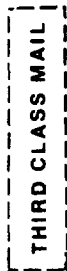




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U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION
WASHINGTON D. C. 20210

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A
Handy
Reference
Guide
The
Williams-
Steiger
Occupational
Safety and
Health Act
of
1970
UNITED STATES
DEPARTMENT
OF LABOR

KMX 01691

Occupational
Safety and Health
Administration
Washington, D.C. 20210

PURPOSE OF THE LAW

The declared congressional purpose and policy of the act is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

COVERAGE

The provisions of the law apply to every employer engaged in a business affecting commerce who has employees. The law applies in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, the Outer Continental Shelf Lands, Johnston Island, and the Canal Zone. Federal, State, and local government employees are specifically excluded from coverage, but they may be covered by equally effective requirements. See Section 19 for programs covering federal employees and Section 18(c)(6) for potential coverage of State and local government employees.

In addition, the act specifically provides that its terms shall not apply to working conditions protected under other Federal occupational safety and health laws (such as those under the Federal Coal Mine Health and Safety Act; and under the Atomic Energy Act of 1954, as amended, including State agreements under that act).

DUTIES OF EMPLOYERS AND EMPLOYEES

Each employer under the act has the general duty to furnish each of his employees employment and places of employment free from recognized hazards causing, or likely to cause, death or serious physical harm; and the employer has the specific duty of

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complying with safety and health standards promulgated under the act. Each employee has the duty to comply with these safety and health standards, and all rules, regulations, and orders issued pursuant to the act which are applicable to his own actions and conduct.

The act took effect on April 28, 1971.

ADMINISTRATION

Administration and enforcement of the act are vested primarily in the Secretary of Labor and in a new agency, The Occupational Safety and Health Review Commission, a quasi-judicial board of three members appointed by the President. Research and related functions are vested in the Secretary of Health, Education, and Welfare whose functions will, for the most part, be carried out by the new National Institute for Occupational Safety and Health established within HEW.

The Secretary of Labor is responsible for both promulgating and enforcing job safety and health standards. Occupational safety and health inspections will be made by inspectors located in offices to be established in many communities throughout the country.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

In general, job safety and health standards consist of rules for avoidance of hazards which have been proven by research and experience to be harmful to personal safety and health. They constitute an extensive compilation of wisdom which sometimes applies to all employees. An example of this would be fire protection standards. A great many standards, however, apply only to workers while engaged in specific types of work—such as handling compressed gases.



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Two of the many thousands of occupational safety and health standards are listed here to familiarize covered employers and employees with the form of such standards:

One typical standard.—Aisles and passageways shall be kept clear and in good repair, with no obstruction across or in aisles that could create a hazard.

Another typical standard.—In any operations such as chipping, caulking, drilling, riveting, grinding, and pouring babbit metal, in which the eye hazard of flying particles, molten metal, or liquid chemical exists, employees shall be protected by suitable face shields or goggles . . .

It is the obligation of all employers and employees to familiarize themselves with those standards which apply to them and to observe them at all times.

The act authorizes the Secretary of Labor until April 28, 1973, to promulgate as occupational safety and health standards any existing Federal Standards (such as those presently applying to Federal contractors under the Walsh-Healey Act) or any national consensus standards (such as those issued by the National Fire Protection Association). He may do this without complying with the rulemaking requirements of the Administrative Procedure Act.

In addition, the Secretary of Labor may, upon the basis of information submitted by the Secretary of Health, Education, and Welfare, advisory committees and others, revise, modify, or revoke existing standards as well as promulgate new ones. The promulgation of standards under this section of the act must be done under the procedures set forth in the section itself, including various time limitations, and also under the procedures of the Administrative Procedure Act. Any person adversely affected by a standard issued by the Secretary may challenge its validity by petitioning the U. S. Court of Appeals within 60 days after its promulgation. Unless otherwise ordered by the Court, filing such a petition does not operate as a stay of the standard.

