

PROTECTING AMERICA'S WORKERS ACT

Sec. 1—(a) Short Title, Table of Contents. This Act may be cited as the “Protecting America's Workers Act.”

Title I- Coverage of Public Employees and Application of Act

Sec. 101. Coverage of public employees. Section 101 expands the coverage under the Occupational Safety and Health Act of 1970 (OSHAct) to include state, county and municipal employees and U.S government employees.

Sec. 102. Definitions. Section 102 establishes a definition of “authorized employee representative” as an individual or organization designated by one or more employees of the employer for purposes of the OSHA Act.

Sec. 103. Application of Act to Other Federal Agencies. Section 103 authorizes the Secretary to assess the adequacy of another agency’s workplace safety and health standards, if they are asserted in lieu of the jurisdiction of OSHA’s. Examples include the Federal Aviation Administration, and the U.S. Department of Energy’s nuclear facilities. If a federal agency has promulgated and is enforcing a standard or regulation regarding the health and safety of employees, and the Secretary determines that the standard is “at least as effective” as the protections provided to workers under the OSHAct, the Secretary may cede jurisdiction to that federal agency. The certification remains in effect until rescinded by the Secretary.

Any person adversely affected by the certification is entitled to petition the Secretary to rescind the decision:

- The Secretary is required to investigate the matter, and within 90 days of the receipt of the petition, publish a decision in the Federal Register.
- Any person who is adversely affected either by the decision of the Secretary certifying the ceding of jurisdiction or the decision to deny a petition to rescind, may within 60 days of the date its publication in the Federal Register, file a petition in the U.S. court of appeals where the person resides or has a place of business.
- The court may set aside the Secretary’s decision if it finds it to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’

The section clarifies that the Act does not apply to the working conditions otherwise covered by the Federal Mine Safety and Health Act.

Title II—Increasing Whistleblower Protections

Sec. 201. Enhanced protections from retaliation. OSHA’s whistleblower provisions were enacted in 1970 and provide the least protection of any of the 21 whistleblower laws administered by OSHA. Workers have only 30 days to file a complaint, have no right to a hearing, and must depend on the Solicitor of Labor to prosecute each case in federal district

court. The Solicitor has only prosecuted 6.7% of all merit claims under the OSHAct over the past 14 years, and fully 60% were abandoned.

All of the modern whistleblower laws, such as the Consumer Product Safety Improvement Act, provide claimants 180 day statute of limitations, and ensure claimants with a right to a hearing before an ALJ. They also allow claimants to “kick out” to federal court if OSHA fails to investigate and adjudicate their claim in a timely manner.

Under Section 201, protected activity is expanded to cover an employee’s refusal to perform work he/she reasonably believes would result in serious injury or illness, or that violates the OSHAct; an employee’s reporting of injuries, illnesses, or unsafe conditions; and an employee testifying before Congress.

This section extends the statute of limitations from 30 to 180 days. OSHA must order preliminary reinstatement to individuals where OSHA has found reasonable grounds that the claimant was discriminated against. Where DOL declines to investigate, employees can request a *de novo* hearing before an Administrative Law Judge (ALJ).

When an ALJ finds a violation of the law, she can order reinstatement, preservation of seniority, back pay with interest, exemplary damages, attorney’s fees, and expungement of adverse information in the employee’s record. There is an administrative appeal within the DOL, which must be completed in 90 days. Judicial review is provided in the Court of Appeals.

If the Labor Department does not investigate, adjudicate, hear appeals and decide the claim in a timely manner (330 days), the claimant is allowed to “kick out” and file suit in federal district court for a *de novo* review of the matter. Claimants employed by employers in OSHA state-plans, can elect to file their claim with the state OSHA or with federal OSHA, if a claim is filed with federal OSHA, federal OSHA must investigate and adjudicate the claim, and may not send the claim back to the state to have it investigated or adjudicated.

Title III—Improving Reporting, Inspection, and Enforcement

Part A – Duties and Standards

Sec. 301. General Duty of Employers. Section 301 expands an employer’s existing “general duty” to provide employees and a place of employment free from recognized hazards to cover not only the direct hire employees, but also any other employees performing work at the such employer’s establishment where such employer exercises control over workplace conditions.¹ It authorizes citations for each employee exposed to such hazard.

