EXECUTIVE OFFICE OF THE PRESIDENT
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ARTICLE ON OSHA SAFETY & HEALTH RULE, FYI

NOTE: IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS POSSIBLE.

tions" with the exception of claiming that it is the exclusive representative of the workers or is bargaining on behalf of the employees, Silberman told BNA April 24. He said that under a substitute version of the legislation, approved by the House Economic and Educational Opportunities Subcommittee on Employer-Employee Relations in early March (45 DLR A-1, 3/8/95), it would be permissible for such employee groups to discuss even "terms and conditions of employment" as part of the broader "issues of mutual interest."

Terms and conditions of employment are reserved for discussion with the bargaining agent in a unionized setting, Silberman said. Even in a non-union situation, he said, terms and conditions are supposed to be addressed in a way that allows employees an independent voice.

That is the intent of the original 1935 statute, he said. But proponents of the amendment "are trying to redefine company union, saying they are not trying to recreate [such company unions.] But they are recreating them in effect," he charged.

Coalition Opposed Broader Reform

Coxson said the TEAM Coalition has tried to have a dialogue with labor on the issues but has been told that there is "not much room" for a modification in labor's position unless the business community is prepared to open the discussion up to the broader labor law reform. But business, he said, "is not interested in wholesale labor law reform."

Coxson said he has been surprised by the vehemence of labor's opposition to the amendment to Section 8(a)(2). "I thought it would be easy to advance" the bill, given the general agreement that workers need to have more voice in the workplace. But Coxson said he now concedes that "it will be a long process" to get the measure enacted, but "ultimately we will prevail."

A Republican staffer for the House Educational and Economic Opportunities Committee said April 24 the full committee is expected to take up the measure "before the summer," but no date currently is set.

Prior to approval of the bill by the House subcommittee in early March, Labor Secretary Robert B. Reich wrote to subcommittee Chairman Harris Fawell (R-Ill) warning that President Clinton would veto the bill if it is approved by Congress. More recently Hillary Rodham Clinton, speaking to the International Association of Machinists legislative convention, reiterated the president's intention to veto the bill (57 DLR A-21, 3/24/95).

Safety and Health

PANEL URGES OSHA TO MOVE FORWARD ON RULE FOR SAFETY, HEALTH PROGRAMS

The Occupational Safety and Health Administration should give high priority to its development of a rule requiring employer safety and health programs, an advisory panel has recommended.

The National Advisory Committee on Occupational Safety and Health's recommendation strongly endorses a safety and health program standard. Such a standard, which is generally supported by both employer and employee groups, has been repeatedly cited as OSHA's top regulatory priority under the Clinton administration.

While OSHA has sought to develop the standard in part to spur all employers to produce an overarching plan to address work hazards, heightened congressional opposition to government regulation has left the future of the safety and health standard, as well as other OSHA standards, in doubt. While OSHA has not completed drafting the rule, the agency decided in October 1994 to merge it with two other related standards that would set employer requirements for conducting medical surveillance and exposure assessment.

Endorsed Safety, Health Requirements

The NACOSH panel, which includes representatives from employee and employer groups, formally endorsed the safety and health program requirement in November.

The panel's final recommendations released April 11 continued to support OSHA's decision to combine the related standards but added that medical surveillance requirements should be applied "only where science and professional judgment indicate it is useful and [where] there is a potential employee exposure."

OSHA has yet to publish a proposed rule on the safety and health program requirement, but is expected to provide a schedule for the rule-making under the agency's semiannual regulatory agenda planned for *Federal Register* publication later in April. OSHA Administrator Joseph A. Dear told the panel April 10 that he remains committed to the proposal but added that the agency will determine the level of employer and employee support for the standard over the next several months.

Other Recommendations

In the April 11 report, NACOSH also recommended that:

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• development of the standard be coordinated with the agency's development of related education, compliance assistance, and outreach programs involving OSHA, states that operate their own job safety programs, employers, and other groups; and

• basic elements of the OSHA-required safety and health plan be flexible so that employers of all sizes could readily understand and implement a plan that best fits their needs. However, OSHA should provide elements it can demonstrate have an impact on improving safety and health.

"Flexibility should be based on the type and degree of hazard and the elements may be formal or informal," the NACOSH recommendations said. "Flexibility is especially important for small businesses."

NACOSH added that representatives from the insurance industry, professional associations, and employee and employer groups that made presentations to the panel agreed that the best health and safety programs include:

• management and employee commitment at all levels;
• management and supervisor responsibility;
• clearly defined roles and responsibilities;
• employee involvement and participation;
• good employee communications and dialogue;
• identification followed by abatement of hazards;
• timely implementation of health and safety recommendations;
• health and safety problem investigations;
• management and employee training;
• medical monitoring and surveillance; and
• enforcement and other measurements of success and failure.