Also, the act provides for the establishment of emergency temporary standards, effective immediately upon publication in the Federal Register, where it is found that employees are exposed to grave danger. The act also contains provision for standards which may require:

- That no employee dealing with toxic materials or harmful physical agents will suffer material impairment of

health or functional capacity, even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

- Development and prescription of labels or other appropriate forms of warning so that employees are made aware of all hazards to which they are exposed.
- Prescription of suitable protective equipment.
- Monitoring or measuring employee exposure to hazards at such locations and intervals and in such manner as may be necessary for the protection of employees.
- Prescription of the type and frequency of medical examinations or other tests for employees exposed to health hazards. At the request of an employee, the examination or test results shall be furnished to his physician.

The Secretary, after a hearing on an employer application therefor, is authorized to grant temporary variances from standards to give the employer sufficient time to come into compliance if he can show a need for certain time-extension and has a protective plan of action. Variances may be granted without time limits if the Secretary finds that an employer is using safety measures which are as safe as those required in a standard. Affected employees shall be given notice of each such application and an opportunity for hearing.

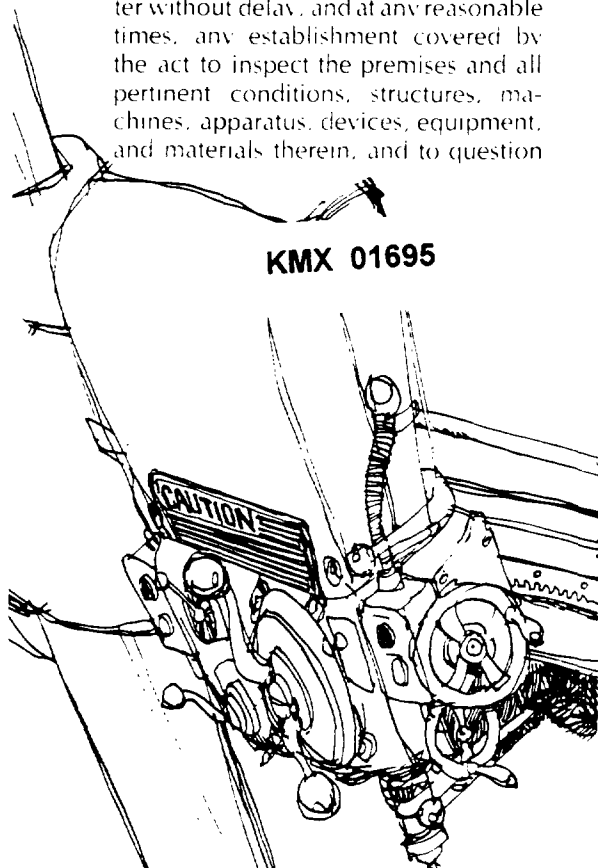
COMPLAINTS OF VIOLATIONS

Any employees (or representative thereof) who believe that a violation of a job safety or health standard exists which threatens physical harm, or that an imminent danger exists, may request an inspection by sending a

signed written notice to the Department of Labor. Such a notice shall set forth with reasonable particularity the grounds for the notice and a copy shall be provided the employer or his agent. The names of the complainants need not, however, be furnished to the employer. If the Secretary finds no reasonable grounds for the complaint and a citation is not issued, the Secretary is required to notify the complainants in writing of his determinations or final disposition of the matter. Also, the Secretary is required to set up procedures for informal review in a case where a citation is not issued.

ENFORCEMENT

In enforcing the standards, Labor Department safety inspectors may enter without delay, and at any reasonable times, any establishment covered by the act to inspect the premises and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question



privately any employer, owner, operator, agent, or employee. The act permits the employer and a representative authorized by his employees to accompany the inspector during the physical inspection of any workplace for the purpose of aiding such inspection. The Secretary of Labor also has power, in making inspections and investigations under the act, to require the attendance and testimony of witnesses and the production of evidence under oath. The Secretary of Health, Education, and Welfare is also authorized to make inspections and question employers and employees in order to carry out those functions assigned to HEW under the act.

