

Worker Safety & Health in the Obama Years: The Importance of Enforcement

As the Senate gets ready to consider the nomination of Andrew Puzder for U.S. Secretary of Labor, it is important not to overlook worker health and safety issues during his confirmation hearings. Mr. Puzder is an outspoken critic of regulations who fails to acknowledge the crucial role that regulations play in protecting workers' health and saving lives in dangerous workplaces.

This briefing paper examines just how vital the Occupational Safety and Health Administration (OSHA) and its regulatory authority are to our nation's workers, and the exceptional record the Obama administration has compiled in preventing serious injuries and saving lives through strong and fair enforcement. We cannot afford to go backward on health and safety. The Senate must conduct a rigorous examination of Mr. Puzder's views on OSHA and its responsibilities, and demand detailed answers to questions about how he intends to protect our nation's workers.

Adopting and Enforcing Sensible Rules Saves Lives

The fact is that workplace fatalities and serious injuries and disease are preventable when employers follow common-sense safety rules—and the Obama administration, through OSHA, has worked tirelessly to keep workers safe, backing up its strong belief that no worker should have to sacrifice health or life for his or her job.

Strong and targeted enforcement by the Labor Department not only saves lives but also saves valuable resources for employers as well. A substantial body of empirical evidence, including recent studies conducted by the Rand Corporation¹ and by the business schools of Harvard University² and the University of California at Berkeley,³ confirm that OSHA inspections result in substantially and persistently reduced rates of both injuries and insurance costs to the tune of billions of dollars annually for employers, both large and small.

Evaluation of OSHA's standards⁴ have shown similar conclusions: OSHA's rule to prevent workers getting killed in trenching and excavation work has reduced workplace deaths by more than 40 percent; its standard for handling⁵ bloodborne pathogens has virtually eliminated occupationally acquired hepatitis B fatalities that killed 120 workers every year; and its grain-handling standard led to a 70 percent decrease in fatalities. In fact, since the Occupational Safety and Health Act and the

Mine Safety and Health Act were enacted in the 1970s, the rate of workers being killed on the job has declined by more than 75 percent, and the number of fatalities has declined from about 14,000 a year in 1970 to 4,836 worker deaths in 2015, with a workforce twice as large. This is still too many, but a huge improvement.

Following years of strong and effective enforcement in the Obama administration, the rate of workers being killed on the job⁶ dropped from 3.7 per 100,000 workers in 2008 to 3.4 per 100,000 in 2015 (data not yet available for 2016). Comparing the record of the average number of workplace fatalities over the last three years of the Obama administration (where data is available, 2013-2015) to the last three years of the Bush administration (2006-2008), there was an average of almost one thousand fewer workers killed on the job each year in the former than in the latter. (Specifically, an average of 4,747 workers were killed on the job each year from 2013-2015 versus an average of 5,570 deaths per year from 2006-2008.)

The Mine Safety and Health Administration (MSHA)⁷ has seen similar results during the Obama administration. After years of strong enforcement by Obama's Labor Department, the nation's mines are at a record low for workers killed on the job.

Targeting Enforcing Makes the Most of Limited Resources

The Obama administration was committed not only to increasing outreach and education on worker safety and health, but also to fair and effective enforcement. After OSHA's resources were depleted during the Bush administration, the Obama administration immediately sought a substantial increase in the number of OSHA inspectors, and Congress in 2010 agreed, allocating funds for OSHA to add more than 200 to its staff. Even with these added resources, however, it would still take OSHA more than 145 years to visit every workplace under its jurisdiction just once. That's why it was so important for the Labor Department to pursue targeted enforcement, particularly with respect to employers in dangerous industries and those with a history of serious, repeated, and willful violations.

These programs have made a real difference. OSHA's 2010 Severe Violator Enforcement Program, which replaced the ineffective Bush-era Enhanced Enforcement Program (decried by the Office of Inspector General in a scathing 2009 report⁸), provided the agency with sorely needed enforcement tools and strategies to protect workers in workplaces where there is a hostile attitude to even basic compliance with safety rules.

With a commitment to holding business accountable when they cut corners and endanger America's workers, the Obama administration issued nearly 1,200 enforcement actions involving serious penalties in its first seven years (2009-2015, data unavailable for 2016). During a comparable period in the Bush administration (2002-2008), the Bush administration issued only 783 cases—even though there were more workplace fatalities and injuries during that period.⁹

Fighting Illegal Retaliation Against Whistleblowers

In addition to strengthening safety enforcement, the Obama administration demonstrated its commitment to protecting the rights of workers illegally discharged or retaliated against under the OSHA law and other safety and consumer protection statutes. Under the OSHA law, for example, it is illegal for workers to be retaliated against for raising health and safety concerns, filing an OSHA complaint, or reporting an injury.

Over the last eight years, OSHA has worked hard to increase the effectiveness of its whistleblower program after years of inattention and underfunding during the Bush administration. The results are in, and the program has showed remarkable and steady progress. Under the last three years of the Obama administration, the number of cases¹⁰ where there was a positive outcome for workers who suffered retaliation for exercising their rights is double that of a comparable period during the Bush administration, and the amount of money restored to workers almost tripled during that time span (from \$38 million awarded total from 2006-2008, versus \$108 million awarded from 2012-2105).

