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# The Occupational Safety & Health Act: Much Ado About Something

Marjorie E. Gross\*

## I. INTRODUCTION

On December 11, 1971, construction workers were excavating a water tunnel in Port Huron, Michigan. Although the tunnel was inadequately ventilated allowing a build-up of methane gas concentrations, the employees worked on. That afternoon, the methane gas caused an explosion which resulted in the deaths of twenty-two workers.<sup>1</sup> Occupational Safety and Health compliance officers from the United States Department of Labor were on the scene within four hours. They began an investigation which led to the issuance from the federal district court of a temporary restraining order requiring workers to remain at least 100 feet from the tunnel.<sup>2</sup> On September 24, 1971, a Philadelphia firm was operating without the protection of several common safety practices such as guards around floor and wall openings, sufficient emergency exits, and portable fire extinguishers. When a Labor Department investigator came to inspect the premises, he pointed out the safety hazards and directed the employer to remedy them. In both these cases, the Department of Labor became involved. In the first case, Department inspectors reached the scene after the accident occurred and ordered changes to prevent similar occurrences in the future. In the second case, corrective measures were taken before a dangerous situation caused actual physical injuries. It is impossible to say whether lives or limbs were actually saved. However, the end result

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\* Miss Gross has been on the legal staff of the Occupational Health and Safety Review Commission since its creation in 1971.

1. See, O.S.H. Rep. 695 (Current Report, Dec. 30, 1971).

2. *Id.*

was that the workers were not as vulnerable to occupational injury when the Labor Department inspector left.

## II. HISTORY

A year ago, there were no Labor Department personnel whose duty was to inspect for conditions dangerous to occupational safety and health. Before 1968, the concept was practically unheard of. In the 1930's Congress had decided that working could be hazardous to the lives, health, and development of children.<sup>3</sup> It therefore passed laws restricting the employment of the young.<sup>4</sup> In the 1960's, legislators began to realize that employment could be equally as hazardous for adults:<sup>5</sup> each year, more than 14,500 workers are killed by industrial accidents;<sup>6</sup> nearly 2.5 million are disabled;<sup>7</sup> and approximately 390,000 are victims of occupational disease.<sup>8</sup> These figures describe an

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3. During the Eighteenth Century, many state laws regulating employment in coal mines were held to be constitutional. *See, Holders v. Hardy*, 169 U.S. 366, 393-95 (1897). The Bureau of Mines was established in the Department of the Interior in 1910; and in 1914, the predecessor of the Occupational Health Division in the Department of Health, Education and Welfare was formed. *See, BNA, THE JOB SAFETY AND HEALTH ACT OF 1970*, 15-16 (1970).

4. In 1916, Congress made its first attempt "to keep the arteries of commerce free from pollution by the sweat of child labor." *Lenroot v. Western Union Telegraph Co.*, 52 F. Supp. 142, 147-48 (S.D.N.Y. 1943). *See*, 39 Stat. 675, ch. 432 (1916). Although this law was declared unconstitutional in *Hammer v. Dagenhart*, 247 U.S. 251 (1918), and subsequent attempts to regulate child labor were also declared unconstitutional, *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922); *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), Congress kept trying. The child labor provisions of the Fair Labor Standards Act of 1938 were the first child labor regulations to be upheld. *See, Fair Labor Standards Act of 1938, as amended*, 29 U.S.C. § 212(c) (1961), *United States v. Darby*, 312 U.S. 100 (1947). The Labor Department has traditionally prohibited the employment of most minors in particularly hazardous occupations. *See, i.e., Child Labor Regulations*, Order No. 2, reprinted in *Lenroot v. Western Union Telegraph Co.*, 52 F. Supp. 142, 145-46, n.1 (S.D.N.Y. 1943).

5. Actually, Congress recognized the need for minimum safety and health standards long before the 1960's. However, the legislators either thought the extent of their authority to promulgate such standards was limited or feared the reactions of businessmen forced to make capital outlays to improve working conditions. Thus, the Walsh-Healey Act of 1936, covering employees of government contractors prohibited the federal government from purchasing supplies or equipment manufactured "under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees. . . ." 41 U.S.C. § 35(e). The conditions themselves, however, were not prohibited. *But see*, n.30, *infra*. More specific safety and health provisions have been written into the Longshoremen's and Harbor Workers' Compensation Act, *as amended*, 33 U.S.C. § 941 (1958), the Coal Mine Health and Safety Act, 30 U.S.C. §§ 801, 811 (1969), and the Atomic Energy Act, *as amended*, 42 U.S.C. 2021 (1959). Nevertheless, the total number of workers covered by all these laws was an insignificant proportion of the 75 to 80 million jobholders in America.

6. 116 Cong. Rec. (daily ed. Nov. 16, 1970) (Remarks of Secretary of Labor Schultz) cited in U.S. CODE CONG. & ADMIN. NEWS 5178, 91st Cong., 2d Sess. (1970).

7. *Id.*

8. *See, H.R. REP. No. 91-1291*, 91st Cong. 2d Sess. 14-15 (1970). *But see* nn. 49 and 50, *infra* and accompanying text.

unfortunate by-product of our industrial progress. They represent what Senator Jacob Javits of New York has called our "industrial carnage."<sup>9</sup> In light of such statistics Congress decided to pass an occupational safety and health act in 1970.

Support for a bill had not been unanimous. Some critics claimed that worker carelessness is the greatest cause of accidents, and the preaching of accident prevention, rather than the institution of safety and health standards for machinery and the work environment, is the only way to eliminate work injuries. The facts show, however, that a combination of safety precautions and safety consciousness is most effective in reducing casualties. For example, the National Safety Council, a large private safety organization which is composed of employers in all fields who have pledged to abide by recognized industrial safety standards, has achieved remarkable success in reducing accidents. By using such recognized industrial safety measures as fire prevention, safety guards for machinery, adequate lighting and good housekeeping, Safety Council members in manufacturing industries managed to log only 5.3 disabling injuries per million employee hours worked in 1968, while non-member employers amassed an overall rate of 17.9.<sup>10</sup> Moreover, existent federal safety legislation had proved quite effective. For instance, after ten years of enforcement of the Maritime Safety Act,<sup>11</sup> accident frequency rates had dropped 53 percent for longshoremen<sup>12</sup> and 41 percent for shipyard workers.<sup>13</sup>

With such statistics as a motivating force, the time was ripe in early 1970 for action in the field of safety and health. There was no dispute that a strong federal occupational health and safety program was necessary to achieve a diminution in industrial accidents. Private industry and state regulation were not doing an adequate job of insuring health and safety in the workplace. Such a federal program was the kind of legislation most Congressmen find easy to support. After all, most voting constituents are workers; and what could be more appealing than worker health, or more desirable than safety on the job? There was also no dispute that the federal program should include

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9. S. REP. NO. 91-1282, 91st Cong., 2d Sess. 54 (1970) (Individual views of Senator Javits).