Where an investigation reveals a violation, the employer is issued a written citation describing the specific nature of the violation. All citations shall fix a reasonable time for abatement of the violation, and each citation (or copies thereof) issued by the Department must be prominently posted at or near each place where a violation referred to in the citation occurred. Notices, in lieu of citations, may be issued for de minimis violations which have no direct or immediate relationship to safety or health.

No citation may be issued after the expiration of 6 months following the occurrence of any violation.

Notification of Proposed Penalty

Within a reasonable time after issuance of a citation for a job safety or health violation, the Labor Department shall notify the employer by certified mail of the penalty, if any, which is proposed to be assessed. The employer then has 15 working days within which to notify the Department that he wishes to contest the citation or proposed assessment of penalty. If the employer fails to notify the Department within such time that he intends to contest the

citation or proposed assessment of penalty, the citation and the assessment shall be final, provided no employee files an objection to the time allowed for abatement (see *below* "Time for Abatement of Hazards"). If the employer notifies the Department within such time that he does wish to contest, the Secretary of Labor will so advise the Occupational Safety and Health Review Commission and the Commission shall afford an opportunity for a hearing. The Commission then will issue orders affirming, modifying, or vacating the citation or proposed penalty. Orders of the Commission are final 30 days after issuance. Review of Commission orders may be obtained in the U. S. Court of Appeals.

The Review Commission's rules of procedure shall provide affected employees (or representatives thereof) an opportunity to participate as parties to hearings under Section 10(c).

Time for Abatement of Hazards

A citation issued by the Department shall prescribe a reasonable time for elimination or abatement of the hazard. This time limit may also be contested if notification of such is filed with the Department within 15 days. The time set by the Department for correcting a violation shall not begin to run until there is a final order of the Review Commission, if the review is initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Employees (or representatives of employees) also have the right to object to the period of time fixed in the citation for the abatement of a violation. If, within 15 days after a citation is issued, an employee files a notice with the Department alleging that an unreasonable time was allowed for abatement, review procedures similar to those specified above apply.

Failure To Correct Violation Within Allowed Time

Where time for correction of a violation is allowed, but the employer fails to abate within such time, the Secretary of Labor shall notify the employer by *certified mail of such failure and of the proposed penalty*. Such notice and assessment shall be final unless the employer contests the same by notice to the Secretary within 15 days.

Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, but that abatement has not been completed because of factors beyond his reasonable control, an opportunity for a hearing will be afforded, after which an order affirming or modifying the abatement requirement will be issued.

PENALTIES FOR VIOLATIONS

Willful or repeated violations of the act's requirements by employers may incur monetary penalties of up to \$10,000 for each violation. Citations issued for serious violations incur *mandatory monetary penalties of up to \$1,000 for each violation*, while penalties in the same amount may be incurred where nonserious violations are cited. A serious violation exists where there is a substantial probability that death or serious physical harm could result. Any employer who fails to correct a violation for which a citation has been issued within the period prescribed therein may be penalized up to \$1,000 each day the violation persists.

A willful violation by an employer which results in the death of any employee is punishable by a fine of up to \$10,000 or imprisonment for up to 6 months. A second conviction doubles these criminal penalties.

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Criminal penalties are also included in the act for making false official statements, and for giving unauthorized advance notice of any inspections to be conducted under the act.

RECORDKEEPING REQUIREMENTS

In order to carry out the purposes of the act, employers are required to keep and make available to the Labor Secretary (and also to the HEW Secretary) records on certain employer activities under the act. Employers are also required to maintain accurate records (and periodic reports) of work-related deaths, injuries, and illnesses. Minor injuries requiring only first aid treatment need not be recorded, but a record must be made if it involves medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

Employers can also be required to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under Section 6(b) (7), and to promptly advise any employee of any excessive exposure and of the corrective action being undertaken. The Secretary of Labor, in cooperation with the Secretary of Health, Education, and Welfare, is authorized by the law to issue regulations in this area which shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, to have access to the records thereof and to such records as will indicate their own exposure to toxic materials or harmful physical agents.

