

## 34. Occupational Safety and Health Administration

### ***Congress should***

- shut down the Occupational Safety and Health Administration (OSHA) or, barring that, at least
- reduce OSHA's enforcement budget,
- further exempt from inspections companies with strong safety programs and reduce fines for firms making legitimate efforts to correct health and safety problems, and
- repeal OSHA's "general duty" clause that allows inspectors to enforce regulations that are not published or are poorly understood by enterprises.

### ***Labored Safety Agency***

OSHA is charged with protecting workers from job-related injuries and illness. All Americans want safe jobs, just as they want a clean environment, no automobile deaths, and no crime. Unfortunately, a society free of risk is not realistic. People are generally unwilling to accept the severe restrictions on personal freedoms as well as the monumental economic expense needed to pursue the impossible task of eliminating all risks to personal health and safety. And attempts to eliminate one risk or danger often create other risks, some worse than the originals.

As it currently operates, OSHA does not increase worker safety in a cost-effective manner. The workers' compensation policies of state governments, for better or for worse, have the major effect on workplace safety. And minor reforms of OSHA probably will not better protect workers; they will simply add to the costs of doing business.

In recent years Congress has made some minor reforms of OSHA. Further, the agency itself has tried to deal with some of the strongest complaints against what are perceived by businesses as unnecessary or costly enforcement practices. But OSHA also has been expanding its efforts, for example, targeting alleged job injuries to deskbound workers and even crime in the workplace.

OSHA therefore should be shut down, or at least it should stop issuing mandatory workplace standards, stop inspecting firms for compliance with federal standards, and stop imposing fines for noncompliance.

### ***OSHA's Effect on Workplace Safety***

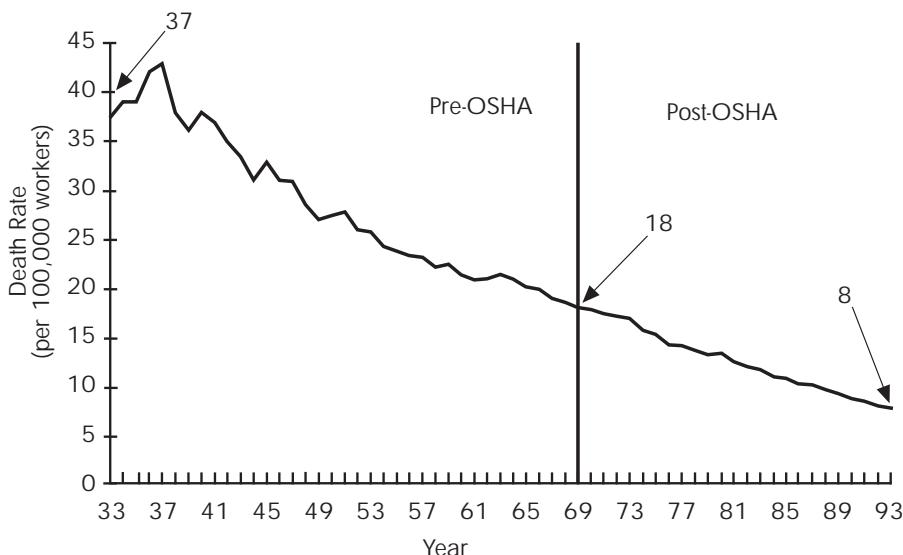
OSHA is the most recently constructed pillar of the U.S. safety policy system. That system also includes tort laws, state workers' compensation insurance programs, and research on and public education about the causes and consequences of work hazards by the National Institute of Occupational Safety and Health (NIOSH). Interwoven with the four pillars of safety policy are the labor market forces establishing compensating wage differentials, which are the wage premiums workers require to accept job-related health hazards.

How safe were workplaces before OSHA's creation in 1970, and how safe are they now? Figure 34.1 shows that the frequency of workplace deaths has declined dramatically over time. In 1933 for every 100,000 workers there were 37 annual workplace fatalities. By 1993 the rate of fatalities had fallen by about 80 percent, to 8 per 100,000 workers annually. As points of reference, in 1993 the chance of dying in an accident at home was slightly greater (9 in 100,000 annually) and the chance of dying in a motor vehicle accident was two times greater (16 in 100,000 annually) than the chance of dying in an accident at work.

The time series of data on nonfatal workplace injuries and illnesses paint a somewhat different picture of improving workplace safety than do the data on fatal injuries. Figure 34.2 shows nonfatal workplace injuries and illness since 1973, the first year firms were required to report industrial accidents and diseases. Unlike death rates, injuries and illnesses do not show a marked decline over time.