10. National Safety Council, *ACCIDENT FACTS* (1970).

11. Longshoremen's and Harbor Workers' Compensation Act, *as amended*, 33 U.S.C. § 941 (1958).

12. National Association of Manufacturers, *Proceedings of an Industry/Government National Teleconference on the Williams-Steiger Occupational Safety and Health Act of 1970*, 10.

13. *Id.*

promulgation and enforcement of federal standards, and substantial aid to those states willing to operate an occupational health and safety program which would meet the federal standards. Nevertheless, there was such a great controversy over the provisions of the bill that many began to despair of its passage.<sup>14</sup>

The controversy was centered upon two competing bills pending before the Congress. The first, known as the Steiger bill,<sup>15</sup> supported mainly by Republicans, was based on President Nixon's Special Message to Congress on Occupational Safety and Health.<sup>16</sup> Its salient features included promulgation of safety and health standards by an independent board;<sup>17</sup> inspection for compliance by the Secretary of Labor;<sup>18</sup> and adjudication of alleged violations by an independent commission.<sup>19</sup> The competing bill, the Daniels bill,<sup>20</sup> with solid support from organized labor, placed complete responsibility in the field of occupational safety and health with the Secretary of Labor.<sup>21</sup> Under this version, the Secretary would set standards,<sup>22</sup> inspect for compliance,<sup>23</sup> and adjudicate all violations.<sup>24</sup>

In the conference committee, most of the differences between the bills were resolved. The key issue which remained, and the issue which polarized organized labor and the Administration (and labor and management) was the role of the Secretary of Labor under the program. The question basically became whether the Secretary should, in addition to his functions as prosecutor, be given the power to promulgate standards and adjudicate enforcement cases. The Daniels bill gave the Secretary all these powers, while the Administration bill separated them by giving the quasi-legislative power to promulgate standards to a five-man board, and the quasi-judicial power to adjudicate

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14. See, *Stalling on Job Safety*, Washington Post, Oct. 3, 1970, § A at 18, col. 1; *Deadlock on Job Safety*, New York Times, Sept. 28, 1970, at 40, col. 1.

15. The House bill, H.R. 19200, was popularly known as the Steiger-Sikes substitute bill. Steiger's co-sponsor was Congressman Robert Sikes (D-Fla.). The same bill in the senate was S.4404.

16. Richard M. Nixon, *Special Message to Congress on Occupational Safety and Health* (Aug. 6, 1969), PUBLIC PAPERS OF THE PRESIDENT, 617 (1969).

17. H.R. 19200 §§ 6, 8; S. 4404 §§ 6, 8.

18. H.R. 19200 §§ 9, 10; S. 4404 §§ 9, 10.

19. H.R. 19200 § 11; S. 4404 § 11.

20. H.R. 16785 was identified principally with Congressman Dominick Daniels. S. 2193 was introduced by Senator Harrison Williams of New Jersey.

21. The AFL-CIO was a particularly strong supporter. See Perlman, LAND-MARK JOB SAFETY LAW WINS FINAL CONGRESS OKAY, AFL-CIO News, Dec. 19, 1970, at 1, col. 4.

22. H.R. 16785 §§ 6-7; S. 2193, as reported with amendment, § 6.

23. H.R. 16785 § 9; S. 2193 § 8(a).

24. H.R. 16785 § 11; S. 2193 § 10(c). The unions undoubtedly thought they would be more influential with the Secretary of Labor than with a quasi-judicial commission.

cate to an independent three-man panel. The rationale for a review board was expressed by Senator Javits:

[I]n light of over 30 years of utterly dismal performance by the Department of Labor of its safety and health responsibilities under the Walsh-Healey Act, labor has little reason to expect or business any reason to fear, overly energetic administration of this Act by the Secretary of Labor or disregard by him of the legitimate concerns of business . . . . Conversely, our experience with multi-member administrative agencies [e.g. the National Labor Relations Board], especially in the area of quasi-judicial adjudication, has been neither so uniformly bad nor so uniformly good, or favorable to business, as compared to our experience with administration by cabinet-level officials, that we can assume that the use of such an agency would seriously weaken . . . this legislation. Cabinet-level officials are, it is true, more sensitive to political influences, and can be held accountable for the failure of their Departments, but political influences are, at best, a two-edged sword, and completely improper, in any event, where adjudication is concerned.<sup>25</sup>

Although the differences often seemed irreconcilable, sentiment was strong for passage of effective legislation during the 91st Congress. During the lame duck session convened on November 16, 1970, Wisconsin Congressman William Steiger led a successful drive to persuade the House to adopt the Nixon Administration bill rather than the Committee-supported Daniels Bill.<sup>26</sup> Meanwhile, in the Senate, Jacob Javits managed to amend the labor-backed Williams bill to make it more palatable to the Administration.<sup>27</sup> The differences between the two bills were ironed out in conference committee—the Secretary of Labor was given the power to promulgate standards, but a newly-created three-man panel, the Occupational Safety and Health Review Commission, was given the power of judicial review. In a display of bi-partisan unity, the result was labeled the Williams-Steiger Act. President Nixon announced his satisfaction at the signing ceremony and commented that the bill attained the goal the Administration had hoped to reach and would effectively decrease occurrences of work-related injuries.<sup>28</sup>

25. S. REP. NO. 91-1282, 91st Cong., 2d Sess. 5219 (1970). (Individual views of Senator Javits).

26. The Steiger substitute bill was passed by a teller vote of 185-114, and then by a roll call vote of 220-172. 116 Cong. Rec. 10701 (1970).

27. See Amendment No. 1061, 116 Cong. Rec. 18338 (1970). This amendment in effect created the Occupational Safety and Health Review Commission. At the time, however, this independent review body was termed a panel.

