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OSHA sees minimal cuts in DOL budget request; Harwood Grants in jeopardy

OSHA and the Mine Safety and Health Administration would see relatively small changes in funding for fiscal year 2018 – even with President Donald Trump seeking a $2.4 billion cut for the Department of Labor – according to the Trump administration's fiscal year 2018 budget request for DOL.

The budget includes $543 million for OSHA, with $130 million for "federal and state compliance assistance activities to enhance employer outreach and training." OSHA's budget for fiscal year 2017, which ends Sept. 30, was $552.8 million.

MSHA is slated for $375.2 million – a slight increase from $373.8 million in fiscal year 2017.

DOL stated it would make at least three cuts to keep itself in line with its new proposed budget:

- Eliminate the Senior Community Service Employment Program, saving $434 million. The department stated the program is not effective "in transitioning seniors into unsubsidized employment."
- Close Job Corps centers that "do an inadequate job of educating and training disadvantaged youth, or where it does not make economic sense to keep the center open." That action would save $238 million.
- Adjust the Bureau of International Labor Affairs' priorities toward "ensuring that U.S. trade agreements are fair for American workers," saving $68 million.

Photo: House Appropriations Committee

"This budget reflects the Department of Labor's core mission and commitment to ensuring all Americans have access to good, safe jobs – and does so in a fiscally responsible way," Secretary of Labor R. Alexander Acosta said in a press release.

At a June 7 hearing before the House Appropriations Committee's Labor, Health and Human Services, Education, and Related Agencies Subcommittee, Acosta addressed the possible elimination of the Susan Harwood Training Grant Program. He said DOL's plan is to provide direct training in place of awarding the Harwood Grants, which provide funding to nonprofit organizations for the creation of worker safety training and education. Cutting the program would save about $10.5 million, DOL claims.

"We're going to do more with less, and we have to do more with less," Acosta said. "We're going to focus the department on its core mission by making smart investments in programs that work. The budget makes hard choices, and they are hard, but they're responsible choices that have to be made. Americans want good and safe jobs. The department is here to support Americans' desire to gain and hold these jobs."

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OSHA rescinds 'walkaround rule'

OSHA has changed its policy on allowing employees at nonunion workplaces to choose a union-affiliated representative for "walkaround" inspections, according to an April 25 memo sent to regional administrators.

The policy began in 2013 with a letter of interpretation from OSHA Deputy Assistant Secretary Richard Fairfax to the United Steelworkers. A coalition of industry groups criticized the move, claiming it would "undermine the safety focus of these inspections" and give unions the chance to gain a foothold inside certain organizations.

In September, the National Federation of Independent Business, with help from the Pacific Legal Foundation, filed a lawsuit challenging the policy in a U.S. District Court for the Northern District of Texas Dallas Division. The court denied part of OSHA's motion for dismissal in February, and NFIB withdrew its suit April 27.

"The new Department of Labor memorandum is a clear win for small businesses," NFIB President and CEO Juanita Duggan said in a press release. "The 2013 memo gave unions a pathway to intimidate small business owners. Congress never intended that OSHA should open the door to unionization efforts. The Obama administration was on thin legal ground with their order, and we applaud the Trump administration for properly recognizing the rights of small business owners."

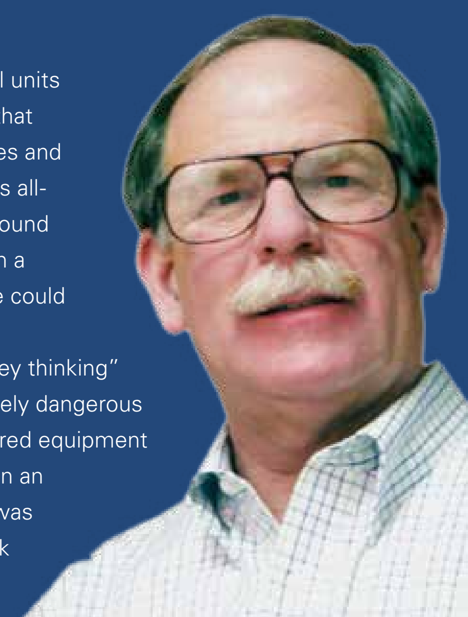
The AFL-CIO had a different perspective regarding the news.

"We were very disappointed to see OSHA under the Trump administration backing away from protecting workers," Peg Seminario, director of occupational safety and health, told *Safety+Health* magazine. "We think in rescinding [the letter of interpretation] that [OSHA has] taken a right from workers who don't happen to have a union. Most importantly, they have taken away and eliminated an important source of information about workplace hazards."

The memo also indicated that the agency would revise part of its Field Operations Manual as a result of the policy change.

ASK THE EXPERT

with Rick Kaletsky



Q: *Do any OSHA standards dictate securing machinery to the floor?*

A: 29 CFR 1910.212(b) states: "Anchoring fixed machinery. Machines designed for a fixed location shall be securely anchored to prevent walking or moving." This standard is not in an obvious portion of the 1910s, as it is within OSHA's "Machinery and Machine Guarding" subpart. For such difficulties in attempting to locate a standard on a particular subject, I urge you to use the index at the end of the hard copy 1910s. The index may not guide you to every subject word that you have in mind, but you will find "Anchoring Fixed Machinery."

