AN OCCUPATIONAL SAFETY AND HEALTH STATE PLAN

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ABSTRACT

The reasons for the Occupational Safety and Health Act are reviewed, including a brief summary of the Congressional action incident to passage of the Act. The declared purpose of Congress is delineated in the 13 ways proposed to achieve its purpose to assure, so far as possible, safe and healthful working conditions for every employee in America and to preserve this country's human resources. Coverage of the Act and some aspects of its implementation are considered. The basic consideration of developing and implementing a State Plan are outlined including some of the disconcerting problems involved.

Not unlike many of our public health laws that are responsive to the needs of all people, safety and health laws, historically, have been left to the states and their legislative actions. Hence the laws were a response relative to problems of the particular state and their application was befitting the circumstances in that state.

A few industrialized states did develop safety and health programs and supporting laws in an effort to reduce deaths and control accidents and injuries in the workplace. There was, however, a great deal of frustration within those states that were bordered by states who saw no need for comparable programs or legislation.

Finally, in 1970, such statistics as almost 15,000 deaths and hundreds of thousands of serious injuries in the workplaces of the United States billowed up in Congress like a smoke signal. Action began to develop. As is true of most important legislation, there quickly developed differences of opinion in interest and philosophy which involved both party politics and labor-management considerations. Among the notables in the House of Representatives were Congressmen Hathaway, O'Hara, Perkins, Steiger, Sikes, and Daniels. In the Senate there were Williams, Javits, and Dominick.

Finally, the joint committee met in five sessions to work out the difference between the bills from the House and Senate. After brief debate the conference report was approved by both legislative bodies. On December 29, 1970, President Nixon signed into law the Occupational Safety and Health Act of 1970.

The ultimate success or failure of the Act is dependent on the understanding, the belief in, and the implementation of the Act so the objectives expressed by the Congress will be achieved. Congress felt that work-related personal injuries and illnesses imposed a substantial burden on and hindered interstate commerce by causing losses in production and wages and through medical expenses and disability payments.

THE INTENT OF CONGRESS

Congress declared it to be its purpose and the policy of the nation to assure so far as possible safe and healthful working conditions to every employee in America and to preserve this country's human resources. For the record I am quoting the intent of the Congress to achieve it's purpose in the following ways:

"(a) By encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(b) By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(c) By authorizing the Secretary of Labor to set mandatory Occupational Safety and Health Standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(d) By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(e) By providing for research in the field of occupational safety and health including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(f) By exploring ways to discover latent diseases, establishing casual connections between diseases and work in environmental condition, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(g) By providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(h) By providing for training programs to increase the
number and competence of personnel engaged in the
field of occupational safety and health;
(i) By providing for the development and promulgation of
occupational safety and health standards;
(ii) By providing an effective enforcement program which
shall include a prohibition against giving advance notice
of any inspection and sanctions for any individual violat­
ing this prohibition;
(k) By encouraging the States to assume the fullest res­
ponsibility for the administration and enforcement of
their occupational safety and health laws by providing
grants to the States to assist in identifying their needs
and responsibilities in the area of occupational safety
and health, to develop plans in accordance with pro­
visions of this Act, to improve the administration and
enforcement of State occupational safety and health
laws, and to conduct experimental and demonstration
projects in connection therewith;
(l) By providing for appropriate reporting procedures with
respect to occupational safety and health which proce­
dures will help achieve the objectives of this Act and
accurately describe the nature of the occupational safe­
ty and health problems.
(m) By encouraging joint labor-management efforts to re­
duce injuries and disease arising out of employment.”

There is no question that if these objectives can be
conceived of by workers in the workplace will be wrought
and many lives will be saved and much lost time in­
jury will be avoided. Objectives k, l, and m are the
key areas in which the States have undertaken de­
velopment and proposed implementation of the Wil­
liams-Steiger Occupational Safety and Health Act of
1970.

DEVELOPING A STATE PLAN

Coverage of the Act is quite broad and is still un­
der fire in many quarters. But in general, the defi­
ition of employer and employee from a legal point of
view is inclusive with few exceptions. These few
exceptions include: domestic help in a private home
and the immediate family of a farm family operation,
also public employees are excluded from coverage of
the Act. In developing a State Plan acceptable to the
U. S. Labor Department, under the terms of the
Act, a State is obliged to consider many ramifications
and applications, among which is, as a general duty
in structuring it's program and legislation, to realize
that the common law concept—that a person must re­
strain from actions which cause harm to others— is
part and parcel of the Federal Act and must be car­
ried into the action and legislation of any State pro­
gram.

