

National Safety Council

December 29, 1970

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

After almost three years of controversy and legislative battle, the Occupational Safety and Health Act of 1970, S.2193, has become law. The joint Senate-House Conference Committee completed action on the Bill on December 14. The following day Secretary of Labor Hodgson expressed the Administration's support of the Bill. The Senate approved the Conference Report by voice vote on December 16. On December 17 the House approved the Report by a vote of 308-60. President Nixon signed the Bill on December 29. Here is a summary of the major provisions.

1. Purpose -- "To assure so far as possible every working man and woman in the Nation safe and healthful working conditions"
2. Coverage -- The Act is applicable to all businesses engaged in interstate commerce except for the mining and railroad industries (covered by other laws). Special provisions are made for Federal and State government employees.
3. Employer Duties -- Each employer (a) "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees" and (b) shall comply with the occupational safety and health standards and all rules pursuant to the Act except where an approved State plan is in effect.
4. Promulgation of Standards -- The Secretary of Labor has the full authority to promulgate occupational safety or health standards. The Secretary must promulgate as soon as practicable (but not later than two years after the effective date of the Act) any national consensus standard or any established Federal standard, unless he determines that such a standard would not result in improved safety or health, and need not hold hearings for the promulgation of such standards. A national consensus standard requires, among other things, that the standard has been adopted by a nationally recognized standards-producing organization under procedures that afforded opportunity for diverse views to be considered and that interested and affected persons have reached substantial agreement on its adoption.

The Secretary may also promulgate, modify, or revoke any occupational safety or health standard using informal hearing procedures of the Administrative Procedure Act.

The Secretary must provide for "emergency temporary standards" which are to take effect immediately upon publication in the Federal Register if he determines that (a) employees are exposed to "grave danger" from exposure to substances or agents determined to be toxic or physically harmful, or from any new hazards, and (b) that such emergency standard is necessary to protect employees from such danger. Such standards are to remain in effect until superseded by a standard promulgated under the procedures prescribed in this Act. Any affected employer may apply for variance from such standards promulgated or may file a petition challenging the validity of such standards.

5. Inspection and Investigation -- Inspections and investigations are to be made by the Secretary of Labor or the Secretary of Health, Education and Welfare. Subject to regulations by the Secretary of Labor both employer and employee representatives have the right to accompany an inspector during his physical examination of the plant. Employees may request an inspection if they believe an alleged violation threatens physical harm or that an "imminent danger" exists. Such inspections may be denied where the Secretary determines that no reasonable grounds exist.

If the Secretary determines that an employer has violated the "general duty" provision, promulgated standards or rules, or the records requirement, the Secretary must issue a citation in writing for violation with reasonable promptness, but not later than six months following the occurrence of any violation. Each citation issued is to be prominently posted at or near each place of violation. If the Secretary arbitrarily or capriciously fails to seek judicial relief to counteract "imminent danger," any employee who may be injured by reason of such failure may bring action against the Secretary to compel him to take such action.

6. Enforcement -- If the Secretary issues a citation for violation, he must notify the employer by certified mail of the penalty, if any, proposed to be assessed and advise the employer that he has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If the employer notifies the Secretary that he intends to contest a citation or proposed assessment of penalty, the Secretary must immediately advise the Occupational Safety and Health Review Commission. Likewise, if any employee files a notice with the Secretary alleging that the time set by the Secretary for abatement of the violation is unreasonable, the Secretary must immediately advise the Commission. The Commission, consisting of three Presidential appointees, after opportunity for a hearing, shall adjudicate the dispute. The Commission's orders become final fifteen days after issuance unless stayed by court order. Uncontested citations shall be deemed to be a final order of the Commission and shall not be subject to judicial review.
7. Judicial Review -- Any "person" (which includes corporations or the Secretary) adversely affected or aggrieved by an order of the Commission may obtain a review of such order in a U. S. Court of Appeals, if sought within 60 days of the order's issuance. The proceeding will not operate as a stay of the Commission's order unless so directed by the court.
8. Variances -- Employers may obtain variances from a standard for one-year periods, renewable to a maximum of three years, on a showing of inability to meet standards because of unavailability of personnel or equipment or time to construct or alter facilities. The employer must also have a program for achieving compliance while taking all available safeguarding steps in the interim.
9. "Imminent Danger" -- A plant or location can be shut down because of "imminent danger" only by a court order. "Imminent danger" is defined as a condition or practice involving a danger which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided in the Act.

