

## AFD Ep 429 Links and Notes - Road to OSHA [Rachel] - Recording June 12, 2022

On this week's episode, we're focusing on worker health and safety laws, culminating in the landmark Occupational Safety and Health Act of 1970, signed into law by President Nixon after a long battle in Congress begun in the Johnson Administration in 1968. However, the struggle to enact laws to protect worker safety and health began, as many of our stories do, in the Second Industrial Revolution.

- <https://www.dol.gov/general/aboutdol/history/osha>  
[https://en.wikipedia.org/wiki/Occupational\\_Safety\\_and\\_Health\\_Act\\_\(United\\_States\)](https://en.wikipedia.org/wiki/Occupational_Safety_and_Health_Act_(United_States))
  - History of worker safety laws: As the Second Industrial Revolution ramped up, factory accidents increased exponentially through the 1870s and 80s. As State labor bureaus started to record the death and injury statistics, they called for states to enact laws to protect the health and safety of workers. In 1877, Massachusetts became the first state to pass a factory inspection law. It required adequate fire exits, guards on belts, shafts and gears, and protection on elevators. Over the next decade or so, other states passed their own laws. *By 1890, nine States provided for factory inspectors, 13 required machine guarding, and 21 made limited provision for health hazards.*
  - Because there were only state laws, there were too many loopholes for factory owners to exploit. They moved operations to states with laxer laws. States often lacked funding to employ inspectors to enforce the laws, and some inspectors even lacked the authority to enter factories. Also, laws often couldn't keep up with innovations, and had to be amended frequently to cover new hazards.
  - In 1893, the first federal law to address workplace safety equipment was passed. The Safety Appliance Act required all trains to have air brakes and automatic couplers. It contributed to a drop in railroad deaths, but was obviously narrow in scope. (We did a whole episode on the topic, culminating in a brief discussion of this legislation and its implementation, [in March 2022 on episode 417.](#))
  - In 1907, a mine accident in Monongah, WV killed 362 coal miners, making it the deadliest US mine disaster. This accident, combined with other mine collapses and explosions, led to the 1910 creation of the US Bureau of Mines.
  - At the same time, accident statistics in other industries were getting scrutinized. William B. Hard, a muckraking journalist, published "Making Steel and Killing Men", about his investigation into a Chicago steel mill. He estimated that out of 10,000 workers, 1,200 were killed or seriously injured. U.S. Steel had already started collecting accident statistics, and formed a safety committee in 1908 to cut down accident rates. Their "safety first" movement was emulated by other industries, and in 1915 a National Safety Council was formed.
  - Another field of study that sprung up at the turn of the century were industrial diseases. The US Bureau of Labor started to publish gruesome pictures of industrial diseases and accidents to bring attention to the issue of workplace health and safety. In 1910, they published a study of phosphorus necrosis, also known as "phossy jaw", that resulted from the manufacture of white phosphorus matches. This study shocked the public, who demanded change. In 1912, Congress passed the Esch Act, which prohibitively taxed white phosphorus matches, and the Diamond Match Co. released the patent for their alternative match head.
  - In 1913, the Department of Labor was created and William B. Wilson was named the first Secretary of the Department of Labor [see [AFD episode 335](#) from November 2020 for more on Wilson and – among other things – his unsuccessful efforts to end child labor]. A Senate resolution called on him to report on industrial accidents and disease. As a former coal miner and union leader from

the time he had himself been a pre-teen laborer in the mines, Wilson was already focused on increasing workplace safety and the health of workers. *Under Wilson, the Bureau of Labor Statistics (formerly the U.S. Bureau of Labor) started compiling regular accidents statistics in the iron and steel industry and gradually included other industries. Wilson sought to establish the principle that, instead of feeding men "into the maw of unhealthy occupations ... the thing to do is to make the unhealthy occupations healthy."*