28. See, 7 *Weekly Compilation of Presidential Documents*, 5.

### III. COVERAGE

Many federal laws, despite the good intentions of their sponsors, are weakened in effectiveness because of their limited scope. The first federal minimum wage laws, for instance, were restricted to employees on federally funded projects.<sup>29</sup> Thus their impact was felt in only a narrow segment of the economy. The Occupational Safety and Health Act of 1970, on the other hand, strives for maximum effectiveness by covering virtually every man and woman who is employed in the United States. Congress determined that work-related personal injury and illness impose a substantial burden upon interstate commerce.<sup>30</sup> It therefore declared its policy to be "to assure [to] every working man and woman in the Nation safe and healthful working conditions."<sup>31</sup> The Act applies to all employment performed in a business *affecting* commerce among the States. Thus jurisdiction under the Act is not difficult to attain. The only workers not protected by the new law are employees whose jobs are covered by other federal safety legislation, such as that regulating coal miners<sup>32</sup> and atomic energy,<sup>33</sup> and local and state employees.<sup>34</sup> Consequently, the rights, duties and liabilities of most employers and employees are now defined by federal safety and health legislation.<sup>35</sup>

### IV. STANDARDS

Standard-setting authority under the Act is the province of the Secretary of Labor.<sup>36</sup> Only the general duty standard is set out in the Act itself. All other standards are to be promulgated, modified or revoked by the Secretary under detailed procedures which are intended to provide notice and opportunity for hearings to all employers affected.

The general duty clause admonishes employers to furnish to their employees a workplace which is free from recognized hazards which

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29. See, e.g., Davis Bacon Act, *as amended*, 40 U.S.C. § 53726a (1964), Walsh-Healey Public Contracts Act, 41 U.S.C. § 35. Although the Public Contracts Act was passed in 1936, no safety and health standards were promulgated under it until 1960. There have been several amendments to the standards since that time. 41 C.F.R. § 50-204 (1970).

30. See, Congressional Findings and Purpose, 29 U.S.C.A. § 651 (1971).

31. See, 29 U.S.C.A. § 651(b) (1971).

32. Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801, 811.

33. Atomic Energy Act of 1954, *as amended*, 42 U.S.C. 2021.

34. 29 U.S.C.A. § 653(b)(2), (4) (1971).

35. The need for protection is, of course, different for different occupations. The incidence of job safety and health hazards is less frequent in non-manufacturing firms than in manufacturing industries. Nevertheless, each non-manufacturing employer must provide his employees with a safe work place and must record all accidents which occur.

36. 29 U.S.C.A. § 655 (1971).

cause or are likely to cause death or serious physical harm. The section also orders employers and *employees* to comply with standards, rules, regulations and orders issued for employees' protection.<sup>37</sup> Skeptics who find the language of this section vacuous and high-sounding should take note that of the first sixty cases filed before the Occupational Safety and Health Review Commission, more than half were based on alleged violations of the general duty clause.<sup>38</sup>

This general duty provision was added because Congress recognized that precise standards to cover every conceivable situation would not always exist. Any effective federal program must cover situations where employees might be killed or injured on the job simply because there was no specific standard applicable to a recognized hazard.

The conference committee concluded that a general duty standard is based on sound and reasonable policy and common law principles. Under recognized principles of common law, individuals are obliged to refrain from actions which cause harm to others. Courts refer to this as a general duty of care to others, and statutes usually increase or modify this duty. With these principles as a guide, employers are equally bound by this general and common law duty to cause no adverse effects to their employees during the course of employment. Employers have primary control of the work environment and should insure that safe and healthful conditions exist. The general duty section, in providing that employers must furnish employment "which is free from recognized hazards so as to provide safe and healthful working conditions," merely restates that each employer should furnish this degree of care.<sup>39</sup> The general duty clause is not a general substitute for reliance on standards, but simply enables the Secretary of Labor to

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37. 29 U.S.C.A. § 654:

(a) Each employer—

(1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

See discussion pt. VII, *infra*.

38. The remaining suits alleged violations of the initial standards package of May 29, 1971.

39. In addition to this common law duty, there is a long-established statutory precedent in both federal and state law to require employers to provide a safe and healthful place of employment. Over 36 states have provisions of this type, and at least 3 federal laws contain similar provisions, including the Walsh-Healey Public Contracts Act, the Service Contract Act, and The Longshoremen's and Harbor Worker's Compensation Act.



insure the protection of employees who are working under special circumstances for which no standard has yet been adopted.

The second part of the general duty provision orders employees to comply with standards set up for their protection. Congress was aware that the purposes of this Act could not be totally achieved without the fullest cooperation of affected employees, therefore an obligation was placed upon each employee to comply with the requirements of the Act. However, this duty of the employee was not intended to diminish the employer's responsibility to comply. Final responsibility for compliance with the requirements of this Act remains with the employer.

The Act goes on to authorize the promulgation of three kinds of standards: interim, permanent, and emergency. The standards currently in force are interim standards. They were derived from safety standards already utilized by enlightened employers for the protection of their workers. Some, known as national consensus standards, were developed by the American National Standards Institute and the National Fire Protection Association. Others, known as established federal standards, were already in force on federally funded projects such as construction under the Walsh-Healey Public Contracts Act<sup>40</sup> and shipping under the Longshoremen's and Harbor Workers' Compensation Act.<sup>41</sup> Although the Act gave the Secretary of Labor two years to promulgate these interim standards, Secretary Hodgson announced an initial package of standards covering most industries soon after the Act became effective.<sup>42</sup> Employers affected by these standards, however, were given a 90-day grace period in order to come into compliance voluntarily.<sup>43</sup>

A second type of standard provided for under the Act is the permanent standard, which may be either a revised old standard or a newly promulgated standard. Permanent standards may be created in several ways. Often, they are suggested by interested persons, unions, or nationally recognized standard-setting organizations, the National Institute for Occupational Safety and Health, a state or local government, or the Secretaries of Labor or Health, Education and Welfare. Once a

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40. 41 U.S.C. § 35(e).

41. Longshoremen's and Harbor Workers' Compensation Act, *as amended*, 33 U.S.C. § 941.

42. *See*, 36 Fed. Reg. 10466-714 (1971).