ESOP

UNITED AIRLINE EMPLOYEES SEEK $1 BILLION FROM ESOP TRUSTEE

CHICAGO—The trustee of the United Airlines employee stock ownership plan is being sued for more than $1 billion in a class action filed by plan beneficiaries who allege the trustee caused them to overpay for their majority stake in the airline's parent company, UAL Corp. (*Summers v. State Street Bank and Trust Co.*, DC NIL, No. 95 C 2271, 4/13/95).

Clyde Platt, who is representing the plaintiffs, said the class action suit was filed against Boston-based State Street Bank and Trust Co. in the U.S. District Court for Northern Illinois on April 13.

Platt, an attorney with the Seattle firm of Hagens & Berman, said State Street Bank violated its financial obligations under the Employee Retirement Income Security Act by authorizing employee participation in a transaction that was not in their best interests.

"In violation of its fiduciary duties to the UAL ESOPs and its participants and beneficiaries, State Street unlawfully and imprudently authorized the UAL ESOPs' acquisition of UAL shares of stock at a price that was grossly above fair market value," the suit states.

The suit seeks to represent the approximately 50,000 UAL employees who have been beneficiaries of the company ESOP since July 12, 1994, when a complex recapitalization plan was established giving employees a 55 percent stake in the airline.

Plan Covers Some 8,000 Pilots

The ESOP covers more than 8,000 United pilots represented by the Air Line Pilots Association, 23,000 machinists represented by the International Association of Machinists, and 17,000 nonunion salaried UAL employees.

The suit specifically notes that under the UAL buyout plan, employees agreed to cuts in wages and benefits and various work rule changes over more than five years at a value of between $3.3 billion and $4.9 billion in return for a majority position in the airline. While these concessions assume per share consideration of $198 for the transaction, the suit calculates the value of UAL's stock at $88 per share. The suit suggests that this overpayment may total more than $1 billion.

As the fiduciary of the UAL ESOP, the suit states that State Street Bank should have demanded modifications to the transaction, guaranteeing a more equitable price for UAL employees.

The suit asks that the plaintiffs be granted the amount they overpaid for UAL stock and demands that State Street Bank be permanently enjoined from serving as a fiduciary for any plan covered under ERISA.

Officials with State Street Bank would not comment on the suit.

Unfair Labor Practice

DOCK WORKERS UNLAWFULLY FIRED FOR REFUSING TO WORK OVERTIME

Four dock workers were engaged in a protected concerted activity when they refused to work overtime, although they had not discussed a group activity or common cause, the U.S. Court of Appeals for the Ninth Circuit found (*NLRB v. Yurosek & Son Inc.*, CA 9, No. 93-70754, 4/21/95).

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Date: 05/16/95 Time: 16:24

Clinton Proposes Rewarding OSHA Inspectors for Injuries They

WASHINGTON (AP)   President Clinton said today he wants OSHA inspectors rewarded for the number of workplace injuries they prevent, not the number of citations they write. ``We're interested in prevention, not punishment,'' he said.

Unveiling his latest effort at ``reinventing government'' at a local sheet metal shop, Clinton said, ``If the government rewards inspectors for writing citations and levying fines more than ensuring safety, there's a chance you'll get more citations, more fines, more hassle   and no more safety.''

The initiative is part of a new mission for the Occupation Safety and Health Administration: Reward companies that cooperate with employees to find and fix safety hazards.

``This is sort of a new face of OSHA,'' said Elaine Kamarck, senior policy adviser for Vice President Al Gore.

The OSHA changes come at a crucial time for the embattled agency. Congressional Republicans are considering cutting OSHA's budget in half, and the business community has long accused the regulators of enforcing irrelevant rules with heavy-handed tactics.

``We've spent the last two years reforming OSHA   developing alternatives to nitpicking regulations and making worker health and safety the preeminent goal,'' Labor Secretary Robert Reich said in a telephone interview.

``Republicans now want to gut OSHA and, in so doing, are jeopardizing the lives and limbs of countless American workers,'' Reich said.

Clinton also attacked Republican efforts to drastically reduce federal regulations. ``They don't want rigorous reform,'' he said. ``Looks to me like they want rigor mortis.''

The effort is not likely to impress Republicans who accuse Clinton of moving too slowly to slash government. House Republicans also want a moratorium on all federal regulations, a proposal Clinton says is too severe.

Under the new strategy, Kamarck said OSHA would:

Stop rewarding safety inspectors based on the number of citations they write. Their job performances will now be based on the success or failure of the worker-management safety teams they supervise at various firms, using injury rates and related data to score performances.

Allow for ``quick fixes,'' giving inspectors authority to waive or reduce fines if the violation is corrected on the spot. Currently, tickets are issued for easily resolved problems, such as a worker not wearing a hard hat.

