



H.R. 2067

Protecting America's Workers Act

Amending the 1970 OSH Act

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HR 2067 Protecting America's Workers

- Introduced by House Workforce Protections Subcommittee Chair, Lynn C. Woolsey (D-Ca), and Education and Labor Committee Chair George Miller (D-Ca), along with 14 other co-sponsors, on April 26, 2009.
- House hearings begin on April 28, 2009.

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- **Expands OSHA coverage to state, local, and federal employees, and potentially private sector employees covered by other federal agencies (except MSHA), under other safety statutes (e.g. airline and railroad industries), unless the Secretary certifies that the other agency regulations are at least as effective as OSHA standards, with the certification reviewable in a circuit court of appeals.**
- **Increases whistle blower / safety complaint protections by prohibiting discharge for a work refusal if the employee has a “reasonable apprehension that performing the work would result in serious injury...or serious impairment of the health. To qualify for protection, when practical the employee must have sought and not been able to obtain a correction from the employer.**
- **Increases whistleblower / safety complaint protections by establishing a fast track DOL complaint, investigation and hearing procedure, with a reinstatement remedy, and recoverable consequential damages and attorneys fees, subject to review in the circuit courts of appeal.**

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- **Mandates regulations to prohibit employers from discouraging injury and illness reporting and prohibits discrimination for such reporting.**
- **Mandates “walk around” pay for OSHA inspections and investigations.**
- **Mandates OSHA investigation of every death and “serious incident” (hospitalization of two or more employees).**
- **Mandates notification to OSHA of every death and serious incident, as well as site preservation.**

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- **Prohibits the classification of “unclassified citations,” (e.g. used to settle OSHA cases).**
- **Establishes victim rights to information and meetings with OSHA, rights to notice of proposed settlements, and rights to present information in settlement negotiations.**
- **Requires abatement of contested citations, except “other than serious,” contested citations, pending review by the Review Commission, and permits additional citations pending review, as well as pleadings alleging a failure to abate .**
- **Permits employees to object to proposed settlements of OSHA cases and requires a hearing on their objections to determine if the settlement furthers the purpose of the Act**

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- **Increases penalties up to \$120,000 for willful and repeat violations with an \$8,000 minimum, and up to \$250,000 for such violations that cause a fatality, with a minimum fatality penalty of \$50,000 (or \$25,000 for employers with less than 25 employees).**
- **Increases penalties for serious violations to a minimum of \$12,000. Requires minimum fines of \$20,000 for serious violations that cause a fatality and authorizes penalties up to \$50,000 for such violations (not less than \$10,000 for employers with less than 25 employees).**
- **Expands criminal sanctions for willful violations causing death to include “any responsible corporate officers” and sets forth increased criminal fines and prison terms up 10 years for willful violations resulting in death, and 5 years for willful violations resulting in serious bodily harm.**

Patton Boggs Safety & Health Law

Companies are faced with an ever-growing array of safety and health rules, regulations and research projects from multiple federal agencies, funded with more than one billion dollars for inspections, investigations and enforcement. Regulatory compliance is a daunting task but perhaps the easiest challenge posed by OSHA, MSHA, NIOSH, ATF, EPA, DOT, the Chemical Safety Board, NTSB, and others. Far greater risks are posed by research, investigations, and NGO standard setting. The evidence developed by the agencies and their enforcement actions not only pose risks of penalties but also impact insurance coverage, liability and even pose risks of criminal prosecution. The Patton Boggs Safety and Health Law Group partners with companies by providing risk reduction and liability prevention services, including:

- Audits
- Program/policy development
- Management training
- Acquisition compliance due diligence
- Regulatory counseling and advocacy
- Contractor management programs
- Crisis/incident response & defense
- Liability and coverage analysis
- Internal investigations
- Expert retention and management
- Enforcement counseling and defense
- Litigation, arbitration, and mediation
- Informal settlement representation
- Agency rulemaking advocacy/litigation
- Private standards counsel and litigation
- Scientific research counsel
- Product stewardship and liability counsel
- Congressional counsel & lobbying
- “Whistleblower”/ discrimination defense
- “White collar” defense

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