

GAO

Testimony

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**OCCUPATIONAL SAFETY
AND HEALTH**

**Worksite Safety and Health
Programs Show Promise**

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Mr. Chairman and Members of the Committee,

I am pleased to provide for the record, as you consider H.R. 3160, the Comprehensive Occupational Safety and Health Reform Act, some observations about the value of comprehensive safety and health programs in improving the safety and health of workers in the United States.

The purpose of the Occupational Safety and Health Act of 1970 is "to assure safe and healthful working conditions for working men and women." However, the Occupational Safety and Health Administration (OSHA) and the state-operated safety and health programs cannot, through direct inspections, monitor all workplaces to determine whether they are free from safety and health hazards.

In our 1990 report, Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR), we noted the importance of both employers' and employees' involvement in improving workplace safety and health. We described (1) the implementation of worksite safety and health programs and (2) labor-management safety and health committees as options for gaining more active participation of both employers and employees in safety and health.

At the request of Senator Claiborne Pell, we have, since issuing that report, conducted a more detailed review to assess whether all employers should be required to implement comprehensive safety and health programs as an additional way to identify and correct safety and health problems in workplaces. To address Senator Pell's concerns, we

- focused on the implementation experience in the six states that require these comprehensive programs and considered the experience of a broad range of employers of all sizes who have voluntarily implemented them in these and other states;
- collected available evidence about the impact of these programs, both when they are voluntary and when they are required; and
- examined OSHA's position on the need for such comprehensive programs, its efforts to encourage their wider use, and its regulations requiring similar prevention efforts for specific hazards.

Our draft report on this work is now at the Department of Labor for review and comment before it is issued in final form. That work forms the basis for this statement.

RESULTS IN BRIEF

Although not conclusive, available information, including the views of enforcement officials and employer and employee representatives, suggests that comprehensive safety and health programs can have positive effects on safety and health at the worksite. We found that reservations about requiring employers to have these programs come primarily from concern about implementation issues, rather than concern about their value. However, our review of the experience in states that require some or all employers to have these programs indicates that, if program requirements and enforcement agency policies are the same as in those states, implementation problems can be overcome. In addition, for many employers who are already required to have written prevention programs for specific workplace hazards, the requirement for a comprehensive safety and health program could entail little additional effort. Still, some uncertainty remains about the difficulty employers of different sizes and in different industries would have in implementing required programs.

Limitations in the quantitative data on the programs' burdens and impact make it difficult for us to recommend at this time that these programs be required for all employers. However, the available information does suggest that the potential reductions in fatalities, injuries and illnesses are likely to justify any additional burden associated with implementing these programs, at least for high-risk employers. High-risk employers could be defined on the basis of (1) high incidence of injuries and illnesses and (2) a history of safety and health violations. In addition, OSHA should collect sufficient information about impact and implementation experiences to determine to which other employers, if any, the requirement should be extended in the future.

BACKGROUND

In 1970, Congress passed the Occupational Safety and Health Act (P. L. 91-596), giving enforcement responsibility to the Secretary of Labor. However, the act places the major responsibility for workplace safety and health with the employer; for enforcement purposes OSHA calls this the employer's "general duty" to provide a workplace free from recognized safety and health hazards.

OSHA, which administers this act, and state-operated safety and health programs have enforcement responsibility for laws protecting the safety and health of more than 88 million employees in about 6 million workplaces.¹ On the basis of their inspections of

¹The act authorizes states to develop and operate their own safety and health programs; currently 21 states and 2 territories do so. Two other states operate their own programs for state and local

facilities, the agencies issue citations for safety and health violations, which may specify civil penalties to be paid by the employer, and they may initiate criminal proceedings against an employer.² In fiscal year 1991, OSHA--with fewer than 1,000 compliance officers³--was able to inspect only 2.5 percent of the worksites it identified as high-risk for health reasons and under 8 percent of the worksites it identified as high-risk for safety reasons.⁴ The magnitude of OSHA's responsibilities, combined with its limited resources, underscores the need for employers and employees to be actively involved in safety and health matters rather than relying on OSHA inspectors to identify hazards.