- During WWI, there was a crisis in health and safety conditions in the war-production industries. In response, Congress created the Working Conditions Service, who were authorized to inspect war production sites, advise companies on reducing hazards, and help states create and enforce health and safety standards. After the war ended, the Service was allowed to expire, but all their records were kept for the future "when public and legislative opinion again shall have become focused upon the necessity for a constructive organization of this character."
- Frances Perkins, FDR's Secretary of Labor, renewed the focus on workplace safety and health, bringing her wealth of knowledge and experience from her time in New York working in occupational health and safety. In 1934, Perkins created the Bureau of Labor Standards, the first permanent Federal agency established primarily to promote safety and health for the entire workforce. Her Labor Department managed to enact more successfully some of the items that had failed in the Courts or in Congress back in the Wilson years.
- *Congress enacted three laws as part of Roosevelt's New Deal which augmented the Federal Government's role in protecting people on the job. The Social Security Act of 1935 allowed the U.S. Public Health Service to fund industrial health programs run by State health departments. This made the Public Health Service, which had begun doing industrial health studies in 1914, the national leader in this field. The Fair Labor Standards Act of 1938, which set a minimum wage and banned exploitative child labor, gave the Labor Department the power to bar workers under age 18 from dangerous occupations. The Walsh-Healey Public Contracts Act of 1936 allowed the department to ban contract work done under hazardous conditions.*
- By the 1950s, the state-federal partnership that Perkins cultivated couldn't keep up with new and emerging hazards, and the federal government took on a more prominent role in worker health and safety. *In 1958, [the Democratic] Congress passed a seemingly minor amendment to the Longshoremen's and Harbor Workers' Compensation Act. It gave the Labor Department authority to set safety and health standards for the very small work force covered under this law. In addition to protecting workers in one of the Nation's most hazardous industries, the amendment closed "the last remaining 'no man's land'" in safety enforcement. The Secretary of Labor was authorized to seek penalties against willful violators, but not against those who only carelessly broke the rules. After holding public hearings, the department began enforcing standards in 1960. Compliance was good, and the high accident rates declined sharply.*
- In December 1960, as the Eisenhower Administration was on the way out, DOL released a set of mandatory health and safety standards under the Walsh-Healey Act. Prior to this, all DOL standards were published in a "Green Book" of informal guidelines to help states create and enforce their own standards. The backlash from both labor and business was swift and vehement. They were surprised by the announcement and angry that they weren't consulted. States also felt undermined by the federal agency. The department under the Kennedy-Johnson

administrations took the criticisms seriously, and in October 1963, they announced proposed revisions, with hearings held in March 1964. The hearings ran for two weeks, and many witnesses from industry testified. Business felt that the new mandatory rules weakened their long-established pattern of voluntary safety efforts, and would stifle innovation.