43. The standards became effective on the date of publication for those employees already covered by similar standards issued under the Walsh-Healey Act and similar laws. The grace period delayed the effective date for all other employers until August 29, 1971.

suggestion has been made, the Secretary of Labor may appoint an advisory committee to analyze it and to recommend appropriate action. On the other hand, he may dispense with the committee and publish the proposal immediately in the Federal Register. However, if a new permanent standard is substantially different from an existing national consensus standard, he must publish in the Federal Register a statement of the reasons why the rule adopted will better effectuate the purposes of the Act.<sup>44</sup> Interested parties have 30 days during which to comment or to request a public hearing. Within 60 days after a hearing has been held, the Secretary issues the standard, although he may delay the effective date if he feels that employers will need time to comply.<sup>45</sup>

Where the Secretary has not granted a delay in the effective date of a standard to an entire industry, an individual employer may nevertheless apply for temporary variances, after notifying his employees that they may participate in a hearing on whether the variance should be granted. In addition, the employer must show by a preponderance of evidence that

The conditions, practices, means, methods, operations or processes used . . . by an employer will provide employment and places of employment . . . which are as safe and healthful [under the variance] as those which would prevail if he had complied with the standard.<sup>46</sup>

This procedure should help assure that new standards will be as small a burden as possible to the individual employers who have special problems which prevent them from complying as quickly as other employers in the same industry, but at the same time will provide adequate protection for employees.

Emergency standards, the last type provided for in the Act, apply when the Secretary determines: (A) that employees are exposed to grave danger from toxic substances or physically dangerous agents or from newly discovered hazards, and (B) that such emergency standard is necessary to protect employees from such danger.<sup>47</sup>

In order to protect the lives and health of workers in dangerous working conditions, the Secretary must move quickly to institute special safety and health standards without regard to the time-consuming permanent standard-setting procedure. Nevertheless, in order to en-

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44. 29 U.S.C.A. § 655(b)(8) (1971).

45. 29 U.S.C.A. § 655(b)(4) (1971).

46. 29 U.S.C.A. § 655(d) (1971).

47. 29 U.S.C.A. § 655(c)(1) (1971).

sure due process and maximum fairness to employers, as soon as emergency temporary standards are published the Secretary must begin the regular formal standard-setting procedure.

When any new standard is published, an employer who feels he has been adversely affected thereby may challenge it in the courts by seeking judicial review in the United States Court of Appeals in the circuit where he resides or has his principal place of business.<sup>48</sup>

In addition to the general duty clause and the standard-setting provisions, another of the most important provisions of the Act, and the one which affects the most American businesses, is the record-keeping requirement. During deliberations prior to the passage of the new law, the inadequacy of job injury statistics was frequently cited as a major problem in the health and safety field. Critics claimed that because of the lack of a uniform recording and reporting system, it was almost impossible to get an accurate picture of the scope and seriousness of the safety and health problem in America and to channel resources into the areas needing the greatest improvements. The major source of injury statistics, the Bureau of Labor Statistics Survey of Work Injury, suffered not only from inadequate funding, but also from a lack of trained researchers and a reporting universe whose representativeness was highly suspect. One source estimated that there could have been an absolute error of eight percent in the total number of injuries reported;<sup>49</sup> another study estimated a discrepancy of as much as ten percent due to the differences in definitions used to describe injuries.<sup>50</sup> For example, some employers never counted non-disabling injuries, although some seemingly harmless injuries undoubtedly later became disabling. Often, an injured employee was transferred to a less demanding job so that all employees would still be working and the firm's record of employment safety would remain untarnished. In a study done for the Department of Labor, it was estimated that for every *disabling* injury reported, ten *serious* injuries went unrecorded.<sup>51</sup>

Although accurate injury statistics cannot prevent accidents, they can help to decrease injuries by indicating special problem areas where

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48. 29 U.S.C.A. § 655(f) (1971).

49. U.S. DEP'T OF LABOR FINAL REPORT, AN EVALUATION OF THE NATIONAL INDUSTRIAL SAFETY STATISTICS PROGRAM, pt. I, at 13. This is the so-called *Gordon Report* of September 30, 1970, prepared under a Department of Labor contract by Jerome B. Gordon, Allan Akman and Michael Brooks; J. GORDON, A. AKMAN, AND M. BROOKS, AN EVALUATION OF THE NATIONAL SAFETY STATISTICS PROGRAM, (Praeger ed. 1971).

50. *Id.* at 14.

51. *Id.*

the accident rate is significantly above national or industry norms.<sup>52</sup> Once statisticians have an accurate breakdown of the incidence of occupational injuries and diseases, their findings can be used by industrial hygienists to institute special safety programs for worker groups with especially high injury rates, and by engineers and medical scientists to spot areas where design improvements are needed to prevent accidents and diseases in the future. Just such a breakdown has been provided by the comprehensive record-keeping requirements which are an integral part of the Occupational Safety and Health Act of 1970. Under these provisions, employers are required to maintain records of all disabling, serious or significant injuries and occupational illnesses, whether or not they require loss of work time.<sup>53</sup> Even minor injuries must be recorded if they involve loss of consciousness, medical treatment other than first aid, restriction of work or motion, or transfer to another job.<sup>54</sup> Furthermore, in order to facilitate research in the field of occupational disease, employers may be required to record employee exposure to potentially toxic materials or to other harmful physical agents.<sup>55</sup> All these records are vital to the development of information on the causes and prevention of occupational accidents and illnesses and may prove to be one of the greatest contributions to the welfare of American workers made by the Act.

## V. ENFORCEMENT

No law can be truly effective without conscientious enforcement. Government personnel must have the right of entry in order to ascertain the safety and health conditions and status of compliance of any employing establishment covered by the Act. Only in this way can an effective national occupational safety and health program be carried out. Responsibility for enforcing the Occupational Safety and Health Act of 1970 is vested in the Department of Labor's Occupational Safety and Health Administration [OSHA], which operates through a network of regional offices throughout the country. Each office maintains a force of job safety inspectors who, under the supervision of an Area

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52. Such statistics also form the basis of the Labor Department's "worst first" approach to enforcement. Initial enforcement activity will be centered in the five industries which have consistently recorded the highest accident rate in the country: longshoring, roofing and sheet metal, meat and meat products, mobile homes and other transportation equipment, and lumber and wood products. See 1 O.S.H. REP. 74-76 (1971), 29 U.S.C.A. §§ 657, 669(a)(5), 673 (1971).

53. 29 U.S.C.A. § 657(c)(2) (1971).

54. *Id.*

55. 29 U.S.C.A. § 657(c)(3) (1971). The Department of Labor mailed record-keeping forms to all employers covered by The Act in mid-1971. Regulations issued in this area are set forth in 29 C.F.R. § 1904.

