



QUARTERLY

FALL

OSHA - A MEANS TO IMPROVE THE HEALTH OF AMERICANS

1974

PART I

This is Part I of a two-part series describing occupational safety and health. Part I describes the history behind the Federal Occupational Safety and Health Act of 1970 (OSHA), how it works, and applies to New York City. Part I also points out the role that the health delivery system can play to increase the safety and working conditions which have an impact on health. Part II will highlight the practical programs which health care facilities can utilize in making occupational safety and health part of their preventive and community medicine activities.

Those interested in gaining more information should contact their local unions, community boards or health departments, the National Institute on Occupational Safety and Health or Region II - Department of Labor.

The passage of the Occupational Safety and Health Act of 1970 (OSHA) has brought new hope to working men and women throughout the United States. Now there is legal basis for protecting their health and safety while on the job. The major goals of OSHA, as stated in its preamble are:

Preamble to OSHA:

"To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging States in their efforts to assure safe and healthful working conditions; by providing research, information, education, and training in the field of occupational safety and health; and for other purposes."
(Public Law 91-596; December 29, 1970)

OSHA probably comes the closest to providing working people in this country with a chance to reach the lofty definition of health of the World Health Organization.

World Health Organization Definition of Health:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Those are high sounding words and promises, not uncommon to other preambles to social legislation. What has been the reality?

A Little Background

OSHA is the first piece of Federal protective legislation for workers in the history of the United States which covers conditions at the workplace. The 1969 Coal Mine and Safety Act, which was passed a few months prior to OSHA, as well as Maritime Acts and acts covering the Atomic Energy Commission were previous examples of governmental involvement in the area of management prerogatives. Prior legal protection available to workers had been the "working conditions" clauses in their collective bargaining contracts (for unorganized workers there was and remains no such protection). The majority of those contract clauses came into being only after the major organizing campaigns of the 1930s, many of them bitter and protracted.

During the Second World War, the Walsh-Healy Act was passed which did establish some minimum standards for working conditions for those private companies doing business with the U.S. government. (Public employees or other private sector workers were not covered by the Act). These standards and those passed by the American Conference on Government Industrial Hygienists (and other professional organizations which sometimes state "acceptable" safe standards) remain the only Federally endorsed health and safety standards which now exist, except for the recently passed asbestos, polyvinyl chloride and noise standards, and the package of 14 cancer causing chemicals. There is still no Federal standard of exposure to such dangerous common substances as lead, carbon monoxide and silica. In fact, there are 500 widely used chemicals within a total of 25,000 toxic chemicals which are used by industry and for which safe standards do not exist.

The period prior to 1970 was marked by industrial disasters and public outrage by workers. In 1877, the State of Massachusetts passed the first safety law which required guard rails on certain machines and by 1893, the first national railroad safety acts were passed. However, this did not stop industrial accidents from killing 4,534 railroad workers in just one year, 1907. Soon after, the State of New York passed the first workers' compensation law in 1910. In the same year, Alice Hamilton, the founder of the occupational health field of medicine, began her work.

The "Era of the Muckrackers" from 1900 to 1910 brought some of the dangers of industrial life to the attention of people in the United States. Upton Sinclair's book, The Jungle pointed out the hazards faced by meatcutters. Other writers of the time described the problems of everyday life which plagued city dwellers who daily faced urban areas filled with industrial dangers.

The infamous 1911 Triangle Shirtwaist fire in New York City killed 146 workers. Soon after, the first fire safety laws came into existence (the law required open fire exits). These laws brought the hundreds of sweat shop workers in the garment district greater safety from the threat of fires.

The first government recognition of an occupational disease concerned the use of white phosphorus in matches in 1912; and the early 1920s brought a ban on the use of radium in watch dials. In 1948, the Federal government banned the use of beryllium in the making of fluorescent lights. All these substances were acted on only after great damage to workers and subsequent public outrage.

However, these governmental actions did little to prevent a tragic occupational catastrophe from taking place in the early 1930s. During tunnel construction for Union Carbide, in Gauley Bridge, West Virginia, 476 tunnel workers died from silica exposure or were killed by accidents, and over 1,500 workers were disabled. At least half of the deaths were caused by exposure to particles of rock called silica, and the disease called silicosis. Those killed by the silica inhaled as little as three months of the silica dust while digging in the tunnel.

Even with the passing of the Wagner Act (which gave workers the right to organize), the Social Security Act and other pieces of protective legislation, there still was not a comprehensive piece of legislation to protect workers. And, there was no law providing a legal basis on which workers could, in a court of law, raise issues of occupational safety and health. This situation abruptly changed, however, after the social upsurge and changes of the 1960s, and the mine disaster of 1969 in Farmington, West Virginia. In this mine disaster, 78 miners were killed in a mine blast. A strongly organized labor lobby soon forced the passage of the Coal Mine and Safety Act of 1969; and on its heels, the Occupational Safety and Health Act of 1970.