Because of the drop in the rate of workplace deaths from 18 per 100,000 workers in 1970 to 8 per 100,000 workers in 1993, both former secretary of labor Robert Reich and former assistant secretary of labor for occupational safety and health Joseph Dear have credited OSHA with reducing workplace fatalities by 57 percent. To credit OSHA with all of the post-1970

**Figure 34.1**  
**Workplace Fatalities, 1933–93**



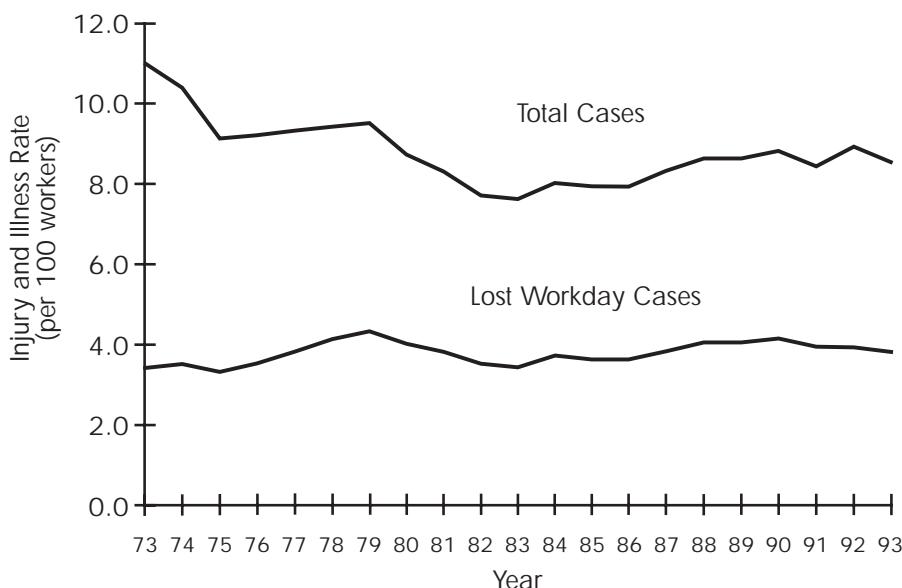
SOURCE: Authors' calculations based on National Safety Council, *Accident Facts, 1994* (Itasca, Ill.: NSC, 1994).

drop in fatalities is similar to a physician's taking credit for the health of a patient whom the doctor did not start treating until two weeks after the patient began recovering. The impact of the doctor, and the impact of OSHA, must be judged on the counterfactual evidence of what the pace of recovery would have been without any intervention.

Devising the counterfactual trend for OSHA is extremely difficult. Unlike medical interventions, there is no control group with which to compare workplace fatalities before and since OSHA. Simply looking at the raw data does not make one leap to the conclusion that OSHA has had a dramatic impact on workplace safety. Figure 34.2 shows no downward trend in either the total frequency of workplace injuries or the frequency of injuries resulting in at least one lost workday. Figure 34.1 shows that the workplace fatality rate began its downward trend well before the creation of OSHA. The trend was fueled not by OSHA but in large part by improvements in safety technology and changes in the occupational distribution of labor, for example, away from more dangerous assembly line work to white collar service jobs.

Richard Butler of the University of Minnesota, who studied National Safety Council data on workplace fatality rates, summarized his findings

**Figure 34.2**  
*Workplace Injuries and Illnesses, 1973–93*



SOURCE: U.S. Department of Labor, OSHA, “Occupational Injury and Illness Rates per 100 Full-Time Workers, 1973–94,” <http://www.osha.gov/oshstats/bls/html>.

on OSHA: “Not only is there an absence of an OSHA shift in death rates as reflected in . . . trends, there does not appear to be any shift after controlling for other factors. Generally, the OSHA variable is statistically insignificant.”

While OSHA supporters cite a few studies suggesting that the agency improves workplace safety, the vast majority of studies has found no statistically significant reduction in the rate of workplace fatalities or injuries due to OSHA. It is thus hard to conclude that OSHA meets even the minimum criterion for any government program: Does it have any desirable effect on the problem it is supposed to solve? Even using the most optimistic estimates, OSHA would be responsible for lowering workplace injuries in the United States by no more than 5 percent.

Giving the agency the benefit of the doubt, other questions must be asked: Do OSHA’s benefits outweigh its costs? Is the program economically efficient? A back-of-the-envelope calculation, using the range of estimates of OSHA’s effectiveness in reducing injuries and the implicit value workers place on safety, indicates that OSHA produces annual safety

benefits of from \$0 to \$4 billion. A study by Robert Hahn and John Hird published in 1991 in the *Yale Journal on Regulation* places the annual cost of OSHA's health and safety standards at \$11 billion, based on either changes in input productivity or expenditures on OSHA-mandated capital equipment. Using cost figures provided by OSHA, Harvey James of Washington University's Center for the Study of American Business estimated that the cost of complying with OSHA's regulations in 1993 was about \$34 billion. Even with the most favorable of the above estimates, the benefits of OSHA, which may very well be zero, fall far short of its costs.

