

# **Behavior-Based Safety/ 'Blame-the-Worker' Safety Programs**

## **Understanding and Confronting Management's Plan for Workplace Health and Safety**

*Union Training for Union Members*



**United Steelworkers'  
Health, Safety and Environment Department**

**April 2010**



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# BASIC PRINCIPLES OF CONTINUOUS IMPROVEMENT TRAINING EXERCISE TWO

## Comparing the Use of Hands

Comparing what each hand is doing while performing work is a very useful tool not only for recognizing non-value work but also for uncovering possible causes of repetitive motion damage and fatigue. It is a very easy exercise to do. Simply by comparing what each hand is doing while performing work provides an effective road map for Continuous Improvement activity.

Consider the example of a technician who is sub-assembling a washer and a nut to a stud. Two such sub-assemblies are required for each vehicle built. A comparison of the technician's hand movements as he works at his sub-assembly table shows the following results:

### Left Hand

### Right Hand

(1)	Pick up stud from tray
(2)	Transfer stud to left hand
(3) Grasp and hold stud	Release stud
(4)	Pick up washer from tray
(5)	Position washer over stud
(6)	Pick up nut from tray
(7)	Loose assemble nut to stud
(8)	Hand start nut to proper position
(9) Release stud	Dispose of nut and stud

Although the work being performed in the example is easy work, the principles shown are very clear. Examination of the comparison shows that only the right hand and arm are actively working. The right arm and hand bear the full force of any fatigue associated with the sub-assembly.

A closer examination also shows that the left hand is doing non-value work only. Recognizing and identifying this non-value work is the beginning of Continuous Improvement activity which will create the smooth process flow.

(The continuous improvement involves installing an inexpensive holding fixture and adapting an air tool.)

## IMPROVED SITUATION

### Left Hand

### Right Hand

(1) Pick up nut from tray	Pick up nut from tray
(2) Place nut in holding fixture	Place nut in holding fixture
(3) Obtain washer	Obtain washer
(4) Place washer on nut	Place washer on nut
(5) Obtain stud	Obtain stud
(6) Hand start stud to nut	Hand start stud to nut
(7) Grasp air tool	Grasp air tool
(8) Position tool and pre-secure stud to nut	Position tool and pre-secure stud to nut
(9) Release air tool	Release air tool
(10) Dispose of nut and stud	Dispose of nut and stud

### Accumulated Results

- Capacity has been increased (2 built instead of 1)
- Non-value work has been minimized
- Work load impact is spread across more body muscles instead of being isolated to only the right arm and hand
- Variability of the quality of the stud and nut sub-assembly has been eliminated
- Variability within Jim's operation has been greatly reduced because the stud and nut sub-assemblies he must use are of a consistent and constant quality
- The work flow is smoother because more variability has been eliminated

The technician decided the benefits as a result of his proposal were good, so he moved forward with his proposal.

**MANY IMPROVEMENTS CAN OCCUR FROM  
ELIMINATING NON-VALUE WORK**



Status: Final

## Accident Report Form

Case Number: A-488-2005-40

FAIRFIELD WORKS

Classification: First Aid

1. Name and Check No. N/A  
2. Accident Date 06/08/2005 4. Division UTILITIES, SHOPS AND SERVICES  
3. Accident Time 1430 5. Department ELECTRICAL  
6. Date Reported 06/08/2005  
8. Body Part Affected Primary: Arm(s)  
9. Nature Of Injury Primary: Puncture Wound  
10. Occ. at time of Injury 603112 - Electrical Repairman 11. Occ. experience yrs 4 mos  
12. Regular Occupation 603112 - MT\*ELECTRICAL REPRMN 13. Corp. Serv. Date 02/07/1996  
14. Last Injury Date 10/30/1999 ( A-488-1999-127 )  
15. No. of injuries since 1990 1 16. Age 61 ( 09/14/1943 )

17. Exact location of accident:

Hallway in front of the restroom at the Line Crew Shop.

