



“OSHA IS GETTING BACK TO THE JOB OF PROTECTING WORKERS, AND THE ADMINISTRATION HAS MADE IT CLEAR THAT IT INTENDS TO ADDRESS MAJOR SAFETY AND HEALTH PROBLEMS.”

—Peg Seminario, director of safety and health, AFL-CIO

● COVER STORY

OSHA's Deeper Bite

The Obama administration injects new power into the occupational safety agency as employers find themselves on the defensive. Critics hit new director as “junk science” advocate.

BY STEVE TUCKEY

While critics on both the right and left have taken on the Obama administration for purportedly wobbling on issues ranging from financial regulation to Afghanistan, worker safety seems one area that the new team in Washington has charted a definite course correction from the past eight years.

Late last year, the Senate quickly confirmed David Michaels as the new director of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA).

Labor advocates cheered. Some business leaders who fear a costly new era of regulation upon them jeered.

Peg Seminario, director of safety and health for AFL-CIO, said the Michaels appointment represents an important step forward after eight years of what she termed “neglect, inaction and in some cases hostility.”

“OSHA is getting back to the job of protecting workers, and the administration has made it clear that it intends to address major safety and health problems,” she said.

Michaels came to OSHA from George Washington University, where he was interim chairman of its School of Public Health and Health Services.

President Obama earlier this year proposed to spend \$573 million for the 2011 fiscal year budget on OSHA, an increase of \$14 million over the previous fiscal year. The extra funds would pay for 125 new inspectors and shift 35 compliance officers to enforcement activities.

In a live Web chat on Feb. 1 discussing the 2011 budget, U.S. Secretary of Labor Hilda L. Solis proposed significant reductions in the Voluntary Protection Program (VPP), despite the good the program accomplished by facilitating voluntary compliance by employers with safety regulations.

Nonetheless, a Government Accountability Office (GAO) report identifying oversight and internal control programs in the VPP could also have played a role in its fate.

“We need to decide whether we will spend our limited resources on supporting those companies that really get it, and who are doing a great job at protecting their employees,” she said. “Or do we spend our scarce resources on companies that

disregard workplace safety and allow workers to die in situations that could easily have been prevented,” she said.

During the same Web chat, Michaels also said that OSHA would work with stakeholders to identify new or alternative funding sources for the VPP.

More funding could bring OSHA's reputation closer to the threshold associated with the Environmental Protection Agency, according to ergonomics consultant Cynthia Roth, CEO of Syosset, N.Y.-based Ergonomics Technologies Corp.

“When the EPA comes calling, employers listen. They don't fool around,” she said. “While I don't think OSHA will reach that level of strength, I do believe greater enforcement capabilities, new regulations and rulemaking will be an aspect of life going forward for businesses.”

Business leaders have expressed concern about the new emphasis on enforcement as opposed to voluntary compliance, embodied by the VPP.

Marc Freedman, director of labor law policy at the U.S. Chamber of Commerce, said the administration's increased OSHA enforcement efforts come as no surprise, given President Obama's rhetoric as a candidate during the 2008 campaign.

“Our concern is how these people are used, and how knowledgeable and well trained they are with respect to being able to look at workplaces and understanding what works as to how employers are protecting their employees,” said Freedman.

Jeri Kubicki, vice president for human resources for the National Association of Manufacturers, took a harder line. OSHA's new leader, she told a Senate panel, had “portrayed employers as ‘manufacturers of doubt’ only driven to elude regulation.”

Kubicki said that workplace safety performance has steadily improved for more than a decade due to the open relationship between employers and the federal government.

“To continue this trend, the trust between employers and OSHA must not be abandoned,” she said.

Before OSHA can make any significant improvements in worker safety, employees themselves have to feel comfortable in reporting safety issues on the job. That, however, isn't the

case, at least not right now, according to a survey published late last year by the GAO of more than 1,000 occupational health practitioners.

More than two-thirds of the respondents observed worker fear for reporting an injury or illness, according to the survey. In addition, a third of the practitioners said they were pressured by employers to provide insufficient treatment to workers or to hide or downplay work-related injuries or illnesses. Moreover, half the respondents said they were pressured to downplay the injury so that it would not be reported to OSHA, the survey also found.

