

## LIVING AND WORKING WITH OSHA

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I am here today to talk to you about the Occupational Safety and Health Law and to tell you how to best live with that law. First, let's recap how we arrived at such a law and some of the problems we are having because of it.

The mounting injury rate registered by all industries since 1958 was the primary motivating factor that led the Congress to the passage of the Williams-Steiger Act in December of 1970. The lack of company safety programs, the lack of state controlled programs and apathy on the part of some managements and employees were contributors to the rising tide. The day of a free ride in a giveaway society has also caused injury rates to rise. A well documented alleged injury in many places pays as well as going to work.

Labor was, of course, vitally interested in Federal legislation. Therefore, the persistent and strongest thrust came from that quarter to pass the Act into law. Several versions of the bill were proposed in Congress beginning with the Eisenhower Administration.

The Williams-Steiger Bill that finally passed was preceded by many House and Senate Committee meetings and hearings on the subject. The bill that passed does not represent 100% of the views of labor, management, the Nixon Administration or Senator Williams or Congressman Bill Steiger; but rather is a compromise bill. At the time of the law's passage it did, however, have the support of all organizations, associations and individuals who were active in its development. Since the signing of the Act into law, needless to say there have been some problems with its administration.

Lack of management's full participation in the formulation of the law during its development played a large part in the lack of understanding and some of the problems that we are having today. Many of those who were actively involved during the formative stages chose to oppose rather than offer constructive criticism in what was eventually to become a reality. In this age of protectivity without active participation from all concerned, you cannot expect total satisfaction.

Labor in its eagerness to have the law put into effect created pressures in the development of procedures required to implement the law that have caused problems that face us today. Standards were thrown together with resulting duplication, ambiguity and a bit of blue sky thrown in for good measure that had no relationship to the safety and health problem at all. There are even cases where standards require things where there is no engineered solution for.

We in management would have been much happier and we all would have been better off if the standards package had been studied a little more in depth prior to its promulgation. I think the Department of Labor feels the same way especially with the extensive revision program that they have had to undertake to bring the standards into line with reality.

Also contributing to the difficulty we have today is the fact that the Occupational Safety and Health Administration, who is charged with implementing the law, was new and faced a tremendous task. The Safety and Health Administration was born coincident with the passing of the law. There is no organization that can take over a program as

large and complex as the one that they have without problems and criticism. Aside from the problem of promulgating standards and building an enforcement arm, OSHA has been faced with severe criticism from its biggest critic, organized labor. They have been critical of what they feel is a shortage of compliance officers and funds for enforcement and the educational elements of the occupational Safety and Health Program. Labor also seeks more penalties for violators and a greater labor role in the OSHA administration. I personally praise the Safety and Health Administration for doing as good a job as they have done with the pressures they have been faced with and the short time they have had to react to a new law. I dare say, we would all find it extremely more difficult to deal with this new law and those administering it if the top executives guiding the program had not had a great deal of experience in management in the private sector.

Shortly after the first of the year George Guenther, who heads the Occupational Safety and Health Administration, brought about organizational changes within the administration. The changes that resulted are already causing the inspection and standards scene to take on a new look. Citations that formerly were considered nitpicking by some are being ruled as lesser important and the emphasis is being placed on deficiencies where the most good can be realized. There is more continuity and uniformity in what is being done at all levels today as opposed to six months ago. There are some exceptions, of course.

The administration is doing all possible to assist states in developing their plans that will, when approved, surpland OSHA as we know and see it today. Planning grants of over six million dollars have been provided the states. These grants are being made into broadside fire from labor that the administration is undertaking an all out effort to give up their responsibilities which labor says will dilute the effect of the law. Labor wants more federalization, more inspectors, more inspections, more penalties, all of which would weigh heavily in the direction of one-sided administration of the law.

On the other hand, some managements are bringing their feelings to the floor of the Congress through such proposals as those made by Senator Curtis of Nebraska on the 29th of February.

His proposed amendment to the law, if accepted, would exempt employers with 25 or fewer employees. Employers in this category in many experts' opinion are some of the larger contributors to the very reason we have such a law.

He also proposes that there be an amendment to delay the effectiveness of the law for one year as sort of a grace period, so that businesses can become acquainted with and voluntarily comply with the standards. This, of course, was provided for initially in the setting up of the program by providing eight months get ready time prior to the first inspection last September to say nothing of the many months and years that these very same standards were being touted by company safety people, insurance companies and state safety activities. These very same standards were available to anyone who wished to refer to them from the American National Standards Institute and the National Fire Protection Association. I doubt seriously that any extensions of a familiarization period would yield any greater understanding or level of voluntary compliance.