Other aspects to be considered are (a) the Stan­
dards. Standards would, of necessity, be required as
effective as those of the Federal Standards. (b) En­
forcement. Enforcement likewise needs to be as ef­
factive as though it is carried on by Federal com­
pliance personnel and administrative procedure. (c) There
must be a system of administrative review of
the various citations when undertaken at the State
level. (d) Also, some form of legal or judicial review
is necessary as part of the State plan and support
legislation. (e) To know where we have been and
where we are going, records, statistics and reports
will be a part of the basic program and need to be
designed so that they can be responsive to the needs
of the particular state. (f) A great deal of research
is necessary since, very quickly, it was realized that
the U. S. Labor Department under the Assistant
Secretary for Occupational Safety and Health was
learning as it attempted to implement Public Law
91-596. There has been great diligence in the attempt
of the U. S. Labor Department to work out its plans
to assist the various States in their efforts to assume
the responsibility which could be delegated to them
by authority of the Act but this monumental respon­
sibility and effort has been interrupted by a change
of Secretaries and circumstances within the depart­
ment which have materially slowed down the process
of approval and implementation of State Plans.

STEPS IN DEVELOPING THE PLAN

Speaking for the States where only a limited ac­
tivity in occupational safety and health was in ef­
fact, it was almost like starting from scratch.

The steps in the development of the Plan are essen­tially these: First, the Governor of the State
appoints a designee, a department or agency within
the State that becomes the responsible occupa­tional
safety and health agency to ultimately enforce and
implement the Act at the State level.

Second, the State agency, in most instances under
a grant, as authorized under the Act, will do re­
search and evaluation of their State needs.

Third, following this exploration, in most instances,
additional monies are provided on a matching basis
from the Federal government for developing plans
and procedures to actually assume responsibility at
the State level. These plans will, of necessity, re­
quire the following basic considerations:

(a) An adequate administrative staff which will include
the necessary administrative assistants and clerical back­
up along with the expertise needed for a standards
and training capability for the ongoing program to
insure updating and review of standards as well as com­
pliance procedures.

(b) A strong and effective compliance department is re­
quired by the Act to enforce the regulations promul­
gated and adopted under legal authority within the State.

(c) In connection with the enforcement process, to be ac­
ceptable, it is paramount that there be established a
Review Board and an advisory committee. In most
instances these people will be appointed by the Gov­
ernor of the State and approved by its legislature, either
in the House or Senate or the appropriate body within
its structure.
(d) Under the Act there will be, of necessity, some effort to establish comparable rules and regulations "as permitted by State law" to protect public employees within that individual state.

(e) The next facet of any State program will be that of statistical competence. This effort is developed through the Bureau of Labor Statistics. Hopefully in development of statistical information and management information systems (MIS), we, at the State level, will be able to ascertain our needs and develop priorities for activity that will reduce the number and severity of injuries as well as number of fatalities.

(f) The other area open to the States within their planned implementation of the Federal Act is authorization by the U. S. Labor Department to develop a technical service and training section for the State operation. In our Plan, we refer to it as our Department of Technical Services and Education. This activity must be kept separate from the compliance group (enforcement group), as referred to in the Federal activity. This is based on the fact that one of the means by which Congress expected these laws to be effective reads (Item 10, in part)—"shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition."

In Mississippi all responsibility for occupational safety and health is vested in the Division of Occupational Safety and Health. In most other states there is a Department of Labor or similar department which is the designee. Matters of training and education, the industrial hygiene, and the health facility are contracted to another department of the State as is statistical activity. This permits the designee to be less concerned with overlap of certain functions and also gives the designee the peculiar advantageous situation in that all policy and procedure can be directed more expeditiously and objectively without the problem of coordinating interagency prerogatives and administrative problems.

**THE REVIEW PROCESS**

One of the major problems in developing an adequate Plan and functional procedure has been the review process through which the States must develop such a plan. I presume, of necessity, the Labor Department has had to fragment its expertise in the review of plans. Some of those reviewers (exercising considerable authority) often seem inexperienced though articulate individuals who do not appear to have an overview of the total plan as it will be applied within the State, nor do they appear to have an appreciation of the problems or peculiar circumstances within the State that will influence administration of the Plan under its support legislation. It has been somewhat like dealing with a biological research team, each individual looking through an individual microscope in which each expert sees only a small field for which they are responsible and really not relating the individual part to the whole problem which would be the State's in its actual enforcement and implementation of the Plan. As I indicated, this in all probability, is due to the required expertise of the individual in each area of concern but, objectively, it has made it difficult for the States to communicate with the Labor Department at the Federal level in an expeditious manner toward getting on with approval of the Plans and, in fact, implementing the necessary action at the State level which would materially speed up the capacity to reduce accidents and injuries as was the intention of the Act when passed.

Plan approval at the regional level would, where full oversight exist and understanding of the capacity of the State Designee to perform, serve to expedite the intent and purpose of OSHA (PL 91-596).

The fact that there has been this delay at the Federal level has created considerable anxiety and doubt in the minds of our adversaries (opposing State Authority) as to the real intention of the U. S. Labor Department to transfer responsibility as is the expressed intention of the Act. This situation has made it difficult for the designated agencies in certain States to sell their legislature on the appropriate support legislation necessary to implement the Act and to transfer the full responsibility to the State designee.

There is no question that the Occupational Safety and Health Act is desirable and should be implemented with full speed. There are serious conditions in every State that need attention and any procrastination and delay either at Federal or State level is a serious disservice to the employees and employers of this nation.