### **Chronic Problems with OSHA**

OSHA in the future is unlikely to reduce workplace fatalities in a cost-effective manner no matter what reforms are implemented. The leading causes of work-related deaths are now highway motor vehicle accidents and murders by customers and coworkers. Those are difficult to control using workplace safety standards. Further, the self-employed suffer a disproportionate share of work-related deaths. OSHA's inspection-and-fine approach to safety is ill suited to preventing accidents in one-person operations.

The general problem with OSHA's approach was aptly noted by the National Coalition on Ergonomics in its response to the proposed, and quickly withdrawn, ergonomic standard. The coalition statement said that OSHA "assumed that every workplace and every job is a potential disorder waiting to happen." Workplace standards impose costs on firms regardless of whether they have problems with safety and health or whether their problems can be successfully combated using the procedures mandated by OSHA.

OSHA is not ineffective because its budget is too small or because it has too few safety and health inspectors. A comparison of the United States and Canada suggests the likely impact of strengthening OSHA's enforcement powers. In the 1980s the government of the province of Quebec in particular began to pursue a much more interventionist policy to protect workers from injuries on the job. For instance, Quebec allowed workers to refuse hazardous tasks, required firms to establish joint workplace safety committees with labor representatives, and made firms initiate accident prevention programs. The Commission de la Santé et de la Sécurité du Travail, Quebec's equivalent of OSHA, was spending over four times more per worker on prevention activities than was OSHA.

Even with more innovative safety measures and a much greater level of enforcement, the Quebec system of workplace regulation has been no more effective in improving worker safety and health than was the old.

### ***The Recent Record***

In the past few years some small progress has been made in containing OSHA abuses. But as is the case when one tries to fix a leaky levee, plugging one hole often causes a greater flood to pour from another one. OSHA continues to expand its control over enterprises.

North Carolina's Rep. Cass Ballenger's OSHA Compliance Assistance Act, signed into law in 1998, authorized the agency to establish and fund consultation programs, to be administered by the states, to help employers to identify violations and correct them without penalty. But this law merely codified an already existing practice. Another Ballenger bill barred OSHA from using the number of inspections or citations or penalties issued to measure the performance of OSHA employees and field offices. Many other reforms proposed by Ballenger and by Sens. Mike Enzi of Wyoming and Judd Gregg of New Hampshire did not pass Congress.

OSHA itself in recent years has expanded assistance to employers to help them meet or exceed standards. It now judges field offices to some extent on how well they do in reducing injury and illness rates in their jurisdictions rather than on the number of citations they issue. It has rewritten some standards to make them easier to understand. By canceling outdated and duplicative regulations, the agency was able to eliminate over 1,000 pages of regulations, though the regulatory burden stayed the same. And OSHA inspections actually fell from 42,377 in FY94 to 24,024 in FY96, a 43 percent drop. Injuries and illnesses also fell. But in FY97 inspections were up again, to 34,264. OSHA officials believe enforcement efforts are necessary to ensure that cooperative plans will work.

OSHA also has tried to expand its activities in other areas. In June 1995 Congress passed an appropriations rider prohibiting OSHA, until October 1996, from using funds to propose or institute ergonomic standards or guidelines. When the rider expired, OSHA almost immediately began to develop a four-point workplace standards plan involving education, research activities through NIOSH, enforcement, and rulemaking. Congress subsequently passed riders prohibiting OSHA from issuing a report on ergonomics. But that ban expired in October 1998, and OSHA is expected to issue a report in 1999.

OSHA is getting into crime prevention. It has issued voluntary guidelines aimed at reducing murders and injuries of clerks at convenience stores. Suggestions include bullet-resistant glass, maintaining video surveillance, installing safes that cannot be accessed by employees, and using two or more workers during high-risk hours.

The Cooperative Compliance Program (CCP) (a spin-off of the Maine 200 Program) gives high-hazard employers a chance to work with OSHA to improve safety without risk of citations. Companies joining the compliance program agree to establish a safety and health program, find and fix hazards, involve workers in the process, and provide OSHA with annual safety and health data. Companies not joining would be subject to a wall-to-wall inspection. The U.S. Chamber of Commerce sued to stop the CCP, claiming it was coercive and was never properly promulgated. The program was put on hold on February 14, 1998, by the U.S. Court of Appeals for the D.C. Circuit.

OSHA also proposed a revision of its regulations on keeping records of accidents and illnesses. The intent was to cover fewer businesses and be less burdensome than the current regulation. But critics claim that the revision would have been more inclusive and more burdensome than the existing rule. The Small Business Administration estimated that the change would have expanded coverage to about 91,000 small businesses nationwide. The rule would have expanded the definition of work-related injuries to include any incident that aggravates a preexisting condition. Thus, claim some critics, if an individual aggravated an old football injury pulling out a stuck desk drawer, the employer might have to record that for OSHA. After much criticism the revision was postponed and may not take effect until early 1999.

