the construction industry in an unprecedented nationwide outreach effort to prevent fatal falls in construction. And, in the growing telecommunications industry, we have worked with the Federal Communications Commission, the National Association of Tower Erectors, and leaders in the telecommunications industry to initiate a working group aimed at developing and implementing recommended safety practices for preventing tower worker deaths.

Conclusion

We continue to work hard each and every day to ensure employers are protecting their workers from the myriad of safety and health hazards in workplaces across this country. And, we put great effort into making sure employers have all the necessary tools required to meet their responsibilities. We believe that with our current resources, the balanced approach of targeted enforcement and extensive compliance assistance is the most effective and efficient way for us to achieve our mission.

I want to thank you again for inviting me to this hearing to detail the work that we do. I look forward to your questions.