

38. Occupational Safety and Health Administration

Congress should shut down the Occupational Safety and Health Administration (OSHA) or, failing that, at least

- reduce OSHA's enforcement budget,
- bar OSHA ergonomics regulations, and
- repeal OSHA's so-called 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 noticeably. 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; such reforms 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 about what are perceived by businesses as unnecessary or costly enforcement practices. But OSHA also has proposed what is perhaps

the greatest expansion of its powers since its creation: Its ergonomics regulations are supposed to protect workers from so-called repetitive motion injuries. And OSHA even claims jurisdiction over crime in the workplace.

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

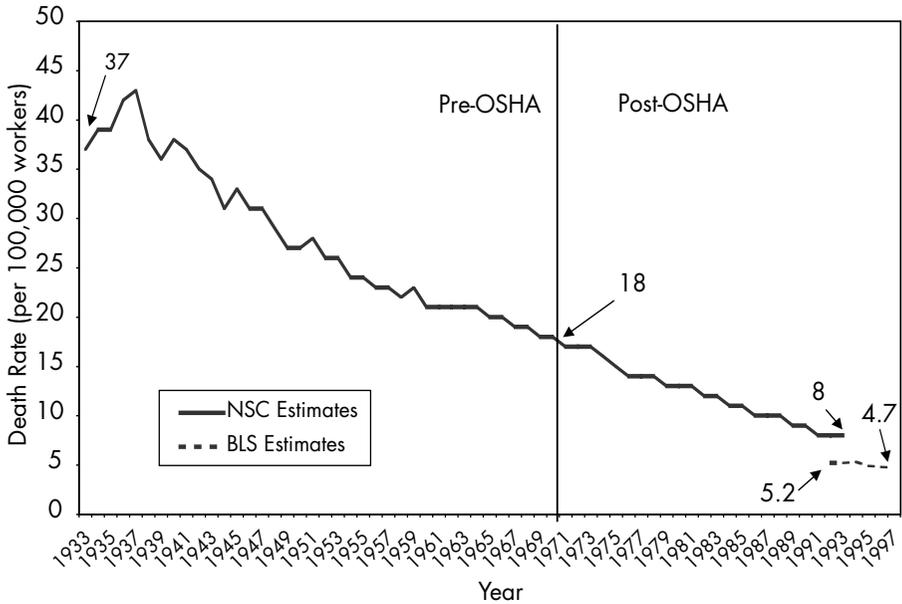
OSHA's Effect on Workplace Safety

OSHA is the most recently constructed pillar of the four pillars of the U.S. safety policy system. That system also rests on tort laws, state workers' compensation insurance programs, and research on and public education about the causes and consequences of workplace hazards by the National Institute of Occupational Safety and Health (NIOSH). Interwoven with government policy intended to influence workplace safety 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 38.1 shows that the frequency of workplace deaths has declined dramatically. 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. There are two trend lines in Figure 38.1 because, after 1993, data are not available from the National Safety Council. Subsequent data are from the Bureau of Labor Statistics (BLS). For 1997 the BLS estimated that the average worker in the United States had a 5 in 100,000 chance of dying in a work-related accident. As points of reference, in 1997 the chance of dying in an accident at home was two times greater (10 in 100,000 annually), and the chance of dying in a motor vehicle accident was more than three times greater (16 in 100,000 annually) than the chance of dying as the result of an accident at work.

The time series of data on nonfatal workplace injuries and illnesses paints a somewhat different picture of improving workplace safety than do the data on fatal injuries. Figure 38.2 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.

Figure 38.1
Workplace Fatalities, 1933–97

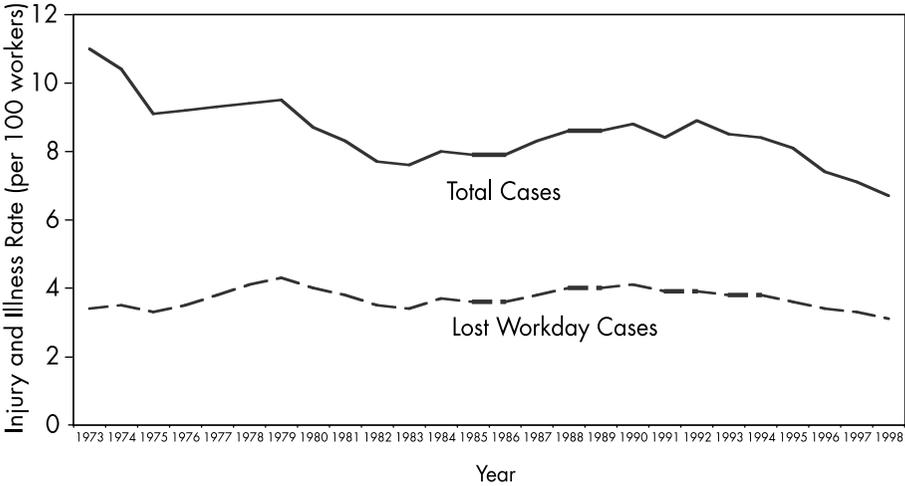


SOURCES: National Safety Council, *Accident Facts* (Itasca, Ill.: NSC, various years); and Bureau of Labor Statistics, *Occupational Injuries and Illnesses in the United States by Industry* (Washington: BLS, various years).