In light of its ineffectiveness, giving OSHA more money, personnel, and power is not the way to produce cost-effective workplace safety. Most protection on the job comes from state workers' compensation insurance programs and market-determined compensating wage differentials.

State-run workers' compensation insurance programs are currently the most influential public attempt to promote workplace safety. Insurance premiums that take account of workplace safety encourage firms to establish safe and healthy work environments. As the frequency of claims rises, the price of workers' compensation insurance increases, thereby penalizing firms for poor safety records. Michael Moore of Duke University and W. Kip Viscusi of Harvard University estimate that, without workers' compensation insurance, the number of fatal accidents and diseases would be 48 percent higher in the United States.

Market forces also promote worker safety and health. Empirical studies show wages rising with workplace risk. All else being equal, the typical American worker in a job with a likelihood of injury earns, on average, 2 to 4 percent more than a person working in a safer job. The added compensation firms must pay to workers who accept more hazardous work is an incentive for firms to expand their investments in safety programs. Firms weigh the benefits of improved safety—smaller compensating wage premiums, lower costs of purchasing workers' compensation insurance, fewer work stoppages, and smaller fines for possibly violating OSHA health and safety standards—against the costs of expanded safety programs.

In 1993 firms paid more than \$55 billion for workers' compensation insurance and an estimated \$200 billion in wage premiums to workers for accepting some job hazards. OSHA, both federal and state, assessed fines of only \$160 million in 1993. At a ratio of 1,594 to 1, the economic incentives to improve safety by reducing compensating wage differentials and workers' compensation insurance expenses far surpass the safety-enhancing incentives of the relatively small fines imposed by OSHA for violating its standards.

### ***Reform for the New Congress***

Rather than waste more resources on an agency that cannot be effective, Congress should shut down OSHA and allow state and local officials to use their own means to ensure worker safety. State policymakers should work to reform their workers' compensation insurance policies to allow market forces to fully operate. In addition, state policymakers should review and reform their tort law systems to allow workers to seek redress from employers in true cases of employer negligence and reckless endangerment.

If OSHA cannot be shut down soon, a good alternative would be to phase out OSHA while immediately revising its current approach to standard setting, inspections, and fines. In particular, Congress should do the following:

- Reduce OSHA's enforcement budget and redirect the funds to NIOSH. The reduction in the enforcement budget would of necessity force OSHA to abandon most heavy-handed dealings with business in favor of less coercive tactics. NIOSH research on improving workplace safety and health, and information and guidelines concerning

threshold levels of exposure to dangerous substances or workplace practices, at least will do little harm to businesses and could be of some use. Workers do have a modicum of knowledge of risk, as demonstrated by the compensating wage differentials for exposure to risk. Ideally, such information could be collected and distributed by insurance companies or other private concerns.

- Further exempt from inspections companies with strong safety programs and reduce fines for firms making legitimate efforts to correct health and safety problems. In the face of congressional criticism over the past two years, OSHA already has moved in that direction. In general, all fines, except ones for the most egregious violations of safety and health regulations, should be lowered and firms should be given the opportunity to correct alleged deficiencies before they are fined.
- Repeal the “general duty” clause of the Occupational Safety and Health Act. That clause mandates that employers furnish each employee a job “free from recognized hazards that are causing or likely to cause death or serious physical harm.” Currently, OSHA inspectors can use the general duty clause to enforce unpublished and poorly understood regulations.
- Allow OSHA to investigate on a more selective basis worker complaints of health and safety concerns. OSHA must now evaluate every formal worker complaint filed against an employer. A majority of complaints are groundless, consuming staff resources without producing improvement in worker health and safety. Since 1989 more than half the complaint-initiated inspections have uncovered no serious violations of OSHA regulations, and nearly a third of the complaint-initiated inspections have uncovered no violations whatsoever.

### ***Suggested Readings***

Kniesner, Thomas J. *Simulating Workplace Safety Policy*. Boston: Kluwer Academic Publishers, 1995.

Kniesner, Thomas J., and John D. Leeth. “Abolishing OSHA.” *Regulation*, no. 4 (1995).

Loeser, John D., Stephen E. Henderlite, and Douglas A. Conrad. “Incentive Effects of Workers’ Compensation Benefits: A Literature Synthesis.” *Medical Care Research and Review* 52, no. 1 (March 1995).

Viscusi, W. Kip. *Fatal Tradeoffs: Public and Private Responsibilities for Risk*. New York: Oxford University Press, 1992.

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