- After the hearings, the Department conducted their own study of their safety programs. An outside consultant found a fragmented collection of programs and laws, and recommended that a single agency bring all these collected programs under one umbrella.
- While this examination of department practices occurred, there was a growing environmental movement concerned with how industrial chemicals affected the safety of water and air. *Spurred by this movement, in 1965 the Public Health Service produced a report, "Protecting the Health of Eighty Million Americans," which outlined some of the recently found technological dangers. It noted that a new chemical entered the workplace every 20 minutes, that evidence now showed a strong link between cancer and the workplace, and that old problems were far from being eliminated. The report called for a major national occupational health effort centered in the Public Health Service.*
- *On May 23, 1966, Johnson told a meeting of labor reporters that "the time has ... come to do something about the effects of a workingman's job on his health." The Departments of Labor and Health, Education and Welfare promptly set about to develop legislation for such a program. A joint task force was then to combine both departments' ideas and submit a proposal to the President. However, Labor and HEW could not agree on which department would control a national program and by late 1966 the task force was deadlocked.*
- Amidst this deadlock, it was revealed that almost a hundred uranium mine workers had died of lung cancer since the 1940s, and up to a thousand more deaths were expected. In 1947, the Atomic Energy Commission determined that radiation levels in these mines were dangerously high, and began a long-term study of the miners, along with the Public Health Service. Although many federal agencies had jurisdiction over uranium mines, no one agency had clear responsibility for mine safety, and there was very little enforcement. *The lack of action took on tragic overtones with the revelations of 1967, and public attention focused on the Federal Radiation Council. Created in 1959 to advise the President on protective measures to take against all types of radiation hazards, the council was composed of representatives from concerned agencies. In 1967, it had just completed a study of the uranium mines and was expected to recommend a standard shortly. However, when the council met on May 4, 1967, it became deadlocked between a standard that the Atomic Energy Commission recommended and a tougher one preferred by the Labor Department.*
- The next day, Labor Secretary Willard Wirtz, frustrated by the lack of action taken, used the Walsh-Healey Act to enact his Department's standard. This move helped shape a national health and safety program, as the Board of the Budget moved forward with the DOL's proposals over HEW's.
- In January 1968, President Johnson asked Congress to pass a job safety and health program conforming to the recommendations of the DOL. *Johnson said it was "the shame of a modern industrial nation" that each year more than 14,000 workers were killed and 2.2 million injured on the job. Citing inadequate standards, lagging research, poor enforcement of laws, shortages of safety and health personnel, and a patchwork of ineffective Federal laws, Johnson argued that a comprehensive new law was needed.*

- The bill was supported by labor, but strongly opposed by business. It gave *the Secretary of Labor the responsibility of setting and enforcing standards to protect 50 million workers. The bill also had a general duty clause requiring employers to "furnish employment and place of employment which are safe and healthful."* It gave inspectors legal authority to enter workplaces without management's permission without prior notice. Violators could be fined or jailed, and the Secretary could black-list transgressors who held government contracts. The Labor Department would help interested States to develop their own programs in lieu of the Federal one. The Department of HEW would provide the Labor Department with scientific material for new safety and health standards. Opponents said that it was too far-reaching and gave the DOL too much power. Ultimately, the bill failed before it even came up for a vote.
- In 1969, President Nixon started working on his own health and safety program alongside Department of Labor Under Secretary James D. Hodgson, (who became Secretary when Secretary George Shultz left the DOL to become the Director of the Office of Management and Budget). *The Nixon Administration's proposal bypassed the question of whether Labor or HEW should have control and offered instead a five-person board that would set and enforce job safety and health standards. The Labor Department would be limited to inspecting workplaces and HEW would do research. Nixon emphasized use of existing efforts by private industry and State governments. The main Federal concern would be with health research and education and training, and only secondarily with direct regulation.*
- Nixon introduced two bills that covered worker health and safety. However, Representative James G. O'Hara and Senator Harrison A. Williams introduced a much stricter bill similar to the Johnson legislation of the year before. In response to the competing bills, Republicans introduced a compromise bill. *The compromise bill established the independent research and standard-setting board favored by Nixon, while creating a new enforcement agency. The compromise bill also gave the Department of Labor the power to litigate on the enforcement agency's behalf (as in the Democratic bill). In November 1970, both chambers acted: The House passed the Republican compromise bill, while the Senate passed the stricter Democratic bill (which now included the general duty clause).*
- *A conference committee considered the final bill in early December 1970. In exchange for a Republican proposal to establish an independent occupational health and safety research agency, Democrats won inclusion of the "general duty" clause and the right for union representatives to accompany a federal inspector during inspections. The conference committee bill passed both chambers on December 17, 1970, and President Nixon signed the bill on December 29, 1970. The Act went into effect on April 28, 1971.*
- What does the Act do?
  - Created Occupational Safety and Health Administration, an agency under the DOL. OSHA has the authority to set and enforce worker health and safety standards.
  - Created the independent Occupational Safety and Health Review Commission to review enforcement priorities, actions and cases.
  - Established the National Institute for Occupational Safety and Health (NIOSH), an independent research institute in the then-Department of Health, Education & Welfare, now under Centers for Disease Control and Prevention.

