

HEALTH & SAFETY

OSHA's new identity crisis:
Sheriff or team player?

By Jim Stanley, President of FDRsafety

After two years of life, the “new” Occupational Safety and Health Administration (OSHA) appears to be having an identity crisis. Is it the tough sheriff that agency leaders had a habit of depicting a while back, or is it a player on the new Obama administration team that is taming excessive regulation?

The agency seems to be going in both directions at once.

OSHA's two approaches

On the one hand, OSHA has pulled back on three proposals:

- one would have tightened enforcement on workplace noise;
- another would have expanded record-keeping on ergonomics; and
- the third would have made funding cutbacks to the program promoting voluntary cooperation between OSHA and industry.

On the other hand, agency chief David Michaels submitted a budget plan that calls for more inspectors and inspections. The plan also lowers the size threshold for organizations that are subject to a Site-Specific Targeting Program that focuses increased inspections on organizations with high injury rates.

Michaels is also standing firm behind his proposal to initiate an Injury and Illness Prevention Program, which has become known as I2P2. That program would require all organizations under OSHA's jurisdiction to have a safety program in place that conforms to specific OSHA requirements. Businesses have objected that it is unrealistic to mandate that they follow specific requirements since organizations vary so widely.

While Michaels has denied that the pullbacks are tied to the administration's new approach to regulation, the timing was interesting. Within a few days of President Barack Obama's announcement that he wanted to rethink excessive regulations that stymied economic growth, OSHA had withdrawn the noise and ergonomics plans.

The story is playing out elsewhere in Washington as well.

A House subcommittee with a new Republican majority held a hearing in mid-February entitled

“Investigating OSHA's Regulatory Agenda and Its Impact on Job Creation.” Subcommittee Chair Representative Tim Walberg (R-Mich.) captured much of the testimony when he said: “Needless rules and onerous regulations are often roadblocks to economic growth and job creation.”

Michaels later responded to the criticism by saying that sensible regulations not only keep American workers safe and healthy but also improve American competitiveness.

He defended the idea of a new standard on noise control — even though his agency withdrew the one it had proposed — by saying that “because OSHA has a weak noise standard and weak enforcement, U.S. employers have no incentive to buy modern, quieter machines, which means that U.S. manufacturers don't build them, and there are few jobs in the U.S. for engineers who could design them.”

What does this all mean?

This approach of going in two directions at the same time makes it tough to predict what's ahead for OSHA, but it will be interesting to see what, if anything, happens with two agency programs that have been the subject of complaints in the business community:

- **Restrictions on the authority of OSHA's area offices to settle cases by reducing penalties through negotiation.** This has prompted more organizations to contest their citations, producing a backlog and costing everyone a lot of money.
- **The Severe Violators Enforcement Program that subjects organizations cited for severe violations to inspections of their plants at other locations.** Complaints have centered on the fact that inspections can be initiated at the other locations even before citations at the original location have been adjudicated. If the citations are ultimately reduced or dropped, the organizations will have been subject to additional inspections for no reason.

Stay tuned.

Jim Stanley, President of FDRsafety, www.fdrsafety.com, is a former Deputy Assistant Secretary of Labor for OSHA. FDRsafety provides temporary safety staffing, expert witnesses on workplace safety, OSHA compliance consulting, and safety awareness training. Contact Jim at jstanley@fdrsafety.com or (513) 317-5644. ♦