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**ICCFA MAGAZINE
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S A F E T Y

Is your safety program iron-clad? Now is a good time to review it, because OSHA is ramping up enforcement of existing rules and regulations and developing additional ones that may affect your operation.

Obama administration brings more OSHA enforcement, expansion plans

The tone at the Department of Labor's Occupational Safety and Health Administration has changed in the Obama era. More emphasis and resources are being allocated to enforcement. Inspections, penalties and fines are being increased.

"Drastic changes are clearly needed to enable American workers, businesses and government to address the needs and challenges of the 21st century workplace," said Secretary of Labor Hilda L. Solis earlier this year. "Fines and penalties are simply too low; whistleblowers are not adequately protected."

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthy workplaces for their employees. OSHA's role is to ensure these working conditions by setting and enforcing standards and providing training, education and assistance.

Let's take a look at some of OSHA's recent and planned actions to understand what is happening that may affect you and to help you plan for what to expect down the road.

Stronger regulations

The proposed **Protecting America's Workers Act** would rev up the OSH Act by raising penalties for violations of the law, strengthening workers' voices in the workplace, expanding the rights of victims and their families, expanding OSHA coverage to public employees and requiring the abatement of serious, willful and repeat hazards during the citation contest period.

Assistant Secretary of Labor for OSHA Dr. David Michaels said, "Secretary Hilda Solis' vision for the Department of Labor is 'good jobs for everyone.' Good jobs are safe jobs. Stronger OSHA enforcement will save lives. The administration supports both the goals of the Protecting America's Workers Act and many specific provisions."

This act has languished in committee for years, but in the current environment it stands a strong likelihood of being enacted. Watch for activity on PAWA, with it possibly coming out of committee for a vote around Labor Day.

Better recordkeeping

Part of the stage for stronger enforcement actions was set with the initiation of the **Recordkeeping National Emphasis Program** in October 2009. The goal of this program is to assess the accuracy of injury and illness data recorded by employers.

The program involves inspecting occupational injury and illness records prepared by businesses and appropriately enforcing regulatory requirements when employers are found to be under-recording injuries and illnesses. The inspections include a records review, employee interviews and a limited safety and health inspection of the workplace.

"Accurate and honest recordkeeping is vitally important to workers' health and safety," said acting Assistant Secretary of Labor for OSHA Jordan Barab. "This information is not only used by OSHA to determine which workplaces to inspect, but is an important tool employers and workers can use to identify health and safety problems in their workplaces."

More scrutiny of frequent violators

OSHA is implementing a new **Severe Violator Enforcement Program** and increasing civil penalty amounts. "For many employers, investing in job safety happens only when they have adequate incentives to comply with OSHA's requirements," Michaels said. "Higher penalties and more aggressive, targeted enforcement will provide a greater deterrent and further encourage these employers to furnish safe and healthy workplaces for their employees."

This program includes increased OSHA inspections, including mandatory OSHA follow-up inspections. SVEP became effective in June.

What's on OSHA's agenda

OSHA released a new semi-annual regulatory agenda on April 26. This document set forth the regulations selected for review or development during the coming year. It lists all regulations that are expected to be under review or development between April 2010 and April 2011, as well as those completed during the past six months. There are several key points of this agenda that demonstrate OSHA's more aggressive

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approach to holding employers to standards.

Focus on prevention

OSHA is developing a new rule that would require businesses to have an **Injury and Illness Prevention Program**. This rule will require employers to develop and implement a program that minimizes worker exposure to safety and health hazards.

Instead of waiting for an OSHA inspection or a workplace incident to address workplace hazards, employers would be required to create a plan for identifying and correcting hazards, and then implement the plan. Workers would also participate in the development and implementation of such plans.

This rule would likely have huge implications for virtually every business in the United States, and the economic impact would be significant. The agency held stakeholder meetings in June to obtain input as it develop the program.

Review of Bloodborne Pathogens Standard

Of specific interest to the death care industry, OSHA is reviewing the **Bloodborne Pathogens Standard** to determine if any changes are needed.

In addition, OSHA is considering the need for an **Infectious Disease Standard**. This rule would require employers to establish a comprehensive infection control program to protect employees from infectious disease. On May 6, OSHA issued a call for information on infectious agents and specifically included mortuaries on the list of health care settings in which it was interested.

The goal of this information gathering is to identify:

- the facilities and tasks potentially exposing workers to the risk of work-acquired infectious diseases;
- successful employee infection control programs;
- control methodologies being used (including engineering, work practice and administrative controls and personal protective equipment; medical surveillance programs; and training).

This information can then be used to

establish an infectious disease regulation. OSHA is also developing a rule regarding occupational exposure to crystalline silica, which may affect you if you do any stone cutting, engraving or masonry.

Cutting back on enforcement exemptions

Another rule that is further along in the process, in the “proposed rule stage,” is that of Cooperative Agreements. Currently, businesses that are using the federally funded Onsite Consultation Program in cooperation with OSHA, or that have obtained Safety and Health Achievement Recognition Program status are exempt from inspections.

In this proposed rule, OSHA is proposing to reconsider exempting such businesses from enforcement. The rule would allow compliance safety and health officers to proceed with enforcement visits resulting from referrals at such businesses.

More recordkeeping

The proposed rule for **NAICS Update and Reporting Revisions** related to occupational injury and illness recordkeeping requirements reconsiders which businesses/industries are exempt from recordkeeping requirements. It also revises the reporting requirements regarding certain injuries and fatalities.

Currently, OSHA uses Standard Industrial Classification codes for classifying industries that are exempt from recordkeeping. The North American Industry Classification System codes are much more specific; multiple NAICS codes typically exist within a single SIC code. This means

that OSHA will be able to fine tune which specific businesses are exempt within what was previously a much more “broad brush” category.

Concern about ergonomics

The proposed rule for recordkeeping to add a new column for work-related musculoskeletal disorders is another step that will allow OSHA to take a closer look at ergonomic injuries and illnesses that occur in the workplace. Currently, there is no specific OSHA regulation for ergonomics, but there are guidelines.

Lack of employer diligence in avoiding musculoskeletal disorders among employees could result in a General Duty Clause citation, which states that the employer must protect the employee from all recognized hazards. Once again, this proposed rule is more evidence of OSHA’s plan to scrutinize more carefully workplace safety and health issues.

The tone has changed in the OSHA administration, and efforts to ramp up and crack down are already in motion. More resources are being allocated to enforcement, and penalties and fines are being increased. Now is a good time to review your safety program and ensure that it is iron-clad. □

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