Holding State Partners Accountable for Enforcement

The Obama administration also acted swiftly to expose and correct serious deficiencies in the enforcement programs of some state agency partners.¹¹ In 2009, for example, OSHA launched an investigation into the deaths of 25 workers during a construction boom on the Las Vegas Strip from 2007 through early 2009, and into the Nevada OSHA's failure to conduct thorough inspections and issue appropriate citations. Among many deficiencies cited,¹² one of the most alarming findings was that many of the Nevada inspectors had never been trained on the hazards in construction work, and therefore were unable to identify hazards and violations. Following this investigation, in 2010, OSHA undertook an unprecedented detailed review of all state-run operations, identified a range of inadequate policies and practices, and started holding state agencies accountable for their performance—to assure they were at least as effective as federal OSHA.

Moving Forward in a New Era

But more work is left to be done. More than 4,800 workers were killed on the job in 2015. It is clear that any new cutbacks in enforcement positions or targeted strategies will result in more on-the-job deaths and injuries, and more families torn apart by the loss of a loved one and a breadwinner.

Severe failures by employers continue even today, even in industries in which some employers should know how to protect their workers. Just this summer, for example, a young woman, two weeks away from her wedding, was working at an auto parts¹³ plant in Alabama when the assembly line stopped and she and three of her co-workers entered a robotic station to clear a sensor fault. The robot restarted abruptly, crushing to death the young woman inside the machine. An investigation by OSHA found that the company exposed her to a life-threatening danger and

completely failed to protect her¹⁴—they never developed or implemented the procedures for preventing machines from starting up when workers are inside. This is one of the oldest and most basic of all safety rules. OSHA levied more than \$2.5 million in fines on both Ajin USA (the plant owner) and the two staffing agencies that provided workers to the plant.

This story—which is one among thousands in 2016—should send a clear message to the incoming administration that strong enforcement of safety rules is a must to safeguard America's workers. But Andrew Puzder, President-elect Donald Trump's nominee for secretary of labor, has spent years railing against regulations—especially those that protect America's workers and the middle class. He speaks often of a cost-benefit analysis that gives short shrift to the value of the lives and health of workers.

Weighing the Labor Secretary Nominee

Enforcement of OSHA regulations saves lives and saves employers money. OSHA's new silica rule will save more than 600 lives a year. Will Mr. Puzder decide that in his cost-benefit analysis, their lives are not worth saving?

Mr. Puzder has claimed that the low-wage fast-food industry, because of supposed overregulation, may be the “canary in the coal mine,”¹⁵ referring to the sacrificial use of canaries in mines to test for dangerous levels of carbon monoxide that would kill miners. This reference alone shows how Puzder fundamentally does not understand the importance of our health and safety laws. As ever, his concern is the bottom-line profitability of his company and his industry. Instead of realizing that the canaries are there to protect the workers, he thinks they should be there to protect the business.

Workers cannot afford to have someone with such fundamental misallocation of priorities as the chief advocate for this nation's workers. The Senate must conduct a vigorous investigation into Mr. Puzder's values and priorities, and if indeed he is as unsuited to this position as the record appears, the Senate must deny him confirmation.

Endnotes

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- ¹ Haviland AM, Burns RM, Gray WB, Ruder T, Mendeloff J. 2010. What kinds of injuries do OSHA inspections prevent? J Saf Res 14:339-345.
- ² Levine DI, Toffel MW. 2012. Government regulation that actually works Harvard business review blog. http://blogs.hbr.org/cs/2012/05/government_regulation_that_act.html (NEW LINK)
- ³ Levine DI, Toffel MW, Johnson MS. 2012. Randomized government safety inspections reduce worker injuries with no detectable job loss. Science 336(6083):907-911.
- ⁴ <https://www.osha.gov/dea/lookback.html>
- ⁵ <http://www.cdc.gov/niosh/docs/2000-108/pdfs/2000-108.pdf>
- ⁶ U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 2016
- ⁷ <https://www.msha.gov/us-mining-deaths-drop-another-new-low-2016>
- ⁸ <https://www.oig.dol.gov/public/reports/oa/viewpdf.php?r=02-09-203-10-105&y=2009>
- ⁹ Data from U.S. Department of Labor, Occupational Safety and Health Administration
- ¹⁰ Data from U.S. Department of Labor, Occupational Safety and Health Administration, Directorate of Whistleblower Protection Programs and website on <https://www.whistleblowers.gov/index.html>
- ¹¹ Approximately 20 states, with Federal OSHA financial assistance and oversight, run their own state OSHA agencies --that must be as effective as Federal OSHA
- ¹² Testimony of then Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor before the U.S. House Committee on Education and Labor, October 29, 2009
- ¹³ https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33540
- ¹⁴ http://www.osha.gov/ooc/citations/Joan_Ajin_1156866.pdf; https://www.osha.gov/ooc/citations/Alliance_1165706.pdf; https://www.osha.gov/ooc/citations/Joynus_1165707.pdf
- ¹⁵ <http://www.franchisetimes.com/news/November-2016/Why-CKEs-Andy-Puzder-Thinks-the-Government-Doesnt-Understand-Job-Creation/>