Federal Enforcement Initiatives

OSHA has interpreted the general duty clause of the act to mean that employers should develop effective management systems for overseeing and controlling safety and health in the worksite. Accordingly, in 1989, OSHA issued guidance on comprehensive safety and health programs to assist employers who were interested in developing such management systems.

government employees but federal OSHA has enforcement responsibility for private sector employees. OSHA approves, monitors, evaluates, and may fund up to 50 percent of the cost of operating these programs.

²Violations fall into four categories. (1) Other than serious: where there was a direct relationship to job safety or health, but the violation probably could not result in death or serious physical harm. (2) Serious violation: where there was a substantial probability that death or serious physical harm could result. (3) Willful violation: where the employer intentionally and knowingly committed the violation. (4) Repeat violation: where the violation was substantially similar to a previous violation. Employers can also be fined for failure to abate (correct) previously cited violations.

³OSHA had a total of about 1,200 inspectors, but this number, in addition to the compliance officers performing inspections, also included others such as supervisors and trainees.

⁴These percentages have declined since fiscal year 1989, when comparable inspection rates were 3 percent and 10 percent. OSHA identifies workplaces as high-risk for safety hazards on the basis of industry-wide injury statistics gathered through the Bureau of Labor Statistics Annual Survey of Occupational Injuries and Illnesses. It uses the results of OSHA inspections conducted in previous years to identify industries that are high-risk for health hazards.

These guidelines describe a program in which, as a way to reduce injuries and illnesses at the worksite, employers allocate resources to inspect their own workplaces and correct any hazards they find. OSHA describes four specific components of these comprehensive safety and health programs:

- detailed self-inspection of the worksite for all existing and potential hazards;
- development of a plan addressing the nature of the hazards at the worksite and the means to control or abate these hazards;
- safety and health training and education of employees; and
- employee involvement in development and implementation of these programs (which may be, but would not have to be, through committees with employer and employee representation).

OSHA had considered making these safety and health program guidelines mandatory, but chose instead to make the final guidelines voluntary.⁵ At the time, OSHA observed that additional experience with program guidelines would produce refinements in methods and practices, as well as provide evidence to indicate whether further regulatory action by the agency was required. However, since issuing the guidelines, OSHA has collected no additional information on these programs.

State Enforcement Initiatives

Six of the 21 states with responsibility for occupational safety and health enforcement have legislated requirements for employers to develop and implement comprehensive worksite safety and health programs similar to those outlined in OSHA's voluntary guidelines. Alaska, California, Hawaii, and Washington require all employers--regardless of size or industry--to develop and implement programs. Minnesota requires them of employers of any size with above-average injury and illness rates, and Oregon requires them of self-insured employers and certain others depending on size, industry and injury and illness history. Alaska, Oregon, and Washington also require that, for some employers, employee involvement must be through committees with both employee and employer representatives. Table 1 provides details of requirements in these six states.

⁵OSHA has, since the early 1970s, required employers in the construction industry to have safety plans. However, the requirements are much more general than these guidelines. For example, there is no requirement for employee involvement or written programs.

Table 1: State Requirements for Comprehensive Worksite Safety and Health Programs

<u>States</u>	<u>Employers that must have a program</u>	<u>Employers that must have a labor-management committee</u>
Alaska (1973)	All employers	Employers in pulp, paper, and paperboard mills industries
California ^a (1989)	All employers	None, but state encourages all employers to have them
Hawaii (1982)	All employers	None
Minnesota (1990)	All employers with specific injury and illness rates ^b	None
Oregon (1991)	All employers with 11 or more employees and high-risk employers with 10 or fewer employees ^c	All employers with 11 or more employees and high-risk employers with 10 or fewer employees ^d
Washington (1960)	All employers	All employers ^e

^aState had a much less comprehensive requirement for programs from 1977 until 1989, with the exception of July 1987 through October 1988, when federal OSHA rather than the state had enforcement responsibility for safety and health.

^bPrograms are required of employers in industries with lost workday injury rates and/or injury and illness incidence rates at or above the state average for all industries.

^cHigh-risk employers are defined by their workers' compensation premium rates or lost workday incidence rates. From 1982 to 1991, programs had been required of high-risk employers, as defined by their lost workday incidence rates, with ten or more employees. Since 1988, programs have been required of (1) all self-insured employers and (2) employers whose workers' compensation experience met disabling claims criteria. Since 1980, programs have been required of all logging employers (except those in pulpwood logging).