- Defined an employer as any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." Covers churches and religious institutions if they employ workers for secular purposes.
- The Act excludes the self-employed, family farms, workplaces covered by other federal laws (such as mining, nuclear weapons manufacture, railroads and airlines) and state and local governments (unless state law permits otherwise). The Act covers federal agencies and the United States Postal Service.
- Section 5 of the Act contains the "general duty clause." The "general duty clause" requires employers to 1) Maintain conditions or adopt practices reasonably necessary and appropriate to protect workers on the job; 2) Be familiar with and comply with standards applicable to their establishments; and 3) Ensure that employees have and use personal protective equipment when required for safety and health. OSHA has established regulations for when it may act under the "general duty clause." The four criteria are 1) There must be a hazard; 2) The hazard must be a recognized hazard (e.g., the employer knew or should have known about the hazard, the hazard is obvious, or the hazard is a recognized one within the industry); 3) The hazard could cause or is likely to cause serious harm or death; and 4) The hazard must be correctable (OSHA recognizes not all hazards are correctable).
- Due to the difficulty of the rule-making process (which is governed by the Administrative Procedures Act), OSHA has focused on basic mechanical and chemical hazards rather than procedures. Major areas which its standards currently cover are: Toxic substances, harmful physical agents, electrical hazards, fall hazards, hazards associated with trenches and digging, hazardous waste, infectious disease, fire and explosion dangers, dangerous atmospheres, machine hazards, and confined spaces.
- Section 8 of the Act covers reporting requirements. All employers must report to OSHA within eight hours if an employee dies from a work-related incident, or three or more employees are hospitalized as a result of a work-related incident. Additionally, all fatal on-the-job heart attacks must also be reported. Section 8 permits OSHA inspectors to enter, inspect and investigate, during regular working hours, any workplace covered by the Act. Employers must also communicate with employees about hazards in the workplace. By regulation, OSHA requires that employers keep a record of every non-consumer chemical product used in the workplace. Detailed technical bulletins called material safety data sheets (MSDSs) must be posted and available for employees to read and use to avoid chemical hazards. OSHA also requires employers to report on every injury or job-related illness requiring medical treatment (other than first aid) on OSHA Form 300, "Log of Work-Related Injuries and Illnesses" (known as an "OSHA Log" or "Form 300"). An annual summary is also required and must be posted for three months, and records must be kept for at least five years.
- Section 11(c) of the Act prohibits any employer from discharging, retaliating or discriminating against any employee because the worker has exercised rights under the Act. These rights include complaining to OSHA and seeking an OSHA inspection, participating in an OSHA

inspection, and participating or testifying in any proceeding related to an OSHA inspection.

- Section 18 of the Act permits and encourages states to adopt their own occupational safety and health plans, so long as the state standards and enforcement "are or will be at least as effective in providing safe and healthful employment" as the federal OSH Act.
- <https://www.osha.gov/data/commonstats> as of 2019
  - Federal OSHA is a small agency; with our state partners we have approximately 1,850 inspectors responsible for the health and safety of 130 million workers, employed at more than 8 million worksites around the nation — which translates to about one compliance officer for every 70,000 workers.
  - Federal OSHA has 10 regional offices and 85 local area offices.
  - 5,333 workers died on the job in 2019 [<https://www.bls.gov/news.release/cfoi.nr0.htm>] (3.5 per 100,000 full-time equivalent workers) — on average, more than 100 a week or about 15 deaths every day. About 20% (1,061) of worker fatalities in private industry in calendar year 2019 were in construction – accounting for one in five worker deaths for the year.
  - Worker deaths in America are down-on average, from about 38 worker deaths a day in 1970 to 15 a day in 2019.
  - Worker injuries and illnesses are down-from 10.9 incidents per 100 workers in 1972 to 2.8 per 100 in 2019.