Director, patrol the factories, farms and offices of their region. Most inspections are made at the initiative of the inspectors in a systematic effort to cover all the workplaces of the region.<sup>56</sup> Inspections, however, may also be instigated in response to a "tip" or a complaint filed by an employee.<sup>57</sup>

Since the law penalizes persons giving advance notice of inspections, employers may be surprised at the safety inspector's visit.<sup>58</sup> When the inspector visits a workplace, he will identify himself to the person in charge, advise him of the purpose of his visit, and begin his investigation. In order to help him on his inspection, a representative of the employer and a representative authorized by employees must be given an opportunity to accompany him around the workplace.<sup>59</sup> Under existing procedures, after completing the investigation, the compliance officer reports any violations to his Area Director, who decides whether to issue a citation.<sup>60</sup> Although the Conference Report accompanying the Occupational Safety and Health Act indicates that a citation should be issued within 72 hours after a violation has been found,<sup>61</sup> the Act provides a six-month statute of limitations.<sup>62</sup>

Once the employer receives a citation, he must post it in a prominent location at or near each place where a cited violation occurred. The citation has a threefold purpose: (1) to describe with particularity the nature of the violation; (2) to fix a reasonable time for abatement of the cited conditions; and (3) to advise employees of their right to a hearing on the reasonableness of the time fixed for abatement of the violation.<sup>63</sup> One vital piece of information *not* contained in the cita-

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56. Although inspections are more or less systematic, there has been an emphasis on those industries with above average injury frequency rates. *See* n.52, *supra*.

57. During the first half of fiscal year 1972, inspectors conducted investigations at 12,176 establishments employing 2,325,501 workers. Only 1,169 visits were in response to complaints. *See* O.S.H. REP. 863 (Current Report, Feb. 17, 1972). Apparently workers are more likely to complain about health problems than about safety hazards. According to Assistant Secretary of Labor for Occupational Safety and Health George Guenther, 60 percent of the employee complaints during the first four months of experience under the Act related to such problems as dust, fumes, mist and radiation rather than conventional safety needs such as machine guard rails. *See* Fishbein, Occupational Health and Safety Letter, at 2 (Nov. 8, 1971).

58. 29 U.S.C.A. § 366(f) provides a \$1,000 penalty for those convicted of giving advance notice of inspections without authority from the Secretary of Labor or his designees.

59. 29 U.S.C.A. § 657(e) (1971).

60. In the first five months of inspections, only 23.5 percent of all establishments inspected were found to be in compliance. *See*, O.S.H. REP. 751 (Current Report, Jan. 13, 1972). After six months' experience with inspections of 12,176 establishments, 9,179 citations alleging 34,960 violations had been issued. *See*, O.S.H. REP. 863 (Current Report, Feb. 17, 1972).

61. *See* H.R. REP. No. 91-1765, 91st Cong., 2d Sess. 38 (1970).

62. 29 U.S.C.A. § 658(c) (1971).

63. This notification is for the purpose of affording employees the opportunity to protect the rights given them under § 659(c) of the Act. A hearing may be requested

tion is the amount of the penalty proposed to be assessed against the employer. The Act provides that such notice of proposed penalty must be sent by registered mail within a reasonable time after completion of the inspection.<sup>64</sup> Presumably, the time before the penalty notice is due is to be spent in weighing the factors which may be taken into account in assessing the penalty, such as the size of the employer's business, the gravity of the violation, the employer's good faith, and his history of previous safety and health violations.<sup>65</sup> The possible penalties which may be imposed are severe enough to serve as a deterrent. A penalty of up to \$1,000 can be assessed for serious or non-serious violations which are not wilful and repeated. These are the most common violations. However, a penalty of up to \$10,000 may be imposed for wilful and repeated violations with an additional six months imprisonment when the violation results in the death of an employee; and up to \$20,000 or imprisonment for one year, or both, for a second or subsequent violation causing the death of an employee. In addition, there may be an assessment of up to \$1,000 a day for each day an employer fails to correct a violation after the expiration of the abatement period.<sup>66</sup>

Once the notice of penalty has been received, the employer has fifteen days in which to contest the proposed penalty, the citation upon which it is based, or both.<sup>67</sup> During this time employees may also contest the amount of time allowed for abatement of the violation.<sup>68</sup> Such contest is accomplished through written notification of the Area Director.<sup>69</sup> The Labor Department then notifies the Occupational Safety and Health Review Commission to place the action on the Review Commission docket. If no contest is made, the citation and proposed penalty are deemed to be final and are not subject to review by any court or agency.<sup>70</sup>

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by notifying the Area Director of an objection to the abatement time within 15 working days of the issuance of the citation.

64. 29 U.S.C.A. § 659(b) (1971).

65. 29 U.S.C.A. § 666(j) (1971).

66. 29 U.S.C.A. § 666(a)-(e) (1971). After the first six months of inspections, covering 12,176 establishments, a total of \$725,169 in penalties had been proposed. See O.S.H. REP. 863 (Current Report, Feb. 17, 1972).

67. 29 U.S.C.A. § 659(a) (1971).

68. See n.63, *supra*.

69. Ideally, at this stage settlement talks could begin between the employer and the Secretary of Labor. Because of the time pressures imposed by the procedural rules of the Occupational Safety and Health Review Commission which require speedy commencement of a hearing, any talk of settlement has been postponed until later in the proceeding.

70. 29 U.S.C.A. § 659(a). One word of caution at this point. The Commission has recently adopted Rules of Procedure which make contesting a case somewhat more complex than the statutory provisions outlined above. See 29 C.F.R. § 2200.

## VI. JUDICIAL REVIEW

Review of the citation and penalty is made by the Occupational Safety and Health Review Commission. The Review Commission is a new federal agency created by the Act. It is an autonomous agency like the National Labor Relations Board, the Federal Trade Commission, and a number of other administrative bodies,<sup>71</sup> but it has no regulatory authority. Rather, its powers are strictly quasi-judicial.<sup>72</sup> In fact, next to the Tax Court of the United States and the United States Court of Military Appeals, it is the closest approximation to a court existing in the executive branch.

It is the duty of the Review Commission to grant hearings. After the Review Commission receives a notice of contest from the Labor Department's Area Director, the case is docketed and referred to a hearing examiner. The examiner holds a formal hearing at or near the site of the alleged violation to determine whether a violation in fact existed and to fix the amount of penalty to be assessed.<sup>73</sup> The decision of the hearing examiner may become the final order of the Commission unless within thirty days after it is rendered, one of the three Commissioners directs that the case be heard by the Commission itself.<sup>74</sup> This automatic finality procedure is a rather unique provision common to federal agencies with quasi-judicial authority. The Commission members need not act affirmatively to adopt the report of a Hearing Examiner as their own; it will become so with the passage of time unless a member of the Commission orders otherwise.<sup>75</sup> If a member of the Review Commission directs that a hearing examiner's report be re-

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71. See, 116 Cong. Rec. 18339 (1970) (remarks of Senator Javits: "It creates a review commission with all complaints referred to it by the Secretary and which will have the same type of authority that the Federal Trade Commission exercises. . . . This is an autonomous, independent commission which, without regard to the Secretary, can find for or against him on the basis of individual complaints.").