Sec. 302—Occupational Safety and Health Standards. Directs the Secretary within 2 years to update national consensus standards which were initially incorporated by reference when the

¹ This provision rectifies a problem created by some courts that have held that OSHA may not rely on the multi-employer citation policy to cite an employer under the general duty clause for violations which endanger another employer’s employees. *See Anthony Crane Rental v. Reich*, 70 F.3d 1298 (D.C. Cir. 1995).

OSHA Act was enacted, unless the Secretary determines that updating such standard would not improve the safety or health of affected workers. There are approximately 200 consensus standards which cover general industry and maritime that were initially adopted for which notice and comment rulemaking was not required. If there is a conflict between consensus standards, or if there is a consolidation of standards, the Secretary is directed to adopt the standard that affords the highest level of protection to workers affected. Prescribes that no new or revised standard, rule, or regulation may reduce health and safety protections from existing levels of protection.

Part B – Inspections, Investigations, and Recordkeeping

Sec. 311 Posting of employee rights. Requires Secretary to include information about OSHA’s whistleblower rights in mandatory employer posters.

Sec. 312. Employer reporting of work-related deaths and hospitalizations and prohibition on discouraging employee reports of injury or illness. Codifies regulations requiring employers electronically report an annual summary of work-related injuries and illnesses and requiring employers with more than 250 employees and employers in high-risk industry with 20 or more employees to annually electronically report detailed injury and illness information to OSHA. Requires “site controlling employers” to maintain an injury and illness log for all employees on their site (including independent contractors). Directs the Secretary to issue regulations requiring employers to notify the Secretary of any work-related death or work-related injury or illness that results in in-patient hospitalization, amputation or loss of eye. Prohibits employers from adopting policies that discourage accurate recordkeeping and prohibits employers from adopting practices that discourage reporting or discriminating against an employee for reporting work-related injuries or illnesses.

Sec. 313. No loss of employee pay for inspections. The time spent by an employee accompanying an OSHA inspector is considered time worked, which must be compensated.

Sec. 314. Investigations of fatalities and significant incidents. Requires the Secretary to investigate any workplace covered by the OSHA Act that has experienced an incident resulting in a death of an employee or serious incident (incident that results in the hospitalization of two or more employees). In these two instances, this section requires the employer to notify the Secretary of the incident and take “appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating the incident.” However, an employer is not prevented from taking action at a worksite to prevent injury to employees or substantial damage to property, and if the employer does that, it must notify the Secretary in a timely fashion.

Section 315: Continuing obligation to maintain accurate workplace injury and illness records: Codifies that OSHA has authority to enforce an employer’s continuing obligation to make and maintain accurate workplace injury and illness records. Requires OSHA issue a final rule to clarify these requirements. Overturns a Congressional Review Act resolution of disapproval that invalidated OSHA’s rule which provided authority to issue citations for recordkeeping violations that occurred within the 5 year record retention period.

Part C – Citations

Sec 321. Period for Issuance of a Citation. Clarifies OSHA’s authority to enforce requirements when there is a continuing violation.

Sec. 322. Prohibition on unclassified citations. Any citation for a violation of the OSHAct may not be designated as an “unclassified” citation.

Part D – Rights of Victims and Families

Sec. 331. Rights of Victims and Families. OSHA must inform family members of workers killed (or incapacitated from a job related injury) or “victims” of a workplace injury about OSHA’s investigation before final decisions on whether to issue citations. “Victims” include workers who suffered an injury which is the subject of an OSHA inspection or investigation.

OSHA must provide a copy of any citations or reports related to the investigation to families or victims at the same time the employer receives them. OSHA is required to notify families or victims about formal or informal settlements and provide families or victims with an opportunity to meet with OSHA or submit statements prior to reaching a settlement. OSHA must establish a family liaison in each area office to keep families and victims informed and assist them in asserting their rights.

Families and victims must be notified of employer contests; notified of time and date of any proceeding before the Occupational Safety and Health Review Commission (Review Commission); be provided copies of all pleadings and decisions; and be provided an opportunity to appear and make a statement before the Review Commission. The Review Commission must provide due consideration to statements and information provided by families.

Part E – Procedure for Enforcement

Sec. 341. Right to contest citations and penalties. An employee or employee representative may challenge the severity of a citation (e.g. willful, serious, repeated, etc.) and/or the size of the proposed penalty, which is an expansion of employee rights under the OSHAct. Currently employees and their representatives may only contest the length of the abatement period.