AFL-CIO President Richard Trumka said the report corroborates what union safety activists and rank-and-file employees have long believed was the truth about employers.

“Employer policies that discourage the reporting of injuries not only undermine the completeness and accuracy of workplace injury data,” he said. “They prevent injured workers from receiving needed medical care and prevent hazardous conditions that injure workers from being identified and corrected.”

The report was requested by two Democratic Senate and House members who are sponsors of the Protecting America Workers Act, which would give OSHA more tools to fight underreporting of injuries and illnesses by employers.

Roth said that companies with higher injury and illness rates face higher workers' compensation costs and often encounter difficulty winning government contracts. “Given such consequences, incentives to cheat are always present, and the GAO found that many employers avoid medical treatments or shop around for doctors who provide diagnoses that avoid recordable events,” she said.

summary

- The Obama administration has asked for a \$14 million increase in OSHA's budget for FY11.
- Under the administration of George W. Bush, some thought the agency lacked clear goals and direction.
- The Protecting America Workers Act would give OSHA more tools to fight underreporting of injuries and illnesses by employers.

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- A Q&A with David Michaels.
- Links to all the relevant GAO reports, congressional testimony and impending legislation.

Linda Johnson, an employment practices attorney based in Manchester, N.H., said that regardless of whether tougher worker protections win approval, employers should be prepared for greater scrutiny this year. She noted that targeted industries include nursing homes, slaughterhouses, foundries, concrete-pipe manufacturing, seafood canning and bottled-water manufacturing.

Companies can and should expect government investigators to review employment records for 2007 and 2008, interviews of management and rank-and-file employees by OSHA

officials, and walk-around safety and health inspections.

Johnson said an array of media reports and academic studies pin the underreporting problem on a number of reasons, including incentive programs that have workplaces festooned with posters proclaiming the number of days without an injury on the job.

"Though well intentioned, even popular safety programs, which provide awards for a period of time without recordable injuries, can have the effect of putting pressure on workers not to report their injuries," she said.

Getting a more accurate overall picture of the state of occupational health and safety in the workplace remains a top agency priority, and OSHA has designated the following specific hazards for review:

- Airborne Infectious Diseases—Healthcare-acquired diseases such as tuberculosis and severe acute respiratory syndrome (SARS) are on the rise this year. Most controls are aimed at patient rather than worker protection, which the agency would like to address.
- Crystalline Silica—Inhalation of silica can cause lung disease and silicosis. The agency plans to update existing exposure limits and set new rules to protect employees from such dust.
- Combustible Dust—Such material can cause catastrophic explosions such as the 2008 Imperial Sugar Refinery explosion. Currently, the agency does not have a comprehensive standard that addresses this hazard.
- Walking-Working Surfaces—The proposed new rule will update the agency's rules covering slip, trip and fall hazards and establish requirements for personal protection systems.

Not only do the new enforcement efforts frighten OSHA critics such as the Manhattan Institute's Center for Legal Policy, a think tank that promotes "market-oriented" solutions to public-policy questions. Michaels' career in and of itself has become a flashpoint in the rhetoric surrounding his nomination.

"This is a guy who has bought into every junk-science claim out there that the plaintiff's bar has embraced over the past decade," said James Copland, director of the Center for Legal Policy. "And they are putting him in charge of occupational safety

"One of the most costly events that can happen to an employer is the death or serious injury of one or more of its workers."

—DAVID MICHAELS, assistant secretary of labor for the Occupational Safety & Health Administration

David Michaels' Prescription for Workplace Safety

In an interview, David Michaels, assistant secretary of labor for the Occupational Safety & Health Administration, reveals the agency's strategy to keep workers safe.

OSHA seems to be enhancing its enforcement efforts. Can you briefly describe these new enforcement efforts?

OSHA is directing and will continue to direct its enforcement resources at those establishments that have the greatest incidence of injuries, illnesses and fatalities. To that end we are looking at and implementing new National and Local Emphasis Programs to target these high hazard establishments. We want to direct enforcement resources to employers that have patterns of systemic violations.