18. What job was being done?

n/a

19. What step of the job was in progress?

n/a

20a. How often is this job normally performed by the affected employee?

n/a

20b. When was the last time this job was performed by affected employee?

21. What happened? ( describe in sequence )

21a. What was the affected employee's position in the physical surroundings?

Employee was standing in the hallway.

21b. How was the affected employee doing what he/she was doing?

n/a

21c. What happened that resulted in the injury/illness?

Employee states that he believes the bee landed on his shirt and that when he brush his left arm against his shirt is when he was stung by the bee.

21d. Are there any other facts necessary to clarify what happened?

none

21e. What personal protective equipment was the affected employee wearing?

fire retardent pants, metatarsal safety shoes.

22. What did the affected employee do or not do that contributed to the accident? Why do you feel their actions contributed to the accident?

The employee should have been aware that a bee had landed on his shirt and taken the appropriate steps to remove the bee without being stung.

23. What did some person, other than the affected employee, do or not do that contributed to the accident? Why do you feel their actions contributed to the accident?

none

24. What conditions of the environment (tools, equipment, machines, structures, materials, substances, etc ) contributed to the accident? Why do you feel these conditions contributed to the accident?

Status: Final

# Accident Report Form

Case Number: A-488-2005-40

FAIRFIELD WORKS

Classification: First Aid

etc.) contributed to the accident? Why do you feel these conditions contributed to the accident?  
none

25. Was affected employee on daily overtime? No Weekly Overtime? Yes  
Total # hours worked last 7 days 48

26. Was job covered by a Safe Job/Energy Control procedure? No  
SJP/ECP Number  
Title  
Last Revision Date

27. Were The Recommendations Being Followed?  
( If yes, any comments made in items 22, 23, and 24 should be reviewed for possible revisions to the related recommended Safe Job Procedure write-up to keep the SJP/ECP current )

28. Was the affected employee instructed in this procedure? If Yes, Give Date:

29. When was the affected employee's last safety contact on this job?

30. What action have you taken and/or do you plan to take to prevent a recurrence?

Actions Taken	Complete By	Completed
Contact all US&S Electrical Technicians on the details of this incident.	06/16/2005	<input checked="" type="checkbox"/>
Contact all US&S Managers on the details of this incident.	06/16/2005	<input checked="" type="checkbox"/>

31. What further recommendations do you make?

32. List witnesses

33. Supervisor/Leader	243973 - JONES, GLENN A	Safety Notified	<input checked="" type="checkbox"/>
34. Prepared by	243973 - JONES, GLENN A	JUM Notified	<input checked="" type="checkbox"/>

**CORRECTIVE ACTION TAKEN - Planned ( To Be Completed By Area Manager )**

35. Do you agree with the actions taken in items 30 and 31 above? Yes

36. Do you have additional recommendations?

37. Area Manager/Process Leader HOUSTON, PHILIP V

38. Safety GREENE, WILLIAM W

With crippled limbs and mangled feet,  
a million man-hours we did meet;

With records kept such as these,  
we'll reach a zillion it'll be a breeze;

Rewards are for achievements met,  
but we ain't reached a million yet;

Their safety program is a sham,  
As for you and me? They don't give a damn.

Hourly worker  
Chemical processing plant

## **Welcome to your indoctrination in BS:**

**Global Trends in Health and Safety  
Mismanagement**



“The fact is, it is not easy for an individual to have a serious injury in today’s workplace.”

