

# FactSheet

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## Job Safety and Health Update April 2012

The Occupational Safety and Health Act and the Mine Safety and Health Act promise workers the right to a safe job. Unions and our allies have fought hard to make that promise a reality, winning protections that have made jobs safe, saved hundreds of thousands of lives and prevented millions of workplace injuries and illnesses. But there still is much work to be done.

After eight years of neglect and inaction by the Bush administration, the Department of Labor under the Obama administration set an ambitious agenda to develop and issue much-needed standards to protect workers from serious and life-threatening safety and health hazards, to strengthen enforcement against serious violators and to protect workers' rights.

But business groups and the Republican majority in the House of Representatives are attacking these stronger measures and trying to roll back existing protections. They have launched a massive assault on all government regulations and safeguards, falsely claiming they kill jobs. They are trying to slash the budget for job safety enforcement and standards. Their goal is to take away workers' rights and weaken the role of government in protecting workers and the public, just like they have tried to do in Wisconsin, Ohio and other states.

Here's the latest on the fight to protect workers safety and health:

**Republican Assault on Regulations-** The Republican majority in Congress and their corporate allies have launched an all-out assault on regulations to protect workers and the public. Workplace safety and health rules, environmental and consumer protections, healthcare regulations and financial safeguards are all major targets. Republicans are trying to cloak this attack as a jobs initiative, claiming that regulations are hampering investment and killing jobs. But in truth, this is simply a brazen effort to rollback 40 years of progress and strip away protections. Their real goal is to totally undermine the government's role in protecting the public and stopping corporate abuses.

A whole series of so-called "regulatory reform" bills are being pushed in the House and Senate that would make it difficult, if not impossible, to issue new needed protections. Some of the most objectionable are:

- The "Regulations from the Executive in Need of Scrutiny Act" (REINS Act) — H.R. 10, S. 299 — would set up Congress as the gatekeeper on regulations, requiring Congress to approve all major regulations before they go into effect. Rules not approved would simply die.
- The Regulatory Accountability Act (RAA) — H.R. 3010, S. 1606 — would up-end more than 40 years of safety and health and other laws. It creates a "super-mandate" to make

- costs to businesses, not the protection of workers or the public its primary focus, and adds more than 60 new steps and hurdles to the regulatory process, further delaying needed protections.
- The Regulatory Flexibility Improvements Act—H.R. 527, S. 1938—adds a whole new host of analytical requirements to the regulatory process.
- The Regulatory Freeze for Jobs Act—H.R. 4078—would bar any significant new regulatory actions until the unemployment rate falls below 6.0 percent. This is one of a large number of bills introduced that would impose some kind of broad-based regulatory moratorium on new regulations.

The House of Representatives passed the REINS Act, RAA and Regulatory Flexibility Improvements Act in December, 2011. Attempts to add some of these measures as amendments to other bills in the Senate have failed to date. The Obama administration opposes these bills and has threatened to veto them.

Backers of these and other harmful regulatory reform bills have vowed to continue their efforts to enact them. The AFL-CIO has joined with other groups through the Coalition for Sensible Safeguards ([www.sensible safeguards.org](http://www.sensible safeguards.org)) to oppose these bills and push for stronger worker and public protections.

### **OSHA and MSHA Job Safety and Health Standards – Action Needed**

After eight years of neglect and inaction by the Bush administration, the Department of Labor under the Obama administration set an ambitious agenda to develop and issue much-needed standards to protect workers from serious and life-threatening safety and health hazards. At OSHA, new standards to protect workers from silica dust, confined spaces in construction and combustible dust, and to require employers to set up safety and health programs to find and fix hazards, were top priorities. And at MSHA, stronger rules to protect miners from coal dust, silica and underground mining equipment dangers headed the list.

OSHA has moved to finalize long-pending rules on cranes and derricks and hazard communication-globally harmonized system, and MSHA has finalized rules on mine refuges, rock dusting, pre-shift examination of underground coal mines and several other hazards.

But business groups and the Republicans in Congress have fought aggressively to stop these new protections through legislation and budget riders. Business groups also have intervened aggressively with the Office of Management and Budget (OMB), the gatekeeper on federal regulatory actions, and the Small Business Administration (SBA), which reviews rules for small business impacts, seeking to stop or weaken safety and health protections.

In the face of this intense assault, many safety and health rules have been delayed, particularly at OSHA. The most significant delay involves the development and promulgation of OSHA's silica dust standard, which is urgently needed to protect workers from silicosis, lung cancer and other diseases. The current rulemaking to protect workers from silica was initiated in 1997, nearly 15 years ago, but years of foot dragging by the Bush administration stalled progress on this rule.

Under the Obama administration, DOL made the promulgation of a new silica standard a top regulatory priority and worked to move this rule forward. In February 2011, OSHA submitted the draft proposed rule to OMB for review under Executive Order 12866. Under that order, OMB was supposed to complete its review within 120 days. But more than a year later, the

draft proposed silica rule still is being held by OMB, with no indication as to when the review will be completed and the proposed rule issued.

The development of OSHA rules on injury and illness programs, combustible dust and other hazards have also been delayed. OSHA's draft final recordkeeping rule to require employers to identify which injuries and illnesses are musculoskeletal disorders (MSDs) was withdrawn from OMB review in January 2011 to seek more input from small businesses. In December 2011, business groups and Republicans succeeded in winning a rider in OSHA's FY 2012 funding bill that prohibits OSHA from acting on this rule during the current fiscal year.