For recordkeeping purposes, the Secretary's regulations may also require employers to conduct their own periodic inspections.

The Secretary is directed to issue

regulations requiring employers to keep their employees informed of their protections and obligations under the law through posting of notices or other appropriate means. The information which employers may be required to give their employees may also include the provisions of applicable standards.

STATISTICS

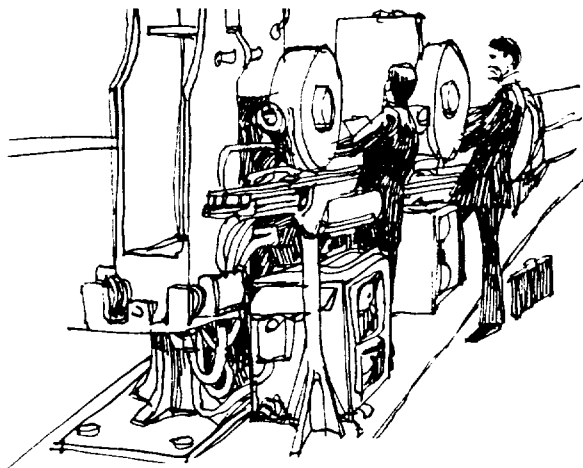
The Secretary of Labor, in consultation with the Secretary of HEW, is required to develop and maintain an effective program of collection, compilation, and analysis of statistics on work injuries and illnesses. In so doing he may make private grants or contracts and grants to States or political subdivisions thereof. The Secretary may also require employers to file such reports of work injuries and illnesses required to be kept under the act as he shall deem necessary.

Existing agreements between the Department of Labor and a State for collection of occupational safety and health statistics are preserved under the act until replaced by other arrangements under grants or contracts made under the act.

GENERAL NOTICE REQUIREMENT

The Secretary of Labor is required to publish in the Federal Register a statement of his reasons for any action he takes with respect to the promulgation of any standard, the issuance of any rule, order or decision, the granting of any exemption or extension of time, as well as any action he takes to compromise, mitigate, or settle any penalty assessed under the act.

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IMMINENT DANGERS

Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal enforcement procedures may be restrained by order of a U. S. District Court upon petition of the Secretary of Labor. If the Secretary arbitrarily or capriciously fails to seek action to abate an imminent danger of such kind, a *mandamus* action to compel him to act may be brought in the U. S. District Court by any employee who may be injured by reason of such failure. A Labor Department safety inspector who concludes that such imminent-danger conditions or practices exist in any place of employment is obligated to inform the affected employees and employers of the danger and that he is recommending to the Secretary of Labor that relief be sought.

PROTECTION AGAINST HARASSMENT

No person shall discharge or in any manner discriminate against any employee because he exercises any right under the act or files a complaint or other proceeding or because he testifies or is about to testify in any proceeding under the act. Any employee who believes that he has been discharged or

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otherwise discriminated against in violation of this provision may, within 30 days of such illegal action, file a complaint with the Secretary of Labor. The Secretary is authorized to investigate the matter and to bring action in the U. S. District Court for appropriate relief, including rehiring or reinstatement of the employee to his former job with back pay. The Secretary must notify the complainant of his action on the complaint within 90 days of its receipt.

STATE PARTICIPATION

The act encourages the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States for the purposes listed later in this guide. A specific disclaimer of Federal preemption is included in order to permit any State agency or court to assert jurisdiction under State law over any occupational safety or health issue with respect to which no Federal standard is in effect under this law.