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 the entire post-1970 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 the case of 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 38.2 shows no downward trend in either the total frequency of workplace injuries or

Figure 38.2
Workplace Injuries and Illnesses, 1973–98



SOURCE: Bureau of Labor Statistics, *Occupational Injuries and Illnesses in the United States by Industry* (Washington: BLS, various years).

the frequency of injuries resulting in at least one lost workday. Figure 38.1 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.

Although OSHA supporters cite a few studies suggesting that the agency improves workplace safety, the vast majority of studies have found that OSHA can be credited with no statistically significant reduction in the rate of workplace fatalities or injuries. It is thus hard to conclude that OSHA has had any desirable effect on the problem it is supposed to solve.

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, which 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. In addition, 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 new Quebec system of workplace regulation has been no more effective in improving worker safety and health than was the old.

As further evidence that OSHA's ineffectiveness is not caused by a lack of funds, consider that since 1980 the real per worker expenditure on safety standards enforcement by OSHA at both the state and federal levels has fallen by a third, and yet, there has not been a marked increase in the rate of injuries and illnesses in the workplace. In fact, over the last six years the frequency of workplace injuries has fallen despite a vigorous economic recovery, which generally produces more injuries because of the hiring of new, inexperienced workers. If a slimmed-down OSHA is not causing workplace safety to deteriorate, then a beefed-up OSHA is unlikely to improve it.

The Recent Record

In recent 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. OSHA continues to expand its control over enterprises.

The 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 new law 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 proposed reforms 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. The agency has rewritten some standards to make them easier to understand. By canceling outdated and duplicative regulations, OSHA was able to eliminate more than 1,000 pages of regulations, though the regulatory burden stayed the same. And federal and state OSHA inspections actually fell from 102,977 in fiscal year 1994 to 81,223 in FY96, a 21 percent drop. Injuries and illnesses also fell. But in FY97 the number of inspections was up again, to 90,887, and it has fallen only slightly since then to 89,331 in FY99. OSHA officials believe enforcement efforts are necessary to ensure that cooperative plans will work.

Ergonomics Regulations

In late 1999 OSHA proposed sweeping and potentially damaging regulations that could subject literally every physical motion in the workplace to government control. The proposed ergonomics regulations are meant to prevent so-called repetitive motion injuries, such as carpal tunnel syndrome, which is supposed to result from typing.

But as the three OSHA-initiated cases adjudicated to judgment show, the regulations are based on junk science. In the 1995 *Beverly Enterprises* case, OSHA could not establish that lifting necessarily causes back injuries. In the 1998 *Dayton Tire* case, OSHA's "experts" repeatedly disagreed with one another on supposed job hazards, for example, from lifting, and could not distinguish the impact on workers of job-related factors from that of non-job-related factors such as playing tennis or raking leaves. Ultimately, the "experts'" testimony was thrown out of court under the Supreme Court's junk science test. In the 1997 *Pepperidge Farm* case, OSHA could not identify changes needed to eliminate supposed ergonomic hazards.

To reduce worker injuries and thus workers' compensation costs, most enterprises already have taken the obvious steps such as supplying workers with wrist pads for typing or ergonomically designed chairs. The proposed regulations will force on businesses more draconian measures that will

effectively require slowing the pace of production, hiring more workers, and redesigning entire operations.

The regulations also contain provisions requiring employers to provide light-duty jobs for up to six months for workers suffering from possible repetitive motion disorders, with no loss in salary or benefits. If restricted work activity is impossible, the employer must pay workers 90 percent of their previous after-tax salary and 100 percent of benefits for up to six months while they are on leave. The work restriction protection provisions are generally more generous than the state workers' compensation insurance laws and differentiate repetitive motion injuries from other types of workplace injuries. Yet those provisions give workers no incentive to avoid activities contributing to repetitive motion disorders, nor do they aid in a worker's recovery from such injuries.

The costs of the regulations will be truly prohibitive without reducing any real risks to workers. The American Trucking Association calculates that the regulations will cost truckers \$6.5 billion annually. Food Distributors International finds that its enterprises will be burdened with \$26 billion the first year the regulations are in effect and \$6 billion per year thereafter. Early in 2000, OSHA's plan to apply ergonomics and other safety and health regulations to the offices of persons working out of their homes was withdrawn in the face of public outrage. In November 2000 OSHA released the final version of the ergonomics regulations that it plans to apply to most other workplaces in the country.

The proposed ergonomics regulations are not OSHA's only attempt to expand its jurisdiction. The agency is also 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.

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

Workers' Compensation and 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 1998 firms paid more than \$52 billion for workers' compensation insurance and an estimated \$210 billion in wage premiums to workers for accepting some job hazards. By the end of the fiscal year, fines assessed by OSHA, both federal and state, totaled only \$132 million. The ratio of those costs—nearly 2,000 to 1—makes the economic incentives to improve safety by reducing compensating wage differentials and workers' compensation insurance expenses far greater than 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 businesses in favor of less coercive tactics. NIOSH research on improving workplace safety and health, and information and guidelines on 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.
- Bar OSHA ergonomics regulations. In the past Congress placed temporary holds on such regulations. But when the last hold expired several years ago, OSHA proposed costly, permanent workplace controls that do not actually protect workers.
- 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. For example, the agency used that clause to press its unsound ergonomics policies on businesses before proposing permanent regulations.

Suggested Readings

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