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Congress Must Protect America's Workers

Reform Is Critical to Preventing 5,000 Annual Workplace Deaths

Each year, more than 5,000 workers are killed on the job. Millions more are exposed to chemical and environmental hazards that will lead to lasting illnesses and health problems. Although recent tragedies like the explosions at a Connecticut natural gas plant and the Upper Big Branch mine generated national attention and shock at the dangerous environments that certain employees are forced to work in, the reality is that an average of 14 workers die each day from workplace hazards—more than the number of workers who perished on the Deepwater Horizon.

Workers toil in harmful and deadly conditions because the government regulators that are tasked with ensuring safe workplaces—the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA)—are working with limited resources and impotent enforcement powers. OSHA's maximum fine for serious violations of safety rules is piddling—only \$7,000 per violation. An employer who willfully violates OSHA safety standards and creates conditions that lead to a worker fatality can be charged at most with a misdemeanor—six months or less in jail for killing an employee.

The spate of recent headline-grabbing workplace tragedies has drawn Congress' attention, and both chambers are currently considering legislation that would improve the ability of OSHA and MSHA to protect workers and punish bad actors. This legislation is critical to ensuring that America's workers do not need to risk their lives to earn a living.

A. Millions of Workers Place Themselves in Harm's Way Every Time They Go to Work

Across the country, America's workers face injuries, illness, or even death because the agencies responsible for promoting safe workplaces are underfunded and impotent. Unscrupulous employers have realized that OSHA's fines are low and inspections are rare, and therefore they can attempt to pad their bottom lines by ignoring workplace safety regulations. These employers are gambling with their employees' lives.

OSHA, the agency responsible for ensuring safe workplaces, operates under outdated and inadequate laws. The Occupational Safety and Health Act was passed in 1970; since then, it has been updated only once, in 1990, when the fines were adjusted for



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inflation. These fines were too low to begin with, and they have remained static for two decades. Furthermore, OSHA's inspectors are simply unable to reach every American workplace because there are so many. OSHA must rely on reports from employees to detect unsafe conditions or injuries, but the whistleblower protections for employees are insufficient, leading them to keep silent for fear of retaliation. In addition, employers have learned how to game the system when they do get caught. They can hold up OSHA and MSHA proceedings for years and get their meager fines reduced further by contesting every citation. This delays both the payment of fines and the abatement of the hazard—leaving employees in danger in the process.

1. Fines Are Too Low

Although the laws and regulations promulgated by OSHA are intended to protect America's workers from job-related injuries, illnesses, and fatalities, the penalties that employers face for violating these laws are meager. And because Congress in the 1990s excluded OSHA from legislation requiring agencies to adjust fines regularly, OSHA's penalties are not automatically adjusted for inflation like those of most other federal agencies, so they are becoming smaller and more negligible each year. Accounting for inflation, OSHA's current fines are less than 60 percent of what they were in 1990, when they were last updated.

Under current OSHA standards, an employer may be fined up to \$7,000 for a serious violation of workplace safety standards—that is, a hazard that creates a substantial probability that death or serious injury could occur and that the employer knew or should have known about. A violation designated as “not serious” has the same \$7,000 ceiling, although in that case OSHA has the option to assess no fine at all. The fine for repeated violations of workplace safety standards or for violations committed with an intentional disregard of, or indifference to, OSHA standards is \$70,000.

These fines are patently too low given the stakes: the safety of America's workers. The Federal Trade Commission assesses fines of \$16,000 for violations of the Do-Not-Call telemarketing law, or for bloggers who fail to disclose in an endorsement of a product that they received the product for free. An airline that keeps passengers on the tarmac for longer than three hours faces Federal Aviation Administration fines of \$27,500 per passenger. The Federal Communications Commission can fine station owners \$325,000 for broadcasting obscene or indecent material; such an offense even carries jail time—up to two years imprisonment. Similarly, U.S. copyright law sets the fines for file-sharing at \$30,000 per violation, that is, \$30,000 for the unauthorized sharing of a single song that can be bought for \$1.



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2. Whistleblower Protections Are Inadequate

The vast number of workplaces in the country and the limited budgets that OSHA and MSHA have for inspecting worksites mean that employees are often the best source of information about workplace conditions. It is critical, therefore, that they be able to alert inspectors and supervisors to hazards, injuries or other unsafe situations without fear of retribution. Under existing law, though, workers who report dangerous behavior or refuse to work in unsafe conditions often face discrimination or termination for their actions. Employees are reluctant to report workplace hazards for fear of retaliation or loss of pay due to work stoppage.