10. Penalties -- Civil penalties are provided up to \$1,000 (a) for each violation (where they are not of a serious nature, such penalty is discretionary) and (b) for each day in which a final order is violated. A penalty of up to \$10,000 is provided for each willful or repeated violation of employer duties (described under item 3). Criminal penalties are set for willful violations resulting in death.

11. State-Federal Relationships -- The Act places all jurisdiction regarding occupational safety and health under its terms in the Federal government, except for those occupational safety and health issues for which no Federal standard is in effect. A State can assume jurisdiction by submitting a State plan which is approved by the Secretary of Labor. The Secretary may have dual jurisdiction in some respects for at least three years after approval of the State plan.

The Act provides for grants to the States up to 90 percent of the total cost to assist them (a) in identifying their needs and responsibilities in the area of occupational safety and health, (b) in developing State plans, (c) in developing plans for data collection, and (d) for experimental and developmental projects. Likewise, grants up to 50 percent of the total cost are provided to assist the States in administering and enforcing programs for occupational safety and health contained in approved State plans.

12. Effect on Other Laws

- a. Walsh-Healey Public Contracts Act -- Enforcement procedures of the new Act become immediately applicable. Standards promulgated under the Walsh-Healey Public Contracts Act, the Service Contract Act, the National Foundation on Arts and Humanities Act, and the Longshoremen's and Harbor Workers' Compensation Act will be superseded when corresponding standards, which the Secretary determines will be "more effective," are issued under the new Act.
- b. Construction Safety Act -- Contractors of Federal or Federally-financed contracts are subject to penalties of both the new Act and the 1969 Construction Safety Act. Other contractors are subject only to the new Act. Congressional intent was stated that there be a single set of standards applicable to both categories of contractors.

13. Records Requirement -- Each employer will be required to maintain and make available such records as the Secretary, in cooperation with the Secretary of HEW, may prescribe as appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. Such rules may include provisions requiring employers to conduct periodic inspections (but not to determine or report their own state of compliance). The Secretary must prescribe regulations requiring employers to (a) maintain accurate records of work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, and (b) maintain records of employee exposure to potentially toxic materials or harmful physical agents. Certain information must be provided to the employee in the latter instance.

14. National Institute for Occupational Safety and Health -- A National Institute is created within the Department of HEW and is authorized, among other things, "to develop and establish recommended safety and health standards." Where feasible, HEW functions under the Act are to be delegated to the Institute.
15. National Commission on State Workmen's Compensation Laws -- This newly established Commission is to be composed of fifteen members appointed by the President. The Commission is authorized to conduct a comprehensive study and evaluation of State workmen's compensation laws to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment. A final report on this study is due by July 31, 1972.
16. National Advisory Committee on Occupational Safety and Health -- The Secretary of Labor and the Secretary of HEW must appoint such a Committee consisting of twelve members (four of whom are to be designated by the Secretary of HEW) and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Committee is to advise, consult with and make recommendations to both Secretaries on matters relating to administration of this Act.
17. Research -- The Act provides for research by HEW relating to occupational safety and health including, but not limited to, (a) psychological factors involved, (b) criteria dealing with toxic materials and harmful physical agents, and (c) effects of chronic or low-level exposure to materials and processes on the potential for illness. At least annually, HEW shall publish a list of all known toxic substances and the concentration at which such toxicity is known to occur.
18. Training -- The Secretary of HEW is to conduct, directly or by grants or contracts, (a) education programs to provide an adequate supply of qualified personnel to carry out the purposes of the Act, and (b) informational programs on the importance of and proper use of safety and health equipment. The Secretary of Labor is to provide for the establishment and supervision of programs for the education and training of employers and employees with respect to effective means of preventing occupational injuries and illnesses.
19. Administrative Matters -- A new post designated as Assistant Secretary of Labor for Occupational Safety and Health is created. The Act also authorizes the appointment of 25 additional GS-16, 17 and 18 positions to be appointed by the Secretary of Labor, and ten like positions to be appointed by the Review Commission.
20. Effective Date -- The Act takes effect 120 days after the date of its enactment.

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Those areas that remain critical to the successful implementation of this piece of legislation are (1) the appropriate selection of the Assistant Secretary of Labor for Occupational Safety and Health, (2) how well the Occupational Safety and Health Review Commission functions, and (3) adequate funding year-in and year-out.