In addition, any State may assume responsibility for the development and enforcement of occupational safety and health standards relating to any job safety and health issue covered by a standard promulgated under Section 6 of the Occupational Safety and Health Act, if such State submits an approved plan for so doing to the Secretary of Labor. The Secretary shall approve such a plan under the following conditions.

1. An agency, or agencies, of the State must be designated or created to carry out the plan.
2. The State standards (and enforcement thereof) must be at least as effective as the counterpart Federal standards in providing safe and healthful employment.
3. There must be effective provisions for rights of entry and inspection of

- workplaces, including a prohibition on advance notice of inspections.
4. Enforcement capacity must be demonstrated.
 5. Adequate funds for administration and enforcement must be assured.
 6. Effective and comprehensive job safety and health programs for all public employees within the State will be established to the extent permitted by the particular State's law.
 7. The State, and employers within the State, will make such reports as may be required by the Secretary of Labor.

Following approval of a State plan for the development and enforcement of State standards, the Secretary of Labor may continue to exercise his enforcement authority with respect to comparable Federal occupational safety and health standards until he determines on the basis of actual operations that the criteria set forth above are being applied. Once he makes such determination (but he cannot do so during the first 3 years after the plan's approval), the Federal standards and the Secretary's enforcement of them become inapplicable with respect to issues covered under the plan.

However, the Secretary is required to make a continuing evaluation of the manner in which each State plan is being carried out and to withdraw his approval thereof whenever there is a failure to comply substantially with any provision thereof. Such a plan shall cease to be in effect upon receipt of notice by the State of the Secretary's withdrawal of approval.

The Secretary of Labor is authorized, after consultation with the Secretary of Health, Education, and Welfare, to make grants to States for experimental and demonstration projects consistent

with the objectives of the act, for administering and enforcing approved programs, for assisting them in identifying their needs, or in developing their plans, in establishing systems for collection of information concerning the nature and frequency of occupational injuries and diseases, for developing and administering programs dealing with occupational safety and health statistics, and otherwise improving the expertise of personnel or the administration and enforcement of State occupational safety and health laws consistent with the objectives of the act.

If the Secretary of Labor rejects a State plan for development and enforcement of State standards, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. The subsequent withdrawal of an approved State plan or the rejection of a State's plan is subject to review in the U. S. Courts of Appeals.

The law also permits the Secretary of Labor to enter into an agreement with any State under which the State will be permitted to continue to enforce its own occupational safety and health standards until approval of its plan for development and enforcement of occupational safety and health standards or until December 29, 1972, whichever comes first.

EDUCATION AND TRAINING PROGRAMS

The act provides for programs to be conducted by the Secretary of Labor, in consultation with the Department of Health, Education, and Welfare, for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful working conditions, and in the effective means for preventing occupational injuries and illnesses.

The act also makes provision for educational and training programs to provide an adequate supply of qualified personnel to carry out the law's purposes and for informational programs on the importance of and proper use of adequate safety and health equipment to be conducted primarily by the Department of Health, Education, and Welfare, but also to some extent by the Secretary of Labor.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

The act establishes within HEW a new National Institute for Occupational Safety and Health primarily for the purpose of carrying out the research and educational functions assigned to the HEW Secretary under the act.

In addition to these functions, the Institute is authorized to develop and establish recommended occupational safety and health standards; to conduct research and experimental programs determined by the Institute's director to be necessary for developing criteria for new and improved job safety and health standards; and to make recommendations to the Secretaries of Labor and HEW concerning new and improved standards.

Among the HEW functions which may be carried out by the Institute is the one which calls for prescribing regulations requiring employers to measure, record, and make reports on the exposure of employees to potentially toxic substances or harmful physical agents which might endanger their safety and health. Employers required to do so may receive full financial or other assistance for the purpose or defraying any additional expense so incurred. Also authorized are programs for medical examinations and tests as

may be necessary to determine, for the purposes of research, the incidence of occupational illness and the susceptibility of employees to such illnesses. These examinations may also be at Government expense. Another HEW function will be the annual publication of a list of all known toxic substances and the concentrations at which toxicity is known to occur. There will also be published industrywide studies on chronic or low-level exposure to a broad variety of industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults, and also authorized is the making of determinations by HEW, at the written request of any employer or authorized representatives of employees, as to whether any substance normally found in the place of employment has potentially toxic effects. Such determinations shall be submitted to both the employer and the affected employees as soon as possible.