MSHA has been more successful at moving forward on needed standards. An emergency standard on rock dusting to prevent explosions in underground mines was issued after the Upper Big Branch (UBB) explosion, as well as a proposed rule to address patterns of violations, like those at UBB, and a proposed rule to require pre-shift examination of mines, which was finalized in April 2012. MSHA has proposed a rule to reduce exposure to coal dust and another rule to require proximity detection devices on underground mining equipment. However, MSHA's proposed rule to limit silica exposures to address increases in lung disease among miners has been delayed, and a proposed rule to require safety and health programs for mines has been taken off the regulatory agenda for the present time.

**Strengthening Job Safety Enforcement** – When Secretary of Labor Solis took office she gave notice that there was “a new sheriff in town” and that the Department of Labor would strongly enforce the law. She has been true to her word. Both OSHA and MSHA have stepped up enforcement, assessing large penalties against employers who have serious, repeated and willful violations. OSHA has implemented a Severe Violators Enforcement Program (SVEP) to strengthen enforcement for repeated violators and to utilize corporate-wide approaches to enforcement to address hazardous conditions at multiple locations of the same company. The OSHA penalty policy has been modified to provide higher penalties for high gravity violations, particularly those that result in injury or death. Average penalties assessed for serious violations have more than doubled and the number of significant enforcement cases (those with total penalties of more than \$100,000) has nearly doubled as well.

Following the Upper Big Branch disaster, MSHA launched a program of strategic “impact” inspections targeting mines with a history of significant problems, which has uncovered major hazards and violations. The agency has also sought injunctive relief to enforce against patterns of violations. As of January 31, 2012, MSHA had conducted 403 impact inspections which resulted in 7,162 citations and 718 orders.

In December 2010, MSHA issued \$10.8 million in fines to Massey Energy for hundreds of violations identified in the investigation of the UBB disaster. MSHA found that Massey put miners' lives and risk and created a culture of fear and intimidation. The U.S. Department of Justice reached a \$209 million settlement with Massey in connection with criminal investigations of the explosion. But the criminal investigation of Massey management officials has continued. To date 3 management UBB mine supervisors have been charged, of whom, one has been convicted to and sentenced to 3 years in jail, and another has plead guilty.

**Supporting and Defending Workers Rights** – The Obama administration has made supporting and defending worker rights a high priority. OSHA has strengthened its Whistleblower Protection Program to protect workers who raise job safety issues from employer retaliation. The whistleblower program has been elevated to the OSHA Assistant Secretary's office, additional staff hired, funding for more investigators requested and enforcement strengthened.

New initiatives have been undertaken to address the growing problem of employer retaliation against workers for reporting injuries and to make clear that policies and practices, including injury discipline policies, that discourage workers from reporting injuries are illegal.

MSHA has also enhanced efforts to protect miners' rights with a new initiative—Miner's Voice. This initiative includes extensive outreach to and education of miners about their rights under the MSHA Act and enhanced enforcement of anti-discrimination protections so miners who exercise their rights are protected.

**The Battle Over the Job Safety Budget** – Since taking office, the Obama Administration has sought to increase funding for OSHA and MSHA, with a focus on strengthening enforcement programs. Increases in FY 2010 brought these programs back to FY 2001 levels, restoring cuts made during the Bush Administration, and in its subsequent budget requests, the administration has proposed some further modest increases for OSHA and MSHA. House Republicans have tried to cut funding for OSHA, but President Obama and Congressional Democrats have strongly opposed these cuts, and to date OSHA and MSHA funding has been maintained. During the fight over the FY 2012 budget, House Republicans pushed a long list of riders to prohibit action on dozens of worker protection measures, including a number of OSHA and MSHA rules. Most of these were turned back, but as noted above, Republicans succeeded in blocking OSHA's injury reporting rule on musculoskeletal disorders.

Funding for NIOSH, the job safety research agency, has also been threatened. After seeking increases in NIOSH funding in FY 2010 and FY 2011, the Obama administration proposed \$48 million in cuts for the NIOSH program for FY 2012. These cuts would come from the elimination of the program for agriculture, fishing and logging safety and health research, and the Educational Resource Center program to train occupational safety and health professionals. Both of these cuts would seriously harm safety and health efforts. The occupational safety and health community successfully fought these cuts in the FY 2012 funding bill. Nonetheless, the administration has included these same proposed cuts in its FY 2013 budget request for NIOSH.

**9/11 Health and Compensation Act** – In December, 2010, the 9/11 Health and Compensation Act was enacted. This legislation will provide ongoing medical monitoring, treatment and compensation to the thousands of responders and community members who are now sick as a result of toxic exposures at the World Trade Center. The AFL-CIO, the NYS AFL-CIO and the unions who worked for years to get this bill passed, have been working on the implementation of this law. Although there have been some bumps in the road, both the health and compensation programs are up and running. Recent studies have documented an increase in certain types of cancer in exposed 9/11 responders, confirming what workers and unions have known. Unions and New York congressional representatives are seeking to add cancer to the list of 9/11 covered conditions through a new regulation, with a decision on this petition expected in the next several months.