How Does the Law Work?

There are at least 4.1 million workplaces covered by the Act, even with the Act's total exclusion of protection for public employees. The enforcement of the Act is entrusted to the U.S. Department of Labor and its subdivision, the Occupational Safety and Health Administration (OSHA). This agency hires compliance inspectors who inspect the workplaces in the United States. The labor movement pushed to get at least 5,000 inspectors hired to do this monumental job. The U.S. Department of Labor received congressional authorization to hire 500 and promised to increase the number to 1,000 by 1972 or 1973. (The number has not been increased). It is impossible for 500 (actually only about 375 were ever employed at any one time) enforcement officers to inspect 4.1 million workplaces on a regular timely basis.

Under the Act, a separate agency, the National Institute for Occupational Safety and Health (NIOSH), was set up to establish the criteria for all existing toxic chemicals and other safety health hazards. The NIOSH, located administratively in the Department of HEW, and physically in Cincinnati, Ohio, recommends criteria to the Department of Labor for the promulgation and enforcement standards. Unfortunately, NIOSH has been subject to massive budget cuts and administrative hamstringing by constant reorganization and other limitations.

As a result, NIOSH has had to sub-contract almost all of its work in the development of safety standard criteria and this has severely restricted its establishment of uniformity. In spite of these problems, NIOSH has developed, distributed and delivered to the Department of Labor, over 25 criteria documents, which, if promulgated and implemented, would greatly improve the health and safety of workers.

How Do workers Find Out If They Are In Danger?

If a worker wants to report that a particular chemical is dangerous or that any other workplace situation is unsafe, a call can be made to the Regional Office of the U.S. Department of Labor, OSHA Division. A compliance officer should be requested to inspect the workplace or condition. A letter is usually required. However, if the situation is an emergency, the worker can invoke the "imminent danger" section of the Act and an inspector MUST be sent to the workplace within 24 hours.

When the inspector arrives at the plant, the worker is allowed to "walk-around" with the inspector and the union representative, (at a possible loss of pay according to recent court decisions) and show the inspector what is wrong. The worker may also choose to remain anonymous and not accompany the inspector and foreman. This anonymity is protected under the Act with severe penalties to the employer when an act of discrimination is taken against the worker for seeking an inspection. These cases are piling up. It is quite clear that this inspection procedure almost requires a union representative to be present to protect the rights of workers. Unorganized workers do not have an organization like a union to defend their rights and protect their health. When an inspector arrives and finds a violation, a citation is issued. The penalty procedure is a fine, similar to a traffic ticket. A worker can also request (from NIOSH) an inspection to see if a particular substance, material or procedure is dangerous.

How Much Are the Fines?

According to the Department of Labor figures in U.S. Senate hearings, the average fine given to employers in the first two and one-half years under the Act is well under \$50. This low

figure is indicative of the ineffectiveness of OSHA enforcement. In addition, 98.6% of the violations, were classified as being of the "nonserious" nature as opposed to "serious" violations. This classification almost ensures a low fine, and with it, virtual guarantees that the workplace will remain unsafe.

There are administrative procedures under OSHA which lead to a Review Commission to which appeal complaints on particular citations by both worker and employer may finally be appealed. To date, this Review Commission has had a record of reducing fines and thus, by administrative actions, eliminating existing violations. Its track record has not been favorable to workers and their unions. Review Commission decisions are subject to appeal in the Federal courts. This is an expensive and time-consuming process.

What Has Been Industry's Response?

Industry's response is self-protection. In almost every case, industry has complained about the strict enforcement of OSHA. A recent study by a well known economist indicated that industry plans to spend less money as a percent of capital expenditures on improving safety and health conditions in 1975 than it did in 1974.

How Is NYC Affected?

The City of New York presents certain unique problems, which affect the safety and health of many workers. First of all, NYC is not basically an industrial town with steel mills, auto factories, or coal mines. There exist no massive factories producing textiles, steel, automobiles, etc. But New York is a city in which thousands of smaller workplaces predominate -- small to medium sized shops doing garment and needle trade work, small iron and other metal works, as well as hundreds of carpentry and similar industrial shops. The massive construction industry also plays a major role in the city's industrial profile. Unfortunately, the lack of large industrial complexes in New York City has probably led to the general lack of awareness that occupational safety and health is a major issue here.

In addition, New York has over 300,000 public employees who are specifically excluded from Federal OSHA coverage, and who have only former Mayor Lindsay's Executive Order #109 for protection (#109 allows little hope for improvements, since it lacks any enforcement penalty and can call only for voluntary compliance). Of these 300,000 workers well over 50,000 do industrial type work in sanitation collection, the city incinerators, in the bellies of municipal hospitals where there are high noise levels and crushing heat, in water treatment plants, etc., where they are exposed daily to chemicals and other health hazards of all kinds. To a

great extent, the large number of public employees in the public sector plays a role in the determination of major labor oriented political issues in New York City. The lack of legal coverage for such a major segment of the City's work force may be holding the City administration from implementing safety and health laws for all of the workers in New York City.