Information obtained by the Departments of HEW and of Labor under the research provisions of the act is to be disseminated to employers and employees and organizations thereof.

WORKMEN'S COMPENSATION

The act does not in any manner affect any workmen's compensation law or enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment. Provision is made in the law, however, for a 15-member National Commission on State Workmen's Compensation Laws to evaluate State workmen's compensation laws in order 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.

ASSISTANCE FROM SMALL BUSINESS ADMINISTRATION

The law includes amendments to the Small Business Act which provides for financial assistance to small firms for alterations in its equipment, facilities, or methods of operation to comply with standards established by the Department of Labor or by any State pursuant to the act, if the Small Business Administration determines that such a firm is likely to suffer substantial economic injury without such assistance.

OTHER PROVISIONS

Advisory Committees.—The act creates a 12-member National Advisory Committee to be appointed by the Secretary of Labor (including 4 designees of the Secretary of HEW) to advise, consult, and make recommendations on matters relating to the administration of the act, and permits the establishment of *ad hoc* advisory committees to assist the Secretary in his standard-setting functions.

Nonobstruction Requirement.—Any information obtained by any agency under the act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

Occupational Safety and Health Review Commission.—The act establishes a new independent Federal agency, called the Occupational Safety and Health Review Commission. This

Commission is a quasi-judicial body whose functions are: (1) to hear and review cases of alleged violations brought before it by the Secretary of Labor, and, where warranted, (2) to issue corrective orders, and (3) to assess civil penalties. The Commission is to be composed of three members, appointed by the President (with the approval of the Senate) to serve 6-year staggered terms. The members will be chosen from among persons who are qualified by reason of training, education, or experience to perform their duties. One of the members shall be appointed by the President to serve as Chairman.

Labor Department Legal Representation.—The Solicitor of Labor is authorized to appear for and represent the Secretary in any civil litigation brought under the act subject to the direction and control of the Attorney General.

Trade Secrets.—Any trade secrets revealed to Labor Department personnel during the course of their duties under the act shall be considered confidential for the purpose of 18 USC 1905.

National Defense Tolerances.—The Secretary of Labor may allow reasonable variations, tolerances, and exemptions from any and all of the act's provisions, if he finds these necessary to avoid serious impairment of the national defense.

Federal Protection for Labor Department Inspectors.—The act broadens the provisions of Title 18 of the United States Code, which make it a Federal criminal offense to assault, kill, or otherwise interfere with certain law enforcement officials in the course of their assignments, by extending this protection to all employees of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions.

Annual Reports.—Comprehensive annual reports on the act must be prepared and submitted to the President for transmittal to the Congress by both the Secretary of Labor and the Secretary of Health, Education, and Welfare. Reports are also required from the Secretary of Labor on the grants program; from the Director of the National Institute for Occupational Safety and Health on the operations of that Institute, and from the Secretary of Labor on occupational safety and health programs for Federal employees.

New Assistant Secretary of Labor.—The law adds an additional Assistant Secretary in the Department of Labor to head the new Occupational Safety and Health organization within the Department.

Appropriations Authority.—Congress has authorized such funds to be appropriated to administer and enforce this law as Congress shall from time to time deem necessary.

ADDITIONAL INFORMATION

Additional information concerning this law may be obtained by contacting the nearest Regional Office, Occupational Safety and Health Administration, U. S. Department of Labor, with appropriate jurisdiction, or you may contact the Office of Information Services, Occupational Safety and Health Administration, U. S. Department of Labor, Washington, D. C. 20210.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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