OSHA wants to avoid confrontations ``that get lawyers noodling everywhere   fighting fines and imposing fines,'' Kamarck said.

Eliminate or change scores of regulations. For example, plastic gasoline cans approved for sale to consumers are not allowed on factory floors, Kamarck said.

The cornerstone of the OSHA plan will expand a pilot project in Maine to all 67 OSHA field offices, Kamarck said. Under the project, companies with the worst safety records are urged to establish safety teams for finding and eliminating workplace hazards. The teams must consist of employees and managers who work under OSHA supervision.

The program has its critics.

Maine AFL-CIO President Charles O'Leary said today organized labor advocates are wary of the program because ``it looks like a sweetheart agreement in some cases.''

Washington attorney Baruch Fellner, who represents management in worker safety disputes, said the Maine program rated results based on workers' compensation claims, which he said are unreliable.

``It's more fluff and less substance,'' said Fellner, who was OSHA's associate counsel in the 1970s.

Companies that use safety teams could qualify for ``large reductions, up to 100 percent, on penalties'' for safety violations found by OSHA inspectors, the agency says in a report prepared for Clinton. The reductions could be allowed at the discretion of inspectors.

Companies that refused to form safety teams would be subject to traditional OSHA inspections and penalties, a frequently confrontational process that leads to lengthy legal battles and large fines.

In Maine, OSHA found that management-worker safety teams discovered and fixed 14 times as many safety problems as the agency would have turned up, Kamarck said.

``It's both less bureaucratic ... and more effective in dealing with dangers, which is what you want in the regulatory system,'' she said.

OSHA has about 2,000 employees for overseeing health and safety conditions at 6 million workplaces.

APNP-05-16-95 1625EDT

5-16-95
Wall Street Journal

Clinton to Slash OSHA Regulations In Overhaul Plan

By Asra Q. Nomani
Staff Reporter of The Wall Street Journal

WASHINGTON – The Clinton administration plans to reduce regulations at the Occupational Safety and Health Administration, as part of its broad "reinventing government" program.

President Clinton, who is planning to release details today at the Stromberg Sheet Metal Works here, is partly responding to widespread corporate and Republican criticism that OSHA regulations are too cumbersome and costly.

The Clinton administration has stepped up its efforts to "reinvent" government since the Republican sweep in last November's elections. It has been unveiling several efforts to streamline regulations partly in reaction to regulatory reforms pressed by congressional Republicans that the White House views as too extreme.

OSHA has been the target of much criticism by groups such as the National Association of Manufacturers and the U.S. Chamber of Commerce. There has been Republican momentum on Capitol Hill to reduce the agency's funding drastically.

At OSHA, the administration plans to slash fines and penalties for employers that cooperate with efforts to reduce on-the-job safety problems. It plans to take nationwide a program started in Maine, administration officials said.

In the program, called Maine 200 because it effects 200 companies, OSHA uses worker-compensation data to identify companies with bad health and safety records.

The companies with the worst histories are instructed by OSHA officials to either implement effective health and safety programs, or face the likelihood of a comprehensive OSHA inspection and potential fines.

OSHA officials have the employers put together management-employee teams to remedy the problems. President Clinton is expected to cite numbers that show the Maine 200 program identified and fixed 14 times more safety problems than OSHA would have otherwise identified.

The new OSHA guidelines would also stop setting numerical goals for how many citations safety inspectors write against employers or how many inspections they conduct at work sites.

Job performance for the inspectors instead would be evaluated based on a reduction in injury and illness rates at work sites.

The new OSHA program would also let employers remedy problems immediately, rather than face costly fines or inspections.

Federal and state OSHA offices have about 2,000 inspectors responsible for 93 million workers at six million work sites. In the wake of increased scrutiny, OSHA has even begun issuing "myth versus reality" papers to correct rumors about regulations that it supposedly oversees.

Photo by Tracy A. Woodward/The Washington Times

President Clinton unveils new proposals for workplace safety before workers and managers at a sheet metal factory in Southeast.

Clinton unveils new rules for job safety, hits GOP

ASSOCIATED PRESS

Outlining new business-friendly job safety rules, President Clinton said yesterday that budget cuts sought by Republicans "put at risk the health and safety of millions of ordinary American workers."

"They don't want rigorous reform; looks like they want rigor mortis," Mr. Clinton said.

"They have ... gone after the worker protection standards with a little bit of extra gusto," he said of GOP proposals in Congress to stay the hand of the Occupational Safety and Health Administration (OSHA) by cutting its budget in half.

Standing on the concrete floor of a Washington sheet metal factory, the president pointed to an overhead banner reading "Common Sense At Work" and sketched a new approach to workplace safety.

He said it would encourage the formation of worker-management task forces to root out the causes of health and safety problems before they cause injuries and deaths.

The model is a two-year pilot program involving 200 companies and their workers in Maine that administration officials said sharply cut injury rates.