72. Its only function, according to the Act, is to afford hearings in accordance with the provisions of 5 U.S.C. § 554.

73. The figure proposed by the Labor Department and named in the citation is merely a suggestion. The Review Commission Hearing Examiner may affirm it or modify it in conformance with the requirements of the Act. The Commissioners may also change the penalty when they review a case. See, 29 U.S.C.A. § 666(j) (1971).

74. 29 U.S.C.A. § 659 (1971). See also, 29 C.F.R. § 2200, 42(c)(d)(1); 116 Cong. Rec. 18339 (1970). (Remarks of Senator Javits: "[T]his amendment provides that if the hearing examiner's report is not contested and the Commission does not order it reviewed, it becomes final . . .—a very quick way of dealing with relatively minor situations.").

75. In its first seven months of operation, the Commission received a total of 358 cases. Eighty-two were withdrawn or disposed of on procedural grounds; five were decided after hearing and allowed to become final. Review of the Hearing Examiner's decision was directed by Commission members in ten cases. See O.S.H. REP. 742 (Current Report, Jan. 6, 1972).

viewed, the parties to the case are notified and are given an opportunity to file briefs and exceptions to the hearing examiner's report. The Commission thereafter issues its decision. Another unique provision makes a final order of the Review Commission self-enforcing unless stayed by the Court of Appeals.<sup>76</sup> Otherwise, the appeal procedure from the Review Commission follows fairly familiar lines. Appeals go to the United States Court of Appeals and must be filed within sixty days of the Commission's final order.<sup>77</sup>

The Commission's caseload has risen sharply during its short existence. In October, 1971, the first month in which the temporary standards became applicable to most businesses, 3 percent of all citations were contested to the Commission. In January of 1972—just three months later—the percentage of cases appealed had doubled to 6 percent.<sup>78</sup> These cases will raise many questions concerning the Act and its application. They will require careful consideration, for these cases will provide precedent for future administration of the Act.

#### VII. JUDICIAL INTERPRETATION OF THE ACT

As previously mentioned, many of the cases which have come before the Review Commission have been based on the general duty clause. Undoubtedly one of the most complicated tasks presently before the Review Commission is to define this general duty section. Thirty cases have already been brought under the clause. Although many of these were settled after violation of the clause was charged and citations issued, several cases remain, raising issues which run the gamut from the "duty of due care" of traditional tort law to interpretation of a legislative history which is more than a little vague. The problem simply phrased is: What constitutes employment and a place of employment free from recognized hazards causing or likely to cause death or serious physical harm?

Despite the length of the hearings and debates on the Occupational Safety and Health Act of 1970, there was surprisingly little discussion of the meaning of the general duty clause which would be helpful to the resolution of individual cases. Doubtless many legislators thought the language of the provision was self-explanatory. Neither of the original Occupational Safety and Health bills, H.R. 3809 (introduced by Congressman O'Hara) or S. 2193 (Williams, Kennedy, Mondale,

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76. 29 U.S.C.A. § 660(a) (1971).

77. *Id.*

78. The number of inspections also increased during this period.



and Yarborough) contained a general duty clause as such although each was directed toward the establishment of safe and healthful employment. The first Administration proposals, H.R. 13373 and S. 2788, provided that employers should furnish "employment and a place of employment which are safe and healthful as prescribed by . . . standards promulgated by the National Occupational Safety and Health Board"—a new body created by the Act. The bill eventually adopted by the Senate subcommittee was an amended version of S. 2193.<sup>79</sup> This bill, reported on October 6 and passed by the full Senate on November 17, provided for workplaces "free from recognized hazards so as to provide safe and healthful working conditions."

H.R. 16785 was also sponsored by Democrats.<sup>80</sup> That bill, uniformly disliked by Republicans on the Committee, provided in section 5a(1) that "[e]ach employer shall furnish to each of his employees employment and a place of employment which is safe and healthful." The outcry against the vague standard "safe and healthful" was overwhelming.<sup>81</sup> Opponents of the bill referred to the clause as a "sweeping general requirement" couched in "language . . . so broad, general and vague as to defy practical interpretation let alone responsible enforcement."<sup>82</sup> The Republican alternative, H.R. 19200, offered by Congressmen Steiger and Sikes on September 29, 1970, forbade "any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm." The counterpart bill in the Senate (S. 4404) contained a similar provision. Even this language had problems in interpretation. It is possible that a hazard readily apparent to a safety expert might not be readily apparent to a layman or ordinary worker; however the readily apparent language was more specific than the Committee version. At the end of November, when dissatisfaction with the House Committee bill ran high, Congressman Daniels made an unsuccessful last ditch effort to prevent passage of the Steiger-Sikes Amendment by making several amendments to H.R. 16785, including a change in the general duty clause. Daniels feared that the Steiger-Sikes "readily apparent" language meant "apparent without investigation,"<sup>83</sup> and that

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79. S. 2193 introduced by Senators Williams, Kennedy, Mondale, Yarborough, Hart and Tydings.

80. H.R. 16785, the Daniels bill, adopted by the House Committee on Labor and Education.

81. 116 Cong. Rec. H. 10615 (daily ed. Nov. 23, 1970) (remarks of Congressman Smith); 116 Cong. Rec. H.10691 (daily ed. Nov. 24, 1970) (remarks of Congressman Robison).

82. 116 Cong. Rec. H.10616 (daily ed. Nov. 23, 1970) (remarks of Congressman Anderson).

83. 116 Cong. Rec. H.10625 (daily ed. Nov. 23, 1970).

such an interpretation might discourage thorough investigation by employers. This would provide an escape mechanism for employers who were ill-informed about safety matters. Daniels proposed to require employers to furnish "employment and a place of employment free from recognized hazards so as to provide safe and healthful working conditions"—language which was eventually adopted by the conference committee.

It is obvious by the number of cases filed that the general duty clause is important, and it becomes more important in light of the confusion surrounding its interpretation. Although most citations were given before the comprehensive standards took effect, several have been given since that time. From the legislative history it is reasonably certain that the clause was intended to have a practical meaning.<sup>84</sup> However, the obvious problem still remains: What does it mean and how should it be applied to the cases? What is a recognized hazard? Who is to do the recognizing—the employer, the employees, the government, or perhaps the ordinary prudent man? Neither the bill nor the speeches on the floor of Congress give much explanation.