Sec. 342. Correction of serious, willful, or repeated violations pending contest and procedures for a stay. Requires employers to correct serious, willful, and repeat violations while they are contesting citations for OSHA violations. The OSHAct currently allows employers to postpone abatement of the violation while they litigate. The DOL-IG has found that OSHA must eliminate penalties or downgrade citations in order to secure timely abatement of the hazard.

Provides employers with the right to seek a temporary stay of OSHA’s abatement order through an expedited proceeding before a Review Commission ALJ, while the merits of the citation are litigated. To obtain a stay, the employer must show it is likely to succeed in challenging the underlying the merits of the citation or in challenging the length of the abatement period, and a

stay will not harm the health and safety of workers. Employee representatives can intervene as a party. Decisions on a request for a stay must be rendered within 30 days. Any party can appeal to the full Review Commission, and if the Review Commission declines to act, or act in a timely manner, parties can appeal directly to the Court of Appeals.

Sec. 343. Inaction by the Review Commission. Section 311 expedites resolution of contested citations which are stalled due the lack of a quorum at the Occupational Safety and Health Review Commission. If the Review Commission fails to issue a decision within one year after directing review of a petition appealing a decision of an Administrative Law Judge (ALJ) because the Commission lacks a quorum (2 of 3 members available to deliberate), then the decision of the Administrative Law Judge will be considered the Commission’s final decision. The ALJ’s decision may be appealed to the Court of Appeals pursuant to Section 11 of the Act after the one year exhaustion period.

Sec. 344. Conforming amendments. Conforms various sections.

Part F - Penalties

Sec. 351. Civil penalties. Section 313 incorporates into the OSHA Act adjustments to OSHA’s civil monetary penalties which were adjusted for inflation from 1990 levels, pursuant to a mandate included in the Federal Civil Penalties Inflation Adjustment Improvement Act of 2015. These new levels were established through rulemaking, and most recently updated effective January 23, 2019. These changes are set forth in Chart #1. Section 313 also authorizes higher penalties when workers are killed due a willful or serious violation. A reduced penalty is established for small businesses where workers are killed due to a willful or serious violation. Section 313 also requires OSHA to adjust civil penalties for inflation not later than January 15 of each year, consistent with the requirements of the Federal Civil Penalties Inflation Adjustment Improvement Act of 2015.

Chart 1-- OSHA Civil Penalties

Category of Violation	Previous Civil Monetary Penalty		Increases in Civil Monetary Penalty	
	Minimum	Maximum	Minimum	Maximum
Willful	\$5,000	\$70,000	\$9,472	\$129,336
Willful, resulting in a fatality	Not in law		\$50,000; \$25,000 for a small business ^a	\$250,000
Serious	\$0	\$7,000	\$0	\$13,260
Serious, resulting in a fatality	Not in law		\$20,000; \$10,000 for a small business ^a	\$50,000
Other than serious	\$0	\$7,000	\$0	\$13,260
Failure to correct (abate) a safety or health hazard	\$0	\$7,000/day	\$0	\$13,260/day
Failure to post	\$0	\$7,000	\$0	\$13,260

^a A small business is defined in this section as an employer with 25 or fewer employees.

When assessing penalties for repeat violation, Section 313 authorizes OSHA and the Review Commission to consider the employer’s history of similar violations in state-plan states as well as federal OSHA states. Currently, federal OSHA does not consider violations arising in 21 state-plan states when assessing an employer’s past history.

Sec. 352. Criminal penalties. This section increases the criminal penalty and modifies the intent standard for a violation that causes or contributes to a worker’s death. Penalties are increased from a misdemeanor to a felony. Under this section, knowing violations which cause or contribute to the death of a worker are designated as felonies with a maximum fine of \$250,000 for individuals and \$500,000 for organizations, or a 10-year prison term, or both. Knowing violations which cause “serious bodily harm” are subject to maximum fine of \$250,000 for individuals and \$500,000 for organizations or a 5-year prison term, or both. Serious bodily harm is defined as an injury or illness that involves a “substantial risk of death, protracted unconsciousness, obvious physical disfigurement, or loss or impairment (either permanent or temporary) of the function of a bodily member, organ or mental facility.” While corporations and sole proprietors are liable under the OSHAct, officers and directors of corporations are currently immune from criminal liability. Section 314 adds officers and directors as parties who can be liable for criminal violations.