^dHigh-risk employers are defined by their workers' compensation premium rates or lost workday incidence rates. From 1982 to 1991, committees had been required of high-risk employers, as defined by their lost workday incidence rates, with 10 or more employees.

^eEmployers with 10 or fewer employees may have foreman-crew meetings that address the required committee responsibilities.

Legislative Initiatives

H.R. 3160 and a similar bill in the Senate, S. 1622, would require, among other things, (1) that employers develop and implement comprehensive safety and health programs and (2) that employers with 11 or more employees establish safety and health committees composed of an equal number of employee and employer representatives. The legislation would permit OSHA to limit the safety and health program requirement to certain classes of employers if it could do so without diminishing the protection of employees.

CONCERNS ABOUT POTENTIAL IMPLEMENTATION PROBLEMS

Individual employers, business and industry groups and employee representatives have cited several concerns about potential implementation difficulties. They expressed these concerns in comments in the public record on legislation in California and Oregon, testimony on S. 1622 and H. R. 3160, public comment on OSHA's voluntary guidelines for worksite programs, and our interviews. The concerns are as follows.

- Too-specific program requirements. Commenters were concerned that mandatory requirements might be so prescriptive that employers would be constrained from developing the kind of safety and health program that would best meet needs at their worksites. In addition, there was some concern that enforcement agencies might establish burdensome reporting requirements, such as requiring frequent detailed reports about activities conducted as part of the program.
- Cost of program implementation. Commenters were concerned that program costs might be too high, especially for small businesses. Program costs could include such things as consultant costs for providing technical assistance or performing some of the tasks involved in developing a program, time spent by employees to participate in the program, and materials purchased for training purposes.
- Enforcement agencies' ability to evaluate management commitment. OSHA voluntary guidelines and state requirements stress the importance of management commitment in order for written programs to be more than an empty exercise. Some commenters agreed but were concerned that too much subjectivity may be involved if enforcement agencies attempt to cite employers for not having the right attitudes.
- Obstacles to obtaining and documenting employee involvement in safety and health programs. Employee involvement may be informal, through participation in specific aspects of safety and health programs such as hazard inspections, or formal,

through membership in joint labor-management safety and health committees. Commenters had two kinds of concerns. First, if programs allow employee representation through mechanisms other than committees, how could inspectors be certain that employees were effectively involved? Second, if programs require employee involvement through joint labor-management committees, what would be the potential liability of committee members and how would employees be selected for the committees?⁶

IMPLEMENTATION PROBLEMS
CAN GENERALLY BE OVERCOME

Evidence we gathered from the six states that require comprehensive programs, but particularly from Oregon and Washington, which we visited, indicates that these potential implementation problems have generally been overcome. Whether they would occur in other states would likely depend on how similar the states' program requirements and enforcement agency policies were to those in the states we reviewed. Our review showed the following about each of the concerns that had been raised.

- Too-specific program requirements. We found no evidence that Washington and Oregon state requirements posed implementation problems for employers' existing safety and health programs. The states' requirements are general enough, employers told us, to allow an employer flexibility in applying them to any worksite. Employers indicated that they had encountered no significant problems either writing a hazard prevention plan or maintaining records to document progress made based on the plan.
- Cost of program implementation. For some employers, the costs of implementing safety and health programs were seen as a normal cost of doing business, according to comments in the public record and our interviews. The six states requiring programs have helped reduce employers' compliance costs by providing free detailed brochures outlining state requirements and how to comply with them. These states also offer free training and consultation services to small employers.

Even when enforcement agencies provide technical assistance, however, some program costs, such as conducting self-

⁶At a worksite with collective bargaining contracts, there would need to be some resolution as to whether the union would automatically determine representation on the committee. At nonunion worksites, the question would be how to select employees who would fairly represent their co-workers and how to avoid any conflict with labor laws that restrict employer-dominated organizations.

inspections and implementing hazard prevention procedures, must be borne by employers. But despite these costs, some small employers in Washington reported that it has actually been profitable for them to implement safety and health programs. They believe the program contributed to a reduction in injuries, which in turn has resulted in savings such as reduced workers' compensation premiums.