Recent stories illustrate this problem. Just weeks before the Deepwater Horizon oil rig exploded in the Gulf of Mexico, workers on the rig complained about unsafe conditions and said they feared retaliation if they reported hazards, according to a confidential employee survey obtained by *The New York Times*.¹ The widow of one of the 11 workers killed in the explosion told a government panel that her husband had expressed similar concerns to her.² These employees should not have been forced to choose between working in dangerous conditions and facing retaliation. According to a recent NPR story, employees at the Upper Big Branch mine that exploded earlier this year had alerted their superiors at Massey of instances of tampering with and disabling of methane detectors in the mine.³ One employee who had been particularly vocal about his concerns was fired; others were justifiably too scared to speak out and alert mine safety officials.

The whistleblower protections offered by OSHA and MSHA are inadequate and do not promote employee-reporting of dangerous conditions. Whistleblower protections are essential to ensuring safe workplaces. Employees should not be forced to choose between working in dangerous conditions and being fired, harassed, or demoted.

3. Repeat Offenders Get Off Easily

Employers who flout OSHA and MSHA rules realize that the penalties for doing so are often lower than the costs of compliance. In addition to disregarding safety regulations, these employers will contest any citation they do receive, because contesting a citation delays not just the fine but the cost of abating the cause of the violation. This leaves workers exposed to dangerous conditions. Life-threatening hazards are allowed to persist unabated while the penalty is contested, which can take years.

¹ <http://www.nytimes.com/2010/07/22/us/22transocean.html>

² <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/22/AR2010072203444.html>

³ <http://www.npr.org/templates/story/story.php?storyId=128516777>



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Miners operate in especially dangerous environments but fare no better than other workers when it comes to safety protections. MSHA's threshold for "pattern of violations" status—allowing MSHA to withdraw miners and shut down mines that repeatedly violate safety rules—is difficult to meet, leaving miners to work amidst numerous outstanding safety violations. MSHA's authority to shut down problem mines is also unclear, and workers who are pulled out of mines receive limited pay during a work stoppage, creating a further disincentive for them to report dangerous conditions.

These factors create an environment in which worker safety is not important to employers. Low fines, infrequent inspections and bureaucratic hurdles have fostered a culture where managers believe it is cheaper and easier to let workers get hurt, pay minuscule fines or contest the citations, and continue with business as usual than to address safety problems.

B. Pending Legislation Would Address Many of These Concerns

The House of Representatives is considering legislation that would overhaul OSHA and MSHA. The Robert C. Byrd Mine Safety and Health Act (H.R. 5663) would address the above concerns and significantly strengthen the agencies responsible for worker safety.

H.R. 5663 would increase civil and criminal penalties for violations of mine and workplace safety standards. Fines for serious violations would be raised from \$7,000 to \$12,000, and fines for willful or repeated violations would increase from \$70,000 to \$120,000. Additionally, penalties for the most egregious offenses, such as causing the death of an employee by knowingly violating a workplace safety standard, would be changed from misdemeanors to felonies and would extend to any responsible party, including a corporate officer who authorized the violation. (Currently, labor law doesn't specifically name corporate officers as potentially liable parties. Under mine safety law, officers and directors are liable for a more narrow list of offenses.) In addition to fines increasing, OSHA's fines would automatically adjust for inflation.

In addition, H.R. 5663 would provide protection for employees who are terminated or discriminated against for alerting superiors or inspectors to unsafe working conditions or refusing to work in unsafe conditions. Employees who file whistleblower claims would be eligible for reinstatement, back pay and compensatory damages. Miners who are unable to work due to a mine being shut down for safety violations would receive full pay while the violations are being corrected.

This legislation also would discourage mine operators from engaging in the delay tactic of contesting every citation while unsafe working conditions persist. Fines would



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accrue interest during appeal, encouraging swift resolution of violations. Employers would be required to abate OSHA violations designated as “serious” even if they contest the citation, recognizing that safety cannot wait.

H.R. 5663 recently was voted out of the Education and Labor Committee on a party-line vote and placed on the House calendar shortly before the August recess, although no date has been set for a vote. Sens. John D. Rockefeller and Carte Goodwin, both Democrats of West Virginia, have recently introduced a similar bill, S. 3671, and the Senate Health, Education, Labor, and Pensions Committee is also drafting legislation to address workplace and mine safety.

C. Conclusion: Congress Must Enact This Legislation Now

The enforcement powers of OSHA and MSHA are ineffective deterrents against dangerous and reckless workplace behavior. Congress can pass relatively simple provisions that will make major improvements for workers, and it is imperative that Congress do so quickly. Fourteen workers die needlessly every day that passes. It is essential that Congress enact these commonsense reforms and help OSHA and MSHA to protect America’s workers.

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