With regards to unauthorized advance notice of inspections, Section 314 replaces strict liability provision with a requirement that a person must knowingly provide advance notice with the intent to impede, interfere with or adversely affect the result of an inspection. Current law provides that advance notice of inspections by any person is a misdemeanor. Penalties are increased from a misdemeanor to a felony with 5 years/maximum or \$250,000 for an individual, and \$500,000 for an organization. (see Chart #2)

Nothing preempts state or local law enforcement agencies from conducting criminal prosecutions in accordance with state or local laws.

Chart 2-- OSHA Criminal Penalties

Category of Violation	Current Maximum Criminal Penalty	Criminal Penalty in Section 314
Knowing, resulting in fatality	\$10,000; misdemeanor with a 6 month max prison term	For an individual - \$250,000; felony with a 10 yr max prison term For an organization - \$500,000; felony
Knowing, repeat, resulting in a fatality	20,000; misdemeanor with a 1 yr max prison term	For an individual - \$250,000; felony with a 20 yr max prison term For an organization - \$500,000; felony
Knowing, resulting in serious bodily harm	Not in law	For an individual - \$250,000; felony with a 5 yr max prison term For an organization - \$500,000; felony
Knowing, resulting in serious bodily harm	Not in law	For an individual - \$250,000; felony with a 10 yr max prison term For an organization - \$500,000; felony
Advance notice of inspection	\$1,000; misdemeanor with a 6 month max prison term	For an individual - \$250,000; felony with a 5 yr max prison term For an organization - \$500,000; felony

False Statements	\$10,000; misdemeanor with a 6 month max prison term	For an individual - \$250,000; felony with a 5 yr max prison term For an organization - \$500,000; felony
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Sec. 353. Prejudgment interest. Authorizes prejudgment interest from the date of contest to the date of final order at the rate charged by the IRS. Post judgment interest is already authorized.

Title IV—State Plans

Sec. 401. Concurrent enforcement authority and review of State occupational safety and health plans. Authorizes the Secretary of Labor to assert concurrent enforcement authority over a state OSHA plan, if she determines that there is a failure by the state plan to comply substantially with any provision of a state plan. Such amendment provides states with an opportunity for a hearing regarding an initial determination by the Secretary, provided such request is made within 10 days of such initial determination. If the Secretary affirms such determination following a hearing, the Secretary may inspect and enforce OSHA standards or under the general duty clause. Requires GAO to conduct a study in 18 months, and again in 5 years, to assess whether a sample of state plans are at least as effective as federal OSHA, whether federal OSHA’s oversight of state plans is effective, whether the Secretary is adequately investigating Complaints About State Plan Administration, and whether the funding formula for state plans is fair and adequate.

Sec. 402. Evaluation of an Employer’s Repeated Violations in State OSHA Plans. Establishes a requirement for state OSHA plans, when evaluating whether an employer’s violations are “repeated”, to look across state lines and consider an employer’s violations in other state plan states as well as states where federal OSHA has jurisdiction. This will harmonize the requirements for state plans with federal OSHA under this bill.

Title V—National Institute for Occupational Safety and Health

Sec. 501. Health Hazard Evaluations by the National Institute for Occupational Safety and Health. Modifies Section 20 of the Occupational Safety and Health Act of 1970 to expand the scope of issues to be covered and the categories of individuals who can request that NIOSH conduct a Health Hazard Evaluation (HHE). This section authorizes representatives of former workers, physicians, another federal agency, or a state or local health department to request an HHE, in addition to employers and employee representatives who are already authorized to make such requests. It also expands the range of hazards beyond toxic substances by adding physical agents, equipment, or working conditions.

Sec 502. Training and Employee Education. Authorizes the Susan Harwood Training Grant Program to provide grant funding for training and education programs for workers and employers in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions, as well as employee rights and employer responsibilities under OSHA.

Title VI—Effective Date

Sec. 601. Effective date. Other than the exceptions listed below, this Act shall take effect 90 days after enactment.

Exceptions:

- A state with an approved state plan shall amend its state plan to conform with this Act not later than 12 months after the date of enactment, and then such state plan amendments will take effect not later than 90 days after adoption.
- A state (and political subdivision of a state) that does not have a plan shall comply with the requirements of this Act, not later than 36 months after the date of enactment.