



Corporate Exposure: The Failure of OSHA?

Harry P. Mirijanian

Does the thought of OSHA and criminal prosecution of executives cause concern within your organization? I suspect many of you will respond in the affirmative; whether this fear is justified is another issue.

The AFL-CIO argued in a recent report, "Death on the Job: The Toll of Neglect," that for years OSHA (Occupational Safety and Health Administration) has failed to protect the lives of American workers. Further, research in this union commissioned report indicates injuries and illnesses have been increasing since 1984, and that OSHA has done little to combat the trend. Officials at the union believe that OSHA's failure stems primarily from inadequate funding, infrequent inspections, and negligible fines or penalties for violators. The federal agency has fewer than 1000 inspectors, and about the same number at the state level, to inspect some six million workplaces. At these levels, they can inspect each workplace only once every 84 years. The report concludes with a demand for additional funding and resources to improve national workplace safety.

Upon examination of the criticism leveled against OSHA we note:

Inadequate funding. OSHA receives \$300 million annually from the federal government to carry out its mission to protect nearly one million workers. State-run OSHA-type programs contribute an additional \$80 million. The combined total represents \$3.80 per worker—compared to nearly 16 times as much (\$6 billion) spent on the environment. In my opinion, additional funding is required, along with a defined agenda of services.

Infrequent inspections. The AFL-CIO report provides a detailed breakdown of the frequency of inspections by state. They range from a high of once every 11 years in Nevada to a

low of once every 167 years in Nebraska. OSHA conducts surprise inspections of workplaces—but only once every 25 years, according to the report.

This representation seems to imply that increased inspections will improve safety and health conditions for the work force. To have a trained inspection force capable of evaluating loss producing conditions or factors in the workplace would be a tremendous undertaking. Instead, insisting companies self-police or report their own operations is far more realistic. We must give organizations rewards for safety and health improvements, not just penalties for non-performance.

Negligible fines/penalties. The "median" penalty paid by an employer during the years 1972-1990 following any incident resulting in death or serious bodily injury to a worker was \$480. Fines associated with OSHA violations, however, have been drastically increased with the passage of the Omnibus Budget Reconciliation Act of 1990, which gave OSHA the power to impose penalties up to \$70,000 per violation plus an egregious penalty if applicable. In the past, employers could usually negotiate down any penalty, where today's OSHA representatives are less inclined to accommodate such requests. Though violations will cost the employer more today than ever, the plan allows for up to a 25 percent good faith reduction in fines if a company has a safety program (this despite the fact that research shows the existence of a safety program is not a good predictor of a company's future safety performance).

What about criminal prosecutions? Nearly every state agrees managers and executives who exert control over day-to-day work conditions can be held liable for workplace injuries and deaths. Though several executives have been tried, none were sent to prison for violating OSHA laws in fis-

cal 1991 (whereas 72 were imprisoned for violating environmental laws).

OSHA and state prosecutors are combining their efforts in the hope that a rise in criminal prosecutions will raise the employer's level of concern and encourage greater safety attention.

Though fear can be used as a motivator, positive rewards for desired performance are more effective. Why not provide an organization with a tax credit or some similar business incentive for positive loss statistics/performance?

The future of OSHA is likely to change drastically—but how drastically depends on several factors. The Presidential elections next month will definitely influence OSHA's mandates. In addition, passage of HR 3160 in the House of Representatives (pending at this writing) could significantly change OSHA's focus and approach by requiring, among other things, workplace labor-management safety committees for employers with 11 or more full-time employees and civil penalties for "willful" safety violations that result in serious bodily injury. This bill would also extend OSHA's jurisdiction to the public sector workplace, which is currently exempt from OSHA.

OSHA is also working on developing ergonomic standards. At present, no standards exist, so OSHA cites ergonomic hazards and conditions under the general duty clause for failure to maintain a safe work environment. Complaints to OSHA on VDT issues now account for over one third of all calls to OSHA. Needless to say, ergonomic concerns will be further scrutinized in the future.

Harry P. Mirijanian is president of Applied Risk, an independent risk management consulting firm established to assist the business community in reducing exposure to loss and insurance costs. He is a frequent speaker at AMA seminars.