Do you expect much blowback from the business community, in regards to these new enforcement efforts, and how do you expect to counter it.

No, I don't expect much push back. I think the business community understands that their most valuable resource is their workers. Safe and healthy workers contribute to the success of the business. Most employers know this and understand that OSHA is directing its enforcement efforts at those establishments not meeting their obligations under the OSH Act.

Can you demonstrate causal links between workplace safety and productivity, and can you also demonstrate that stricter enforcement will not necessarily lead to inordinately higher business costs.

One of the most costly events that can happen to an employer is the death or serious injury of one or more of its workers. For example, BP had to pay more than a billion dollars in response to the 2005 Texas City explosion that killed 15 workers. To that extent, if an OSHA citation prevents a single fatality or serious injury, it's a good investment.

Please describe the new emphasis on musculoskeletal disease in your efforts and why do you think the risk may have been downgraded before?

Work-related musculoskeletal disorders (MSDs) continue to be a major problem for American workers and we are in the process of figuring out how best to address this problem. The first step we're taking is to propose revising our regulation on Recording and Reporting Occupational Injuries and Illnesses (Recordkeeping) to put back a column on the OSHA 300 Log that employers will check when recording work-related musculoskeletal disorders (MSDs).

Have emphasis and enforcement efforts in workplace safety varied according to party dominance such as looking at the Reagan era compared to the Clinton era?

Enforcement and regulatory initiatives vary from Administration to Administration depending on the focuses and types of businesses that are out there. Some administrations focus more on compliance assistance and cooperative programs than they do on enforcement or standard setting.

Why do you want to take on this challenge at this point in your career and what in your background thinks you will be effective.

Ensuring the safety and health of America's working men and women has been my life's work and believe I can make the greatest contribution to this goal by moving OSHA forward. At OSHA, I will use my experience to prevent or reduce hazards that threaten the health and safety of working men and women.

—Steve Tuckey

Editor's note: The full-length version of the Q&A with Michaels is available on www.riskandinsurance.com.

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and health."

Michaels' critics, nonetheless, failed to get the Senate to conduct an extensive look into his background. White House spokesman Tommy Vietor termed some of the more extreme charges leveled at the new appointee "ridiculous and false."

"He is a nationally recognized leader in the efforts to ensure the integrity of the science underpinning public health and environmental regulation," he said in a statement to

FOXNews.com.

For those trying to get what Copland terms "sound science" into not only the courts but the regulatory arena, the Michaels appointment represents a great step back.

Over the past decade, the new director was the chief architect of an initiative to compensate U.S. Department of Energy nuclear weapons workers who developed cancer or lung disease as a result of their exposure to radiation and other life-threatening hazards.

Roth agreed that Michaels has a long history of working to resolve occupational safety and health hazards, particularly those related to the chemical industry.

She also noted that the new director has been a critic of industry employing its own scientists and lobbyists to dispute the findings of studies on the hazards of toxic materials, secondhand smoke and global warming.

"When manufacturers foot the bill for their own 'watchdogs,' the science can be twisted to cast doubt on its validity," Roth said.

“WITH THE MICHAELS APPOINTMENT, OSHA HAS GROWN A NEW SET OF TEETH.”

—*Cynthia Roth, CEO, Ergonomics Technologies Corp.*

So often the issue of what is “junk” or “sound” science comes down to the opinion of a judge or jury. On this issue Michaels’ critics fear he will help reverse the impact of a 1993 court ruling that allowed trial judges to determine the validity of certain expert testimony without a hearing before a jury.

Michaels has written that the impact of the so-called “Daubert” ruling has meant an increase in successful motions of summary judgment, most of which have come down against the plaintiffs, who as a result have had a difficult time making their cases heard.

More protracted hearings over the value of expert testimony and evidence will only benefit the trial lawyers, a major source of cash for Democratic politicians, critics of the new appointee charge.

All the junk or sound science in the world will not matter if federal officials do not take the proper actions to ensure existing rules based on science that everyone agrees on are enforced.

Workplace safety has had varying degrees of importance attached to it over the years since the creation of OSHA during the Nixon years in 1970.

While enforcement picked up late in the Ford administration and the Carter years, it “went into the toilet” during the first Reagan term, according to Seminario.