The Senator also proposed that the Secretary of Labor be required to evaluate all the regulations, distinguish the various facets of a given general form of business and determine if the rules should or should not apply to each facet. This particular point I can't at all take exception to.

Had this procedure been followed prior to the promulgation of the standards, we would not be suffering from the problems that the lack of such a procedure has caused.

He also proposes that the Department of Labor make available technical assistance to smaller places of employment, which is indeed a valid requirement, particularly where there is no source for a company to turn to for technical assistance. But, on the other hand, why just help for one and not the other?

Time will not permit going through each and everyone of the Senator's proposed amendments but I would like to mention the thirteenth of his package in summary. His last proposal would allow for an employer entering into an agreement with the Secretary of Labor whereby an alleged violation might give the employer an option of complying in lieu of using the present provisions of the law and imposing a penalty for having failed to comply. On the surface this looks good but, if adopted, it would take some of the very necessary teeth out of the program. Let's face it, most of the conditions that have already been corrected in industry under OSHA would never have been corrected without a visit from a compliance officer or the threat of a penalty. Opening the door to such a contractual arrangement would in no way encourage voluntary compliance today any more than existed prior to OSHA.

At last count there were about 450 compliance officers in the field to visit over four million work places. This is nothing more than a token force. I figure that it would take approximately 20,000 inspectors just to visit 20% of our nation's workplaces per year. However, take this token threat away and the slackers would keep right on slacking and the problems in the work place would never be corrected.

I don't wish to in any way imply that some changes to the Safety and Health Law wouldn't be appropriate. Any law as far reaching and as important as this one can't possibly be perfect. After a year of operation the law should certainly be subject to a very critical review and appropriate changes should be made where required. Everybody who has the least concern in the matter should play an active part in making any changes. Collectively we failed in this respect during the formative stages of the Safety and Health Law. Management did not participate to the degree they should have. Any changes today, whether it be in the law, an existing standard or the drafting of a new standard, management should be involved.

While I am dealing out criticism, I would like to point out that there is a feeling by many that they have been poorly informed on many matters dealing with the Safety and Health Law. Recently a Congressional Representative from the State of Wyoming said on the floor of the House that many of his constituents are upset by the fact that they are being fined by the Department of Labor, even before the Department has gotten around to seeing that each and every individual affected by the law had received a copy of the regulations. I really don't think that the Department of Labor alone should have to shoulder this criticism. There were many others who dropped the ball as well. I refer to the many trade associations that should have bridged the communications gap but didn't get involved.

As George Guenther and many of us who are active in the program have said many times, "this is a team effort and not only the government but the private sector, both labor and management, must play an equal role in shouldering the responsibilities of implementation of the new law." Attacking the Department of Labor or any one element that is responsible for carrying out the dictates of this program totally misses

the target. I think it is very unfair to say that any one element should bear the full blame of what has happened. Rather than to look over our shoulders at what has happened, why not put this not so well placed energy into a positive direction in the future.

For those who understand the three basic elements of a good accident prevention program, know that enforcement is essential and complements the education and engineering elements. What our country lacked prior to the safety and Health Law was a good enforcement program. For all practical purposes there was none. As for education there wasn't too much consistency or continuity because of a lack of voluntary participation in available programs that would have served these purposes. OSHA can help tie these loose ends together, even though we may not agree with some of the methods that have been used as motivating forces.

The penalty aspects of the Safety and Health Law will serve a motivating purpose as penalty threats do in other areas. A few will get bitten in the pocketbook but for the most part those who will, deserve being bitten.

In summary, as I have said to other groups there are ways that we can and should live with the Occupational Safety and Health Law.

To help guide you, I suggest that -

A) Your group might consider the establishment of a working Safety and Health Committee.

B) If you have not already done so, I urge you as a group to study, understand and communicate within your group the full meaning of the law.

C) If you have ideas of how the Law can be amended to be more effective, communicate your feelings to your legislators.

D) If you do not understand, agree with or feel that a standard is as it should be, there are rules and procedures for taking action individually or through your group or Association to make changes. Use them.

E) If there is no standard that covers your operation, take the initiative through your group or Association and start the wheels into motion to develop one. If you don't, George Guenther and his staff will do it for you.

F) Encourage voluntary compliance programs within your individual operations.

G) If your company is inspected and subsequently cited and you do not agree with the citation for any reason at all, or you do not understand the citation, write to as well as call the Area Office of the Occupational Safety and Health Administration. You can't resolve these problems by sitting on them. Do it immediately, but certainly within the first 15 days after receiving your citation. After that time, the citation and proposed penalty become the automatic ruling of the Review Commission.

H) The seven points that I have just made can be summarized in one sentence -

Gentlemen, get involved and make this program one that will pay off to you in dollars and the satisfaction that you have provided a safer place to work.