David Bradford,  
American Society of Safety Engineers,  
Behavioral Safety Symposium 2001  
(page 68)

## Who Sells Behavioral Safety?

- “Behavioral Science Technology” (BST)
- Aubry Daniels “B-Safe Program”
- Liberty Mutual Insurance Co’s “MVP Program”
- FDR Safety (Fred Rine, CEO; Jim Stanley, President)
- Bill Sims Safety Incentive Programs
- Structured Safety Process
- MoveSmart
- “SafeStart”
- Terry McSween’s “Quality Safety Edge”
- DuPont “STOP”
- E. Scott Geller’s “Safety Performance Solutions”
- Michael Topf’s “Safor Program”
- “Safety Pays”
- PTAS
- JMJ Associates
- ProAct Safety/Lean BBS

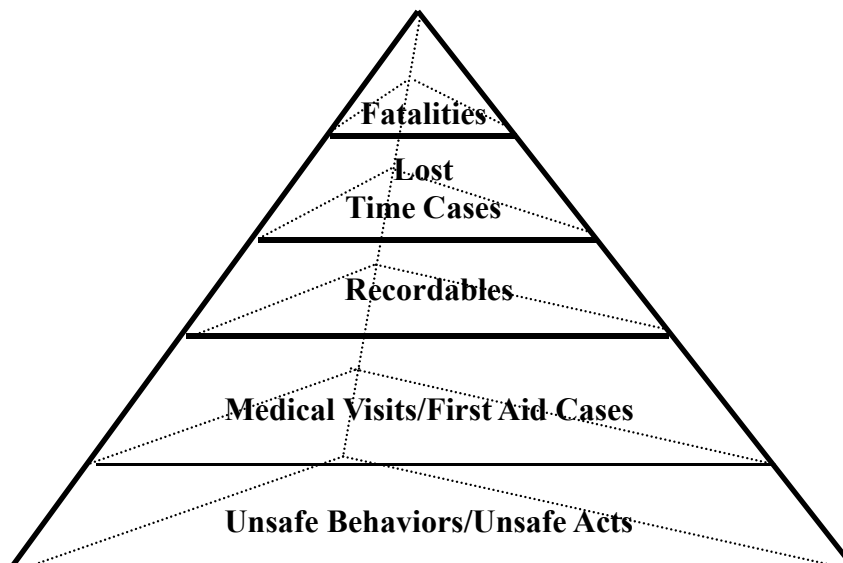
## 88%-96% of all injuries are caused by unsafe acts

- Originated from Herbert William Heinrich (88%)
- Insurance investigator (Travelers Insurance Company)
- Studied supervisor accident reports (1931)
- Drew conclusions from supervisor-recommended corrective actions

1930's Safety Theory BST (80%-95%) and DuPont (96%) call it "leading edge"



It's a trap!



1930's Safety Theory -- BST & DuPont call this folk lore "Cutting-Edge Technology"

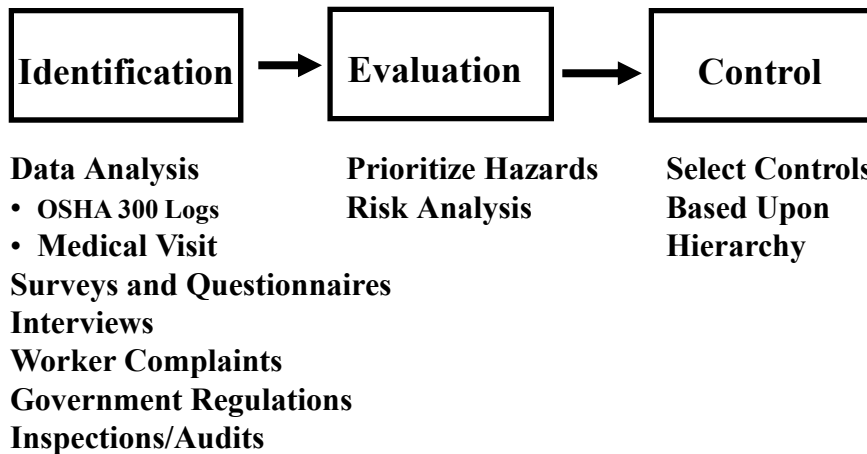
In order to have an  
“at-risk” behavior,  
what must be present?