Mr. Clinton said the new approach would soften the inspect-and-punish regime that he said poisoned previous safety efforts by alienating management.

The initiative, part of the administration's overall drive to "reinvent government," was unveiled before an audience of workers and managers at Stromberg Sheet Metal Works in Southeast Washington.

Unlike past practice, Mr. Clinton said he wants OSHA inspectors rewarded for the number of workplace injuries they prevent, not the number of citations they write or the amount of fines they levy.

But he said that even as the administration puts a new and more effective health-and-safety structure into place, the Republican leadership of Congress is "mounting an assault on our ability to protect people in the workplace at all."

The business community has long accused OSHA regulators and inspectors of enforcing irrelevant safety rules with heavy-handed tactics.

But Mr. Clinton said the response being offered by the GOP goes too far and ignores the changes his administration is making.

"They're not trying to reform the system of worker protection, as we are, but instead to dismantle it and therefore to destroy our ability to pursue its fundamental purpose," he said.

But some critics say the new approach also is flawed.

MAY 17 1995

WASHINGTON TIMES

USA TODAY · WEDNESDAY, MAY 17, 1995 · 5B

Clinton: Revamp OSHA approach

From wire reports

President Clinton said Tuesday that he wants OSHA inspectors rewarded for the number of workplace injuries they prevent, not the number of citations they write. "We're interested in prevention, not punishment," he said.

The initiative is part of a new mission for the Occupational Safety and Health Administration: Reward companies that cooperate with employees to find and fix safety hazards.

The OSHA changes come at a crucial time. Congressional Republicans are considering cutting half of OSHA's budget, and businesses have long accused the regulators of heavy-handed enforcement of irrelevant rules.

"We've spent the last two years reforming OSHA — developing alternatives to nitpicking regulations and making worker health and safety the pre-eminent goal," Labor Secretary Robert Reich told the Associated Press in a telephone interview. "Republicans now want to gut OSHA and, in so doing, are jeopardizing the lives and limbs of countless American workers."

The effort is not likely to impress Republicans who accuse Clinton of moving too slowly to slash government. House Republicans also want a moratorium on all federal regulations, a proposal Clinton says is too severe.

Under the new strategy, Elaine Kamarck, senior policy adviser for Vice President Gore, says OSHA will:

▶ Stop rewarding safety inspectors based on the number of citations they write. Their job performances will be based on the success or failure of the worker-management safety teams they supervise at various firms, using injury rates and related data to score performances.

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The cornerstone of the OSHA plan will expand a pilot project in Maine to all 67 OSHA field offices, Kamarck said. Companies with the worst safety records are urged to establish safety teams to find and eliminate workplace hazards.

2

Tuesday, May 16, 1995 The Dallas Morning News

OSHA to cut back on penalties in exchange for cooperation

Associated Press

WASHINGTON — The Clinton administration plans to dramatically reduce OSHA fines and penalties for companies that agree to cooperate with workers in eliminating job-site hazards, administration officials said late Monday.

In the latest proposal for "reinventing government," President Clinton on Tuesday will tell the Occupational Safety and Health Administration to quit rewarding inspectors based on the number of citations they issue.

"This is sort of a new face of OSHA," said Elaine Kamarck, a senior adviser to Vice President Al Gore, who heads the administration's reinventing government effort.

The cornerstone of the OSHA plan will expand a pilot project in Maine to all 67 OSHA field offices, Ms. Kamarck said. Under the project, companies with the worst safety records are urged to establish safety teams for finding and eliminating workplace hazards.

Companies that adopt safety teams could qualify for "large reductions, up to 100 percent, on penalties" for safety violations found by OSHA inspectors, the agency says in a report to be released Tuesday.

Companies that refuse to form safety teams would be subject to traditional OSHA inspections and penalties, a frequently confrontational process that leads to large fines and lengthy legal battles.

DENVER POST 5-16-95

Clinton to reduce OSHA penalties

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Brolin Cheryl

From: Belsky Al@NOSAL@DOL@3CR
To: CBROLIN; RLIBLONG
Subject: AP Wire-OSHA (Update)
Date: Tuesday, May 16, 1995 4:23PM

FROM: Belsky Al@NOSAL@DOL@3CR
(MBNET/MSR/BelskyAl00)

TO: CBROLIN
TO: RLIBLONG
DATE: 5-16-95
TIME: 05:03
SUBJECT: AP Wire-OSHA (Update)
PRIORITY:

To: {CBROLIN@MMOSHA01@DOL@MSR}:3CR:DOL
cc: {RLIBLONG@MMOSHA01@DOL@MSR}:3CR:DOL

Date: 5-16-95 4:25pm Associated Press

Clinton Proposes Rewarding OSHA Inspectors for Injuries They Prevent
By RON FOURNIER

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[Robert&Reich]