

L a b o r & E m p l o y m e n t A L E R T

APRIL
2009

PROTECTING AMERICA'S WORKERS ACT IS REINTRODUCED IN HOUSE OF REPRESENTATIVES

As widely anticipated, Rep. Lynn Woolsey (D-CA) has reintroduced the Protecting America's Workers Act ("PAWA") in the 111th Congress. If passed, this legislation will significantly amend the Occupational Safety & Health Act ("OSHA"). Joined by 16 co-sponsors, Rep. Woolsey says that this legislation is intended to "strengthen OSHA by expanding coverage to millions of workers who are currently unprotected or inadequately protected, increasing civil and criminal penalties for those who violate the law, and by protecting those who blow the whistle on unsafe employer practices." More specifically, PAWA would amend OSHA in the following respects:

1. Expansion of Coverage.

- PAWA proposes coverage of federal, state and local public employees whose worksites are not covered at present by OSHA.
- Extends OSHA coverage to certain other private sector workers, including railroad and airline workers and some federal agency contractors.
- Requires OSHA to investigate all cases of death and incidents that result in the hospitalization of 2 or more employees.

2. Substantially Greater Penalty Exposure for Violations of OSHA Standards

- Increases in civil penalties, which will be indexed to inflation to the following levels:

- Willful or repeated violation
 - Maximum of \$120,000 (now \$70,000) per violation.
 - Minimum of \$8,000 (now \$5,000) per violation.
 - If violation leads to death, not more than \$250,000 nor less than \$50,000 (\$25,000 if employer has fewer than 25 employees).
- Serious or Non-Serious Violation
 - Maximum of \$12,000 (now \$7,000) per violation.
 - If violation leads to death, not more than \$50,000 nor less than \$20,000 (\$10,000 if employer has fewer than 25 employees).
- Failure to Correct
 - Maximum of \$12,000 (now \$7,000) per violation per day
- Violation of Posting Requirements
 - Maximum of \$12,000 (now \$7,000) per violation
- Subjects employers who commit willful violations that result in death or serious bodily injury to felony prosecutions.
- Exposes responsible corporate officers to felony prosecutions as well.

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3. Increases Protections for Whistleblowers

- Codifies regulations giving workers the right to refuse to do hazardous work.
- Confirms that the law forbids discrimination against employees for reporting injuries, illnesses or unsafe conditions.
- Makes procedures for investigating and adjudicating OSHA discrimination complaints consistent with other safety and health and whistleblower laws.

4. Permits Workers and Unions to Effectively Intervene in Discretionary Decisionmaking to Curtail OSHA's Ability to Compromise

- Permits workers and employee representatives to contest OSHA's failure to issue citations, the classification of its citations, and proposed penalties for alleged violations.
- Gives injured workers, their families and families of workers killed in work-related incidents the right to meet with investigators, obtain copies of citations, and make a statement before settlement negotiations take place.
- Confirms that time spent by employees accompanying an OSHA inspector during an investigation is time worked for which a worker must be compensated.
- Prohibits OSHA from using "unclassified citations" which permit an employer to avoid the consequences of a willful violation.
- Allows a worker or union to object to OSHA's modification or withdrawal of a citation, and entitles them to a hearing before the Occupational Safety and Health Review Commission.

Of all the respects in which PAWA would ratchet up pressure on employers, it may well be this final group of changes that employers will find to be most objectionable. To permit union representatives or employers to frustrate the settlement cases with the Solicitor of labor and force an expensive trial whenever they believe it to be in their interest would dramatically alter the balance of power.

The introduction of PAWA is the latest in a series of steps intended to provide for greater civil and criminal enforcement of OSHA and other Labor Department programs which new Secretary Hilda Solis has declared to be a priority. Both Solis and President Obama signed on as co-sponsors of PAWA when introduced in the last Congress, and it is anticipated that a greater push will be made in this Congress to pass this legislation. If the pending card check bill should founder, passage of PAWA should become a more pressing priority for an Administration that owes so much to the unions. ♦

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