There may be some matters of interpretation regarding the applicability of this standard, but I have observed dozens of inarguable violations. Culprit machinery most often has included top-heavy pedestal units "standing" on the floor. Within that category, old, narrow drill presses and vertical belt sanders stand out as all-too-common examples. I have found unanchored off-hand grinders on a work bench, where the machine could somewhat easily be displaced.

For a "what the heck were they thinking" example, I ran across an extremely dangerous situation that involved nonpowered equipment – a top-heavy, very heavy vise on an unanchored post pedestal that was quite easy to inadvertently knock over and was extremely close to a walkway.

Former OSHA inspector turned consultant ***Rick Kaletsky*** *is a 46-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2nd edition, the book has been updated and expanded in 2016. Order a copy at* **www.nsc.org**.

In Other News…

OSHA delays July 1 deadline for reporting injury, illness data

OSHA announced it will be extending the deadline for certain employers to submit injury and illness data as part of its Improve Tracking of Workplace Injuries and Illnesses final rule published in May 2016.

The controversial rule had required the information from OSHA Form 300A, which OSHA intends to make public on its website, to be submitted electronically to the agency no later than July 1. The extension deadline had not been released at press time.

Before it was struck down April 4 by President Donald Trump, the rule required employers to keep an up-to-date and accurate record of work-related injuries and illnesses.

Democrats introduce bill to restore 'Volks' recordkeeping rule

Five members of Congress on May 15 introduced a bill that would reinstate OSHA's so-called "Volks" rule, a previously overturned law that addressed employers' "ongoing obligation" to make and maintain accurate records of work-related injuries and illnesses.

The move comes after President Donald Trump on April 4 signed into law a Congressional Review Act resolution (H.J. Resolution 83) to repeal the Volks rule.

The rule allowed OSHA to issue citations anytime during the five-year period employers are required to keep injury and illness records instead of within six months after an incident occurred.

The legislation was co-sponsored by Sens. Richard Blumenthal (D-CT) and Patty Murray (D-WA); and Reps. Joe Courtney (D-CT), Bobby Scott (D-VA) and Mark Takano (D-CA).

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Whether extension cords may be repaired and returned to use

Standard: 1926.403; 1926.403(a); 1926.404; and 1926.404(b)(1)(iii)(C)
Date of response: April 4, 2010

Question: *Where an extension cord being used in construction has been damaged near the plug end, is it permissible to replace the plug with an approved cord cap made for that type of cord, provided the repair is done by a qualified electrician?*

Answer: Extension cords used in construction may be repaired, so long as the repair returns the cord to the "approved" state required by 1926.403(a).

This section states, "All electrical conductors and equipment shall be approved."

The repair of cords and cord sets is permitted under 1926.404(b)(1)(iii)(C):

Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles that are fixed and not exposed to damage, shall visually be inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indications for possible internal damage. Equipment found damaged or defective shall *not* be used until repaired. (Emphasis added.)

Repairs of extension cords therefore are permitted under 1926.404(b)(1)(iii)(C). However, to remain compliant with 1926.403(a), the repairs must return the equipment to the state in which it initially was approved.

Similar repairs are discussed in our May 19, 2003, letter to Barry Cole:

To satisfy the requirements of the OSHA standards, a repair would have to restore the tool to its "approved" condition in accordance with 1926.403(a). Tools ... are approved as complete factory-produced entities. The approval is for the tool as a whole – its design, capacity, materials and construction. This provision precludes the use of an approved tool if its characteristics are materially altered.

Sincerely,
Bill Parsons, Acting Director
Directorate of Construction

Excerpted from ***www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27353.***

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In This Issue

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In response, Rep. Rosa DeLauro (D-CT), the subcommittee's ranking member, said, "You cannot do more with less – you can only do less with less. In my view, that's what this budget proposal will do: less for American workers."

She added, "We also need to know if you are going to fight to defend the protections for safe workplaces that your department has made in recent years – regulations to limit exposure to silica, beryllium and coal dust that will save thousands of lives."

The budget request is available to download at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf.*

Meanwhile, NIOSH might experience a sizable reduction in its budget, and the Chemical Safety Board still is scheduled for elimination in the Trump administration's latest spending plan, released May 23.

NIOSH's potential budget is set at \$200 million, a sharp decrease from the \$335.2 million in the fiscal year 2017 appropriations bill passed May 4.

The elimination of CSB is proposed in the "Major Savings and Reforms" document, which points to the "duplicative nature" of CSB's work as a major reason for cutting the agency.

CSB Chairperson Vanessa A. Sutherland, in a May 23 press release, countered that the independent federal agency has a unique role.

"In our safety investigations of high-consequence chemical accidents, we routinely examine the adequacy of existing regulations and standards. No other federal agency, or private entity for that matter, provides this comprehensive safety role."

CSB, one of 19 agencies facing elimination, has proposed a budget of \$11.6 million for fiscal year 2018, a modest increase from \$11 million in 2017.