New York does have a well organized labor movement and a very highly developed medical and public health structure. The Department of Health, the Health and Hospital Corporation, the Comprehensive Health Planning Agency, the Environmental Protection Agency and other City agencies which have some responsibility for occupational safety and health could constitute a substantial body of concern if motivated to implement OSHA. The City health agencies could be augmented in this effort by the large number of health science schools, other schools and community organizations interested in health care. To date, no decision has been made to get involved.

And so, with the exception of a few committed unions and some health advocates, OSHA isn't far off the ground in New York City.

What Has OSHA Done?

Through its legal obligation to make a full report directly to the President and indirectly to the Congress, OSHA has provided some officially sanctioned figures on the gravity of the situation. The figures (which are quite staggering) state that over 14,000 workers die yearly due to industrial accidents, and over 100,000 die yearly due to occupational disease according to Work In America by Eliot Richardson, former Secretary, HEW. Reliable sources indicate, however, that the figures are more like 25,000 dead from accidents and well over 200,000 dead from occupational diseases (especially with the recent revelations on asbestos and vinyl chloride exposure).

The Department of Labor (DOL) is responsible to collect data on mortality and morbidity caused by occupational conditions. The importance of this type of data collection by DOL cannot be overstated. The tabulated results and statistics form the basis for valuable decision-making in the area of occupational safety and health. Unfortunately, a recent Senate investigation of OSHA cited the DOL for its failure to collect and analyze this vitally needed data. The President issues a formal report to Congress every 18 months which is available under the Freedom of Information Act. OSHA has tried to respond to issues like vinyl chloride with hearings, but there is still no schedule for the promulgation of other standards. In response to criticism, OSHA is presently developing a new system for promulgating standards. This came after the establishment of standards on asbestos, in which OSHA responded to industry's pressure by setting standards above the

medically recognized safety level of zero exposure.

Cooperation Is the Key to a More Effective Use of OSHA

OSHA has given hope to many workers. More sophisticated unions in the safety field have used OSHA to get their workplaces cleaned up by threatening to bring OSHA inspectors into the workplace. OSHA has also given hope to some health professionals who see it as an aid to preventive medicine-- an important area of health care.

Dr. Irving Selikoff of Mt. Sinai Environmental Science Laboratories, has inaugurated many screening programs with unions to detect silicosis, lead poisoning, asbestos, and vinyl chloride exposure. One such program in New York City, is a cooperative effort between Local 259 of the United Auto Workers (UAW), the employer, and the Mt. Sinai Department of Environmental Medicine, headed by Dr. Selikoff.

The thrust of this study is to determine the effects of breathing shop air on workers in auto repair agencies. It is Dr. Selikoff's contention that the auto repair workers are exposed to high levels of asbestos dust. The lining of brakes consists of asbestos fibres, which become dust with use and collect in the drums and the plating of the brakes. This dust becomes airborne in the shop while brake repair jobs are done. For many years, this brake dust was merely blown throughout the shop by compressed air hoses, exposing all workers to high concentrations of asbestos dust.

The Mt. Sinai-Local 259 program, which has been under way now for a year, began when staff members of Dr. Selikoff's group inspected the death records of Local 259 members (with the consent of the union). The next step was to take air samples in several of the auto repair shops. Most recently, forty older members (who have twenty or more years in the industry) have been examined by the Mt. Sinai group at Local 259 headquarters. An important consequence of this study by the Mt. Sinai group is the provision of medically sound information to the union to make improvements in the working conditions of the shop.

In a related fashion, Dr. Steven Ayers, St. Vincent's Hospital, has been helping Bridge and Tunnel Officers to set lower carbon monoxide levels, which will prevent the high incidence of heart attacks in workers.

These projects are good examples of what cooperative relationships between health professionals and trade unions can accomplish. Once the health hazard has been identified by the health professional, it then becomes the responsibility of the union to educate the membership and work with management to eradicate this hazard.

Interest and concern in the problem of industrial health, and safety hazards are growing within the health care system.

Screening programs such as those of Dr. Selikoff and Dr. Ayers are becoming more available. Projects such as those described above, are an important first step toward the development of a comprehensive health care program of diagnosis, treatment and, ultimately, prevention, for millions of workers in this country.

The final goal of such programs, of course, is prevention - that is, elimination of the occupational health hazards which cause disease. The importance of OSHA is that it provides the legal mechanism to achieve this aim, through the cooperation between workers and their representatives, and workers in the health care system.

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