A number of horrendous events followed—fatal explosions in Bhopal, India, and at a factory in West Virginia—and the issue of workplace safety returned to the front burner, particularly with the appointment by Reagan of former Labor Secretary William Brock.

Oddly enough, the first Clinton term, with its emphasis on “Reinventing Government,” made workplace safety more of a voluntary

effort than in previous years.

But as the administration began to rethink that policy, Seminario said, it then had to deal with the election of the Republican Congress in 1994, which wielded budget powers through not only the amount of dollars allocated but through legislative riders that prohibited certain enforcement activities.

In its waning days, the Clinton

administration released more than 1,600 pages of ergonomic rules. The rules became a bone of contention with lawmakers, and the issue could emerge once again with the Obama administration now in charge and favoring more labor equality. (See related story on Page 26.)

The George W. Bush administration virtually shut down issuing any new regulations and put enforcement on a kind of retail level, Seminario said, without any strategic plans of targeting industries and trying to change employer practices.

All that has changed once more

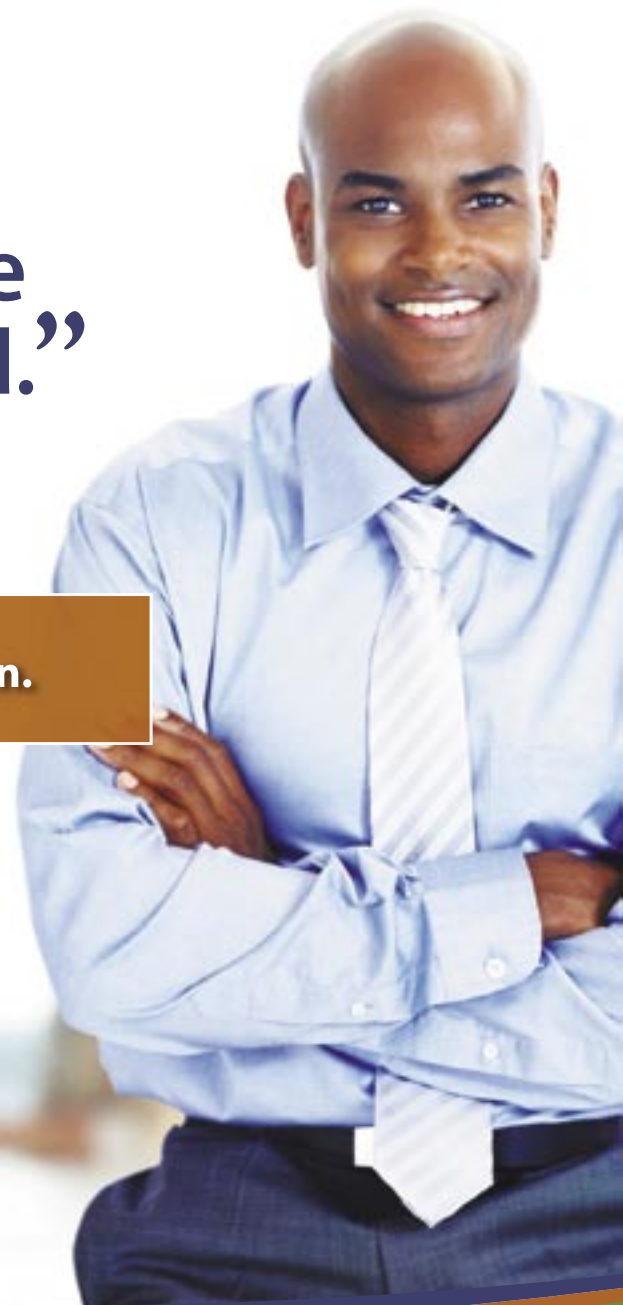
with the appointment of Michaels, and the new labor secretary, who said that the \$87 million fine issued late last year against BP Products North America—the largest fine in OSHA history—indicates the agency means business.

“We are sending a strong message throughout the industry that we will not tolerate the endangerment of workers,” said Secretary Solis.

STEVE TUCKEY has written on insurance issues for a decade for several national media outlets. He can be reached at riskletters@lrp.com.

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