- Enforcement agencies' ability to evaluate management commitment. In judging an employer's commitment, Washington and Oregon inspectors focus on specific employer actions rather than attempting to judge such an intangible as the employer's attitude toward the program. They look for such things as (1) records of the resources allocated to carry out the safety and health programs and (2) documentation of corporate policies and goals established for safety and health. OSHA follows similar procedures in evaluating programs of employers who have voluntarily implemented these programs, as do other states that require employers to implement safety and health programs.
- Obstacles to obtaining and documenting employee involvement in safety and health programs. In Washington and Oregon, which require some employers to have committees, inspection statistics show high rates of compliance in both union and nonunion worksites. Concerns about liability appear to have been successfully addressed by defining the employee's role as advisory and affirming that management is ultimately responsible for workplace safety and health. Although agency officials reported no litigation in those states related to conflicts with labor laws, this concern has not been completely resolved nationwide.

In the states where formal committees are not required, employers have either established committees voluntarily or used other mechanisms to meet the requirement to involve employees in their programs. Other mechanisms include (1) communicating the content of the safety and health program to employees, (2) training employees for their responsibilities under the program, and (3) involving them in accident investigations and in specific components of hazard inspections. State inspectors have used interviews with employees and general observations of conditions on site to determine whether involvement such as this has occurred.

PROGRAMS PERCEIVED TO HAVE POSITIVE IMPACT BUT DATA INCONCLUSIVE

Many representatives of enforcement agencies as well as industry and labor officials have expressed positive views about the impact of worksite safety and health programs, and some statistical data suggest that workplace safety and health has improved as a result

of these programs. However, because of the inconclusiveness of available statistics, we were unable to quantify the programs' impact on injuries and illnesses.

Positive Views

When it published the guidelines on comprehensive safety and health programs, OSHA asserted that such programs have a positive effect on worksite injuries and illnesses. As a result, it has encouraged employers to implement comprehensive safety and health programs. In addition, it requires a broad range of manufacturing and non-manufacturing employers to develop written plans for control of certain specific hazards in the workplace, even though they are not required to have comprehensive safety and health programs covering all the hazards in their workplaces. For example, the chemical process safety management standard requires employers in over 95 different industry sectors to develop written plans to manage hazards associated with processes using highly hazardous chemicals. It also requires manufacturers and non-manufacturers of all sizes to develop written hazard prevention plans to address the safe storage, use and processing of hazardous chemicals.

We also found an overall positive view about the programs' potential impact, although there were reservations about implementation issues, in the comments submitted for the public record in response to OSHA and state proposals. These comments (more than 100) came from representatives of employers and labor groups across a wide range of industries, both large and small individual employers, enforcement agency officials, and academic researchers.⁷

OSHA inspectors also believe safety and health programs have a positive effect on workplace safety and health. In November 1990, we reported that over 90 percent of the almost 400 inspectors we surveyed believed safety and health would be improved if safety and health programs were required.⁸ When we asked about which employers should be required to have them, 90 percent said they should be required of both repeat violators and employers in high-hazard industries. Sixty-three percent said these should be required for all employers regardless of size, industry category, and injury and illness rate history.

⁷However, these comments came only from those who chose to comment on this matter, which is not necessarily a representative group of those who should be affected by these programs. Many organizations representing employers, including those representing small businesses, did not comment.

⁸Occupational Safety and Health: Inspectors' Opinions on Improving OSHA Effectiveness, (GAO/HRD-91-9FS, Nov. 14, 1990)

State enforcement officials also described these programs as having a positive impact on their enforcement efforts. Enforcement agencies cannot, through inspections alone, identify all workplaces that have safety and health hazards. If employers develop and implement safety and health programs, hazards can be identified and corrected without the necessity of an inspection. In addition, according to enforcement officials, when they do inspect, their inspection efforts can be more efficient if employers have identified hazards and outlined a program to abate them.

