

Risk Management Bulletin

A Bulletin for Members of the South Dakota Public Assurance Alliance
and the SDML Workers' Compensation Fund

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Alliance

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Safety Benefits, Inc.

4901 Isabel Pl. Suite 120

Sioux Fall, SD 57108

(888) 313-0839

(605) 334-9567

Mitchell

(800) 408-9040

(605) 996-5072

Doug Kirkus

dkirkus@safety-benefits.com

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New Federal OSHA Legislation

"Bill would eliminate OSHA exemption for local governmental entities in South Dakota"

Congress created OSHA under the Occupational Safety and Health Act, which was signed by President Richard M. Nixon on December 29, 1970. OSHA's mission is to prevent work-related injuries, illnesses, and deaths. According to OSHA, since the agency was created in 1971, occupational deaths have been cut by 62% and injuries have declined by 42%. In the original OSH Act, the term "employer" meant a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) ***"or any State or political subdivision of a State"***.

Democrats on the U.S. House Education and Labor Committee introduced legislation on April 23, 2009 (H.R. 2067 'Protecting America's Workers Act') that according to a committee press release "would help the nation's health and safety agencies hold unscrupulous employers accountable for exposing their workers to preventable hazards".

According to the chair of the Workforce Protections Subcommittee, "It has been more than 30 years since the passage of the OSH Act [Occupational Safety and Health Act] and it is badly in need of reform. While thousands of workers have been saved as a result of OSHA, 16 workers are killed and 11,200 workers are injured or made ill each and every day," said U.S. Rep. Lynn Woolsey (D-CA), chair of the subcommittee. "This legislation will strengthen OSHA by expanding coverage to millions of workers who are currently unprotected or inadequately protected, increasing civil and criminal penalties for those who violate the law, and by protecting those who blow the whistle on unsafe employer practice."

Among other provisions, the bill would:

- 1) Apply federal safety standards to workers who are not currently covered, including federal, state and local employees and some private sector employers;

Janet Sporrer

jsporrer@safety-benefits.com

- 2) Protect workers who blow the whistle on unsafe workplace conditions;
- 3) Increase penalties against employers for repeated and willful violations of the law, including making felony charges available when an employer's repeated and willful violation of the law leads to a worker's death or serious injury; and
- 4) Give workers and their families the right to challenge reduction of fines and other penalties.

Part of the original OSH Act encouraged States to develop and operate their own job safety and health programs. There are currently 21 States operating complete State plans (covering both the private sector and State and local government employees) and 3 which cover public employees only. Eight other States were approved at one time but subsequently withdrew their programs.

If this legislation passes and is signed into law, local governmental entities not covered by a State plan, including those in South Dakota, will have 36 months after the date of enactment to come into compliance.

The bill has been referred to the House Committee on Education and Labor. We will keep you posted on the progress of this bill.

H.R. 2067 - 'Protecting America's Workers Act'

A PDF version of the bill is attached to this Bulletin.

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