The problems in defining "recognized hazard" are immediately apparent. The word "recognize" can mean "to perceive clearly something previously known." This may mean that a recognized hazard is a condition known to be hazardous which is readily apparent to the senses. Support for this proposition is found in a statement of Congressman Steiger commenting on the conference committee report. He said:

[Recognized] hazards are the type that can readily be detected on the basis of the basic human senses. Hazards which require technical or testing devices to detect them are not intended to be within the scope of the general duty requirement.<sup>85</sup>

This interpretation is supported by a statement of Senator Saxbe that recognized hazard is "something that would be recognized by all people."<sup>86</sup>

An alternative meaning of "recognized" is "to acknowledge formally," or "to acknowledge de facto existence." This definition implies that a hazard is "recognized" only when it has gone through some for-

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84. It is a well-known rule of statutory construction that every word and clause of a statute must be given effect, *Spring Canyon Coal Co. v. Industrial Comm'n*, 74 Utah 102, 277 P. 206 (1929), BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS, § 53 (2d ed. 1911).

85. 116 Cong. Rec. H.42204 (daily ed. Dec. 17, 1970) (remarks of Congressman Steiger).

86. 116 Cong. Rec. S 17967 (daily ed. Oct. 13, 1970) (remarks of Senator Saxbe).

mal recognition procedure. Support for the proposition that there must be some kind of formal recognition, or at least that recognition is not by the ordinary prudent observer through the senses, is found in the description given by Congressman Daniels of his amendments to H.R. 16785. In his explanation, Congressman Daniels said,

"A recognized hazard is a condition that is known to be hazardous, and is known taking into account the *standard of knowledge in the industry*. In other words, [it] is a matter for objective determination; it does not depend on whether the particular employer is aware of it."<sup>87</sup>

Congressman Daniels may have intended the clause to require expert testimony to prove a violation.

If the decision as to hazardousness is made using an objective interpretation rather than the subjective opinion of the employee on the job, it can be argued that the standard has been narrowed to the detriment of the employee. However, this interpretation, in fact, makes the standard broader than the "readily apparent" interpretation, since an expert who would recognize an inherent danger not visible to the untrained eye would undoubtedly recognize as hazardous a readily apparent danger. This proposition is consistent with the overall policy of the Act of preventing job injuries and providing inherently safe workplaces.

It is impossible to predict how these problems will be solved. I am sure that the Review Commission and the federal courts of appeal will have much to say concerning the meaning of the general duty clause. It is interesting to note, however, what has been said about the standard in the recent past by the Review Commission judges. In *Hodgson v. Republic Creosoting Co.*<sup>88</sup> respondent was charged with a violation of the general duty clause when an employee was killed in a work accident. Republic was engaged in the purchase of recently cut railroad ties which it usually sold to the Penn Central Railroad. Ties received at the firm's yard were loaded on flatbed trucks by the sellers

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87. 116 Cong. Rec. H.10625 (daily ed. Nov. 23, 1970) (emphasis added). The Department of Labor has also adopted an objective standard:

A hazard is "recognized" if it is a condition that is (a) of common knowledge of general recognition in the particular industry in which it occurs and (b) detectable (1) by means of the senses (sight, smell, touch and hearing), or (2) is of such wide general recognition in the industry that even if it is not detectable by means of the senses, there are generally known and accepted tests for its existence to the employer. U.S. DEPT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, COMPLIANCE OPERATIONS MANUAL, 68 (CCH ed. 1972).

88. Occupational Safety and Health Review Commission Case No. 22 [Hereinafter cited OSHRC].

and were secured to the trucks by chains. A portion of each truckload contained packages of ties containing up to 45 ties weighing from 150 to 235 pounds, bound together by one steel band about 1½ inches wide. The customary procedure in unloading trucks was for an employee to move a forklift under the first package to prevent ties from falling from the truck when employees were engaged in the unloading process. Then the band around the pile would be cut. On the day of the accident, three employees were directed to unload a truck. One, who had been working at the unloading yard for only four days, took an ax from the unloader without being ordered to do so. Without informing anyone of what he intended to do, he cut the band binding a package on the truck. As he turned to walk away, five ties fell from the truck, fatally injuring him. The employer was cited under the general duty clause<sup>89</sup> based on allegations that the decedent had been given no safety instructions other than an admonition to be careful, although he had advised the firm of his inexperience in handling lumber.

The Review Commission judge who heard the case found that the work of unloading, stacking and sorting green railroad ties was inherently dangerous because of the weight of the material handled. He found that Republic took no effective steps, either in providing adequate safety regulations or instructions, or adequate supervision of its employees, to avoid or prevent the hazardous condition which existed at its workplace. Although it might be argued that the employee's death was caused by his own negligence, the judge declared that:

"Respondent cannot divest itself of responsibility for the violation charged . . . by alleging that the deceased employee's misconduct . . . caused the fatal injuries. The final responsibility for violations of the Act rests with the employer and the Act imposes upon the employer the responsibility to take steps necessary to provide a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm to its employees. The Respondent here failed to provide adequate supervision of its employees which created the hazardous condition herein found to exist."<sup>90</sup>

This case raises several interesting issues: Can safety training make the difference between a safe and a hazardous workplace? Can employment which is inherently hazardous be made safe through safety

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89. One of the purposes of the general duty clause is to provide a basis for citations where no specific standards cover the field. See text at p. 252 *supra*. This purpose was specifically adopted by The Occupational Safety and Health Administration as part of its enforcement policy. See COMPLIANCE OPERATIONS MANUAL, *supra* note 87 at 66.

90. OSHRC Case No. 22 at 21.

instruction? Is every accident or death in the workplace the result of a violation of the general duty provision or of a specific standard? Must final responsibility for injury under the Act rest with the employer, or does the employer's duty of care cease after he has complied with a specific level of protection? Indeed, can there be any rigid standard at all, considering the purpose of the Act of making the American workplace "as safe and as healthful as human intelligence and good will can make it"?<sup>91</sup> Must there be an ad hoc determination in every case?

