

EDUCATION & LABOR COMMITTEE

Congressman George Miller, Chairman

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**Chairwoman Woolsey Statement at Subcommittee Hearing on the
“Protecting America’s Workers Act: Modernizing OSHA
Penalties”**

WASHINGTON, D.C. – *Below are the prepared remarks of U.S. Rep. Lynn Woolsey (D-CA), chairwoman of the House Subcommittee on Workforce Protections, for a subcommittee hearing on the “Protecting America’s Workers Act: Modernizing OSHA Penalties”*

This morning’s legislative hearing will examine the penalty provisions of H.R. 2067, the Protecting America’s Workers Act (PAWA), and the proposed changes, which have been circulated to further improve the bill.

Since I became chair of this subcommittee over two years ago, I have made it my top priority to keep the promise of the occupational safety and health act enacted 40 years ago...to protect the health and safety of American workers.

There is no question that this law has saved hundreds of thousands of lives, and countless others have avoided preventable illnesses and injuries.

But we cannot claim victory because over 5,000 workers a year are still killed on the job, 50,000 die from occupational disease, and millions of others become seriously ill or injured.

This subcommittee---and chairman Miller’s full committee---has held numerous hearings on OSHA’s performance in carrying out the mandates of the OSH Act.

Members have heard story after story of worker tragedies and of deaths and injuries that could have been prevented if the employer had followed OSHA standards, and if OSHA had effectively enforced the law.

But now we have a new sheriff in town with Secretary Solis, and when she says she wants “good jobs for everyone,” she means jobs that are safe!

Already under Assistant Secretary Michael’s leadership, OSHA is addressing some of the very problems we have uncovered.

So OSHA has started down the right path.

And both chairman Miller and I will continue to perform our oversight function over the agency.

However, there are limitations on OSHA's effectiveness unless congress makes fundamental changes to the OSH Act itself a law, which has not been updated since it was first passed in 1970.

That is why last year I reintroduced H.R. 2067, the Protecting America's Workers Act (PAWA).

H.R. 2067 addresses three major weaknesses in the OSH Act.

First, it provides OSHA coverage to the over 8.5 million state, county and municipal workers, who currently have limited or no protection from safety and health hazards at work.

Second, the bill makes changes to OSHA's whistleblower provisions because today's process is inadequate; putting off decisions and depriving workers of due process.

Finally, the bill brings OSHA enforcement into the 21st century, by updating civil and criminal penalties.

And that is what today's hearing is about: the civil and criminal penalty provisions in sections 310 and 311 of PAWA, as well as the proposed changes to the introduced bill.

Penalties are critical to the effective enforcement of the OSH Act; otherwise they become meaningless.

OSHA civil penalties have not been increased in 2 decades and are extremely low.

In addition, the OSH Act is exempted from the inflation adjustment act keeping penalties even lower.

And while OSHA can implement policy changes to increase the size of some penalties, it is clear that without a change in the penalty structure of the statute, they will never be high enough to be an effective deterrent, especially for those employers who are repeat violators.

The penalties under the OSH Act pale in comparison to penalties under other laws.

For example, under the Mine Act, egregious violations can carry civil penalties up to \$250,000.

The penalty increases in PAWA are modest and are roughly the same had the penalties been adjusted for inflation after they were updated in 1990.

And these higher penalties also apply to OSHA state plans.

One of the critical features of PAWA's civil penalty structure is that it establishes significant minimum and maximum civil penalties for violations, which result in the death of a worker.

Under current law, this is not the case, and as a result, when a worker dies due to an employer's violation, it is shocking how low these penalties turn out to be without a mandatory minimum.

In January 2009, Robert Fitch fell 84 feet to his death at an Archer-Daniels- midland plant in Lincoln, Nebraska.

The final settlement agreement reached by OSHA for this preventable death was exactly zero!

This is unacceptable.

PAWA also makes needed changes to the criminal penalties, including making top management liable for criminal misconduct.

Under current law, only corporations and not corporate officials, can be criminally liable for willful violations, and this liability is limited only to cases where a worker has died.

For example, a worker in Idaho suffered permanent brain damage because---upon the orders of his employer---he entered a tank of cyanide waste without the proper protective equipment in violation of OSHA's confined space rules.

The owner was successfully prosecuted under the environmental laws, and he was sentenced to 17 years in prison.

But he could not be prosecuted under the OSH Act because the worker did not die.

But even if the owner had been prosecuted under the OSH Act, he would have been guilty of a misdemeanor and served only six months in jail.

The Justice Department has advised us that criminal misdemeanors under the OSH Act are rarely prosecuted.

PAWA changes that: employers-- including top executives--can serve up to 10 years in jail for criminal behavior, which causes the death or serious injury of a worker.

Congress needs to put teeth into these penalties so that employers are held accountable for their bad behavior and no longer view penalties as part of the cost of doing business.

I look forward to hearing from our witnesses, but before I introduce panel one, I recognize ranking member McMorris-Rodgers for her opening statement.