Inconclusive Statistical Data

Some employers who have voluntarily implemented safety and health programs have lower injury and illness rates than employers without the programs. For example, worksites that have chosen to participate in OSHA's Voluntary Protection Programs (which requires comprehensive safety and health programs) have injury rates about 40 percent lower than the average in their industries. Some other companies that have also voluntarily implemented these programs report improved injury and illness rates which they attribute to the programs. However, it could be argued that those who choose to have such programs may be exemplary to begin with and may have had lower than average injury rates.

The six states that require some or all employers to have safety and health programs are convinced of the positive impact of these programs. In the four states where program requirements have been in place long enough to look at injury and illness statistics (Alaska, Hawaii, Oregon, and Washington), state officials gave us statistics, such as injury and illness rates, that support this conclusion. However, some other statistics raise questions about a conclusion that the programs reduce injuries and illnesses. For example, in Hawaii, in the five years preceding implementation of the program requirement in 1983, the average lost workday incidence rate was 6.1, with a range from 5.8 to 6.3. During the next 6 years after implementing the requirement, the average rate was 5.3, with a range from 5.0 to 5.7. However, the lost workday rate went up in 1989 to 6.2 after 6 years of lower rates.

The combination of available statistics illustrates the need for better information about the impact of safety and health programs. Additional studies need to recognize the difficulty of drawing conclusions about impact, whether using within-state, between-state or state-national comparisons. For example, within-state comparisons before and after program implementation are hampered by other program changes, such as stricter enforcement of injury reporting requirements. Between-state and state-national comparisons are hampered by differences such as the following:

- the number and nature of high-hazard occupations and employment in these occupations,

- experience and age of the work populations (a younger, less experienced workforce usually has a higher injury rate than a more experienced workforce), and
- state workers' compensation rules (more lenient ones may encourage employees to be absent from work).

CONCLUSION

OSHA has identified safety and health programs as an effective way to improve worksite safety and health. However, OSHA has made comprehensive safety and health programs voluntary rather than mandatory for employers. It has chosen to require hazard prevention plans only for specific recognized hazards, such as hazardous chemicals, rather than to require employers to have hazard prevention plans that comprehensively address all hazards at the workplace. At the same time, OSHA has collected no additional information about implementation of comprehensive safety and health programs or their impact, nor has it determined what the additional cost or impact of a comprehensive requirement for safety and health programs would be, given the number of employers who are already required to develop prevention plans for specific hazards.

We concur with OSHA's assessment of the value of comprehensive safety and health programs and, as requested, we considered whether they should be required of all employers. We conclude that limitations in the quantitative data on the programs' impact and the lack of certainty about the burden such a requirement would pose make it difficult at this time for us to recommend requiring all employers to have such programs. However, where the risk of injury or illness is high, we believe consideration should be given to requiring employers to have these programs--even if there is some uncertainty about the likely burden--because the potential number of lives saved or injuries and illnesses averted is high.

At the same time, we believe OSHA should take specific steps to obtain the information necessary to decide to what other groups of employers, if any, this requirement should be extended. This information, about both impact and implementation, could come from one or more of the following: (1) employers who voluntarily implement these programs, (2) employers already required by states to have safety and health programs, or (3) high-risk employers who would establish these programs in response to a new requirement that they do so. Special attention should be given to comparing the additional difficulty of having a comprehensive safety and health program with the existing difficulty of complying with the requirement for multiple prevention programs for specific hazards. In addition, OSHA should assess whether a single comprehensive program at the worksite, rather than multiple separate hazard prevention plans, might increase management's effectiveness in protecting safety and health, while streamlining its efforts and reducing the compliance burden.

Title I of H. R. 3160 and S. 1622 is similar to what we believe is needed. The primary difference is that we believe it would be better to place the requirement for safety and health programs on high-risk employers, as defined by OSHA--with OSHA conducting specific studies to determine additional groups to which the requirement should be extended--rather than to place it on all employers, with OSHA allowed to exclude certain classes of employers.

RELATED GAO PRODUCTS

Occupational Safety & Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991).

Occupational Safety & Health: Worksite Programs and Committees (GAO/T-HRD-92-9, Nov. 5, 1991).

Managing Workplace Safety & Health in the Petrochemical Industry (GAO/T-HRD-92-1, Oct. 2, 1991).

Occupational Safety & Health: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD-91-35, May 8, 1991).

Occupational Safety & Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).