**A HAZARD**

**All injuries and illnesses  
on the job  
are the result of  
exposure to hazards.**

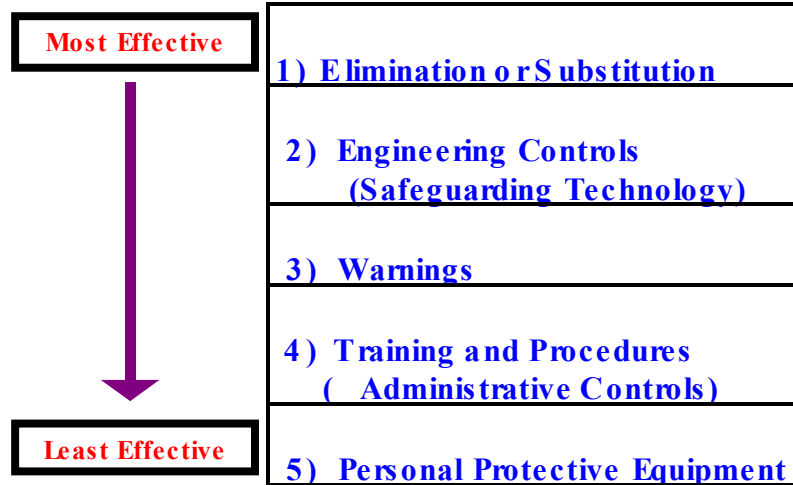
**There are no exceptions!**

## Health and Safety Process Model

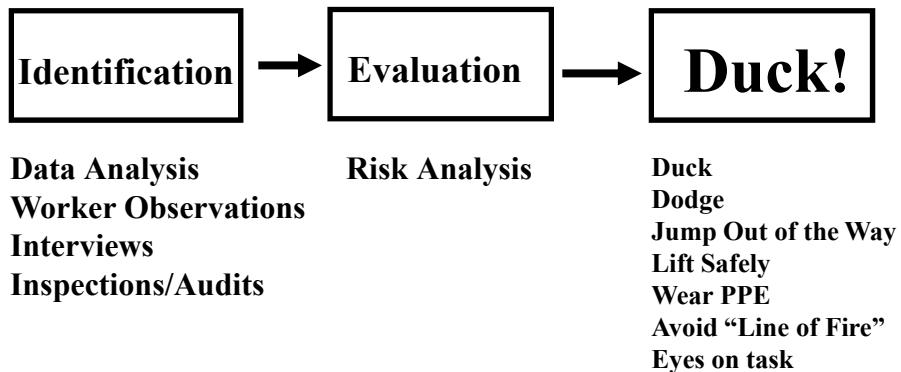


**How do we  
*CONTROL* hazards  
in our workplaces?**

# Hierarchy of Controls

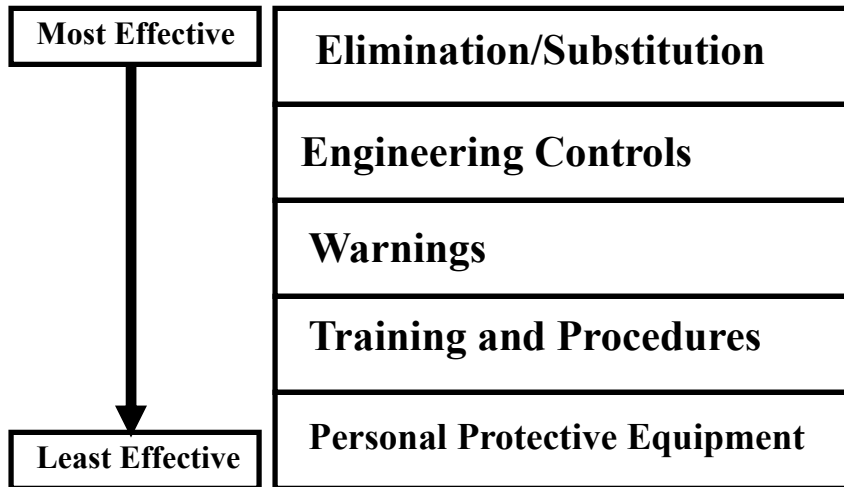


# Behavior Based Process Model

