You can live with OSHA

Knowing when to step in is a key to your success

By Mari M. Gursky

The Occupational Safety and Health Act of 1970 is the most comprehensive safety and health legislation ever passed in this country. Nobody challenges its goal—to create a safe workplace—but many challenge its enormous regulatory authority and its effectiveness.

That Act—OSHA—virtually gave the Secretary of Labor the authority to create and enforce standards for all American industry. And promulgate and enforce he has. Stacks of regulations have been passed under OSHA and millions of enforcement dollars have brought droves of inspectors into businesses all over the country.

Background

OSHA, which regulates six million businesses, is the first federal comprehensive law directed at the safety of employees. Earlier bits of safety legislation were directed to specific industries. In the thirties came the Davis-Bacon Act and the Walsh-Healey Public Contracts Act dealing with government contract work, including safety and health. There was some safety legislation in maritime and mining in the fifties, and the sixties brought the McNamara-O’Hara Public Service Contract Act which applied Walsh-Healey to government service suppliers. None of this legislation approached the breadth of OSHA.

OSHA covers virtually all employers—all employers whose business affect interstate commerce, though the Senate has recently approved an amendment to the Act which would prohibit routine inspections of employers with less than ten employees and good injury/illness rates.

The Secretary of Labor has been given broad power under the Act to create standards and regulations and enforce them, as well as the “general duty” clause which requires that an employer provide his employees with a workplace free from “recognized hazards.” For enforcement purposes alone, the Secretary has been armed with approximately 1,400 compliance officers, as well as safety specialists on his staff borrowed from kindred agencies or private consultants.

Protective intervention

The first step along the way of regulation at which you as an Association or an employer can intervene is by monitoring the activities of various relevant OSHA committees.

There is an OSHA Advisory Committee on Construction Safety and Health. At its July 18, 1979, meeting a subgroup was formed to study health hazards for construction, and Ike Martin, representing OSHA’s construction standards office, stated that the priorities in the office are standards for roofing, ladders and scaffolding, and floor and wall openings and stairways.

By keeping up with the activities of OSHA committees dealing with construction, you can learn early of OSHA target areas both in enforcement of existing standards and in generating new standards. Notice of the Construction Advisory Committee meetings is usually printed in the Federal Register in advance of the meeting, and often written data or arguments may be submitted by interested parties or groups. Oral presentations are allowed at the discretion of the Chairman.

During the standard-setting process before the Secretary adopts permanent standards, there is a period during which interested parties can comment. The proposed standards are published in the Federal Register, and associations can provide a useful service to their members by tracking standards that have a particular impact on their members and keeping them informed of these developments. Of course individual employers, too, can watch for standards of particular interest to them.

Where a proposed standard that is inappropriate is published, an individual or group comment should be considered. Though individual comments are useful, it often makes sense to comment as a group. Not only does the number of people supporting the comment give it more weight but also guiding these comments through the administrative and sometimes judicial process with the help of an attorney familiar with OSHA and administrative procedures often requires more time and effort than any individual employer can afford.

If a standard is promulgated which is substantively inappropriate, a person or an association adversely affected by that standard can bring a lawsuit in his or its federal Court of Appeals challenging the standard within 60 days after it is finally issued. This way the standard can be challenged without risking liability for violating the Act. (If the OSHA Commission enforces an improper standard against you, you can also raise the issue in appealing this ruling to the federal Court of Appeals, but if you lose, you are held liable.)

If you need extra time to change your operation in order to comply with a standard or you have a practice that is different but as safe as the standard, you can apply for a temporary or permanent variance from the standard. Carefully determine how long it will take you to comply or produce data to support your position that your practice, though different from the standard, is as safe as the prescribed one. Before you decide to submit information about your practices or your need for a variance, consult an attorney who is familiar with OSHA and its local enforcement practices.

Thus, one way to live more easily with the comprehensive limitations by OSHA is to help define the rules of that living arrangement: participate in forming the rules and regulations that will be applied to you.

Next month: Living with OSHA: Be Prepared for the Knock on Your Door.

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