In *Hodgson v. Norman Bratcher Co.*<sup>92</sup> respondent was a painting contractor charged with painting certain buildings at an Army installation. Although he observed that some buildings had signs warning "Danger High Voltage," he determined that his equipment—an assortment of wooden and aluminum ladders and scaffolding—was adequate for the job. His workmen, after struggling for some time to extend a paint-encrusted aluminum ladder, raised it into the highest of three power lines running in front of the building, electrocuting two painters and resulting in the death of one. Respondent conceded that the use of metal ladders where they might come into contact with electric lines constituted a hazardous condition. However, he argued that the risk was so well known that only the neglect or carelessness of employees could have produced the accident. The Review Commission judge held that the respondent's duty of care did not end when he furnished his employees with wooden ladders as well as metal ladders, since the use of metal ladders near power lines is an employment likely to cause death or serious physical harm. Is it paternalistic to think that the employees could not decide for themselves that the use of aluminum ladders was hazardous? Assuming that aluminum ladders are more beneficial than wooden ones in some situations, must the employer make a determination before the start of every painting job to see whether the use of aluminum ladders is permissible? Is safety instruction the answer—so that once the employer has instructed his employees in the tools of the trade and the possible dangers to be encountered, he is absolved from responsibility where injury or death is caused by their own negligence?

The *Republic* and *Brachter* cases do make it clear that the employer is held to a strict standard of care under the general duty clause. The

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91. 116 Cong. Rec. H.42204 (daily ed. Dec. 17, 1970) (remarks of Congressman Ayres).

92. OSHRC Case No. 83.

*Brachter* case indicates that this standard may not be met where the employer merely provides general safety instructions. In addition, the general duty clause may require the employer to take an active role in the supervision and direction of his employees.

In a third case, *Hodgson v. National Realty and Construction Co.*,<sup>93</sup> the employer was cited under the general duty clause for permitting a foreman to stand as a passenger on the running board of a moving piece of equipment. The employee had hopped onto the side of a front end loader which was towing an air compressor at an excavation site in Virginia. The loader stalled when descending a ramp, and became difficult to steer. As the machine started to roll off the side of the ramp, the foreman jumped off and was killed when the loader toppled over and landed on him. Although there was apparently a company policy prohibiting riding on moving equipment, and although the decedent was a highly experienced foreman whose duties had included enforcement of this company policy, the trial judge determined that the duty of care imposed by the Act as to the foreman was less than that owed to an inexperienced employee. He found that the death was not the result of any breach of duty owed by the respondent under the Act. Rather, it arose out of a violation of a known company safety rule, and was therefore an unavoidable accident as far as the employer was concerned. Even if the employer did have a lesser duty of care to the foreman, did the company fulfill its duty by making known the company policy? Can the employer be held ultimately responsible even though he has done everything in his power to prevent accidents? All these questions will come before the Review Commission within the near future.

It will be our task to determine the meaning of the general duty clause. It may be some small comfort to us to know that at least one Congressman expected the process of definition to be a slow one. As Representative Hathaway remarked during the Congressional debates:

"[It has been said that] it would be up to an inspector to decide what the general duty was. I suppose that is true; it is up to the policeman to decide in the first instance whether or not we have broken a law, too, but we do have resort to the courts, and we would have resort to the courts under this bill . . . . And hopefully, after a while, a body of law could be formulated so that later

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93. OSHRC Case No. 85.

cases would have precedents behind them, and we would be able to exercise a fairly uniform body of law throughout the country as to just what general duty is."<sup>94</sup>

The beginnings of this process are being made at the Review Commission.

### VIII. REMEDIAL ASPECTS OF THE LAW

In addition to the standard-setting and enforcement provisions of the Act which are meant to diminish dangers in the workplace, the Act also provides for methods which will eliminate and prevent harmful conditions. A significant portion of the Act is devoted to methods of improving job safety and health which do not involve enforcement, rules, penalties, courts, or Labor Department inspectors. These remedial aspects are designed to provide for research to aid the development of new methods for dealing with occupational safety and health problems, the exploration of ways to discover latent occupational diseases, medical criteria to assure that no one will suffer diminished health or life expectancy because of his job, and training programs to increase the number and competence of personnel in the field of job safety and health.<sup>95</sup>

The responsibility for accomplishing these objectives is assigned to the Secretary of Health, Education and Welfare. His duties and commensurate powers include power to conduct research, industry studies and employee training programs.<sup>96</sup> To assist him in performing these functions, the National Institute for Occupational Safety and Health, a new agency within the Department of Health, Education and Welfare, was established by the Act.<sup>97</sup> The authority vested in the Institute and its Director extends not only to conducting research and recommending new safety and health standards,<sup>98</sup> but also to performing any function delegated by the Secretary of Health, Education and Welfare.<sup>99</sup> Many believe that these remedial aspects of the law will be more positive forces in improving job safety and health than all other provisions of the Act combined.<sup>100</sup>

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94. 116 Cong. Rec. 10631 (daily ed. Nov. 23, 1970).

95. 29 U.S.C.A. § 651(b)(5), (6), (7) (1971).

96. 29 U.S.C.A. §§ 669(a), (b) 670 (1971).

97. 29 U.S.C.A. § 671(a), (b) (1971).

98. 29 U.S.C.A. § 671(c) (1971).

99. 29 U.S.C.A. § 669(e) (1971).

100. At the signing ceremony. Labor Secretary Hodgson suggested that "Secretary [of HEW] Richardson got more of the health component into this bill than any of the previous bills introduced of this nature. 7 *Weekly Compilation of Presidential Documents*, 5 (Jan. 4, 1971).

## IX. CONCLUSION

During the Congressional debates on the passage of the Occupational Safety and Health Act, several persons noted that the more than 14,500 workers who are killed by industrial accidents each year represent an annual death total exceeding that of the Vietnam War.<sup>101</sup> Congressmen, labor unions, safety organizations and the federal government have initiated procedures which may mean an end to endless casualties on the job. Such procedures will require effective standards, strict enforcement, and relentless research. The fight against job casualties and occupational diseases is just beginning. Hopefully, we will see a winding down and a final end to the senseless carnage of the workplace.

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101. See 116 Cong. Rec. (daily ed. Nov. 16, 1970); U.S. CODE CONG. & ADMIN. NEWS 5178, 91st Cong., 2d Sess. (1970).



## COMMENTARY

*Not every idea of interest to the legal profession needs the traditional structure of the lead article. This section is designed to provide a forum for such ideas in essay form. These essays may discuss novel or controversial ideas or they may seek to evaluate recent trends in the law. Through the publication of these essays, the Loyola Law Journal hopes to stimulate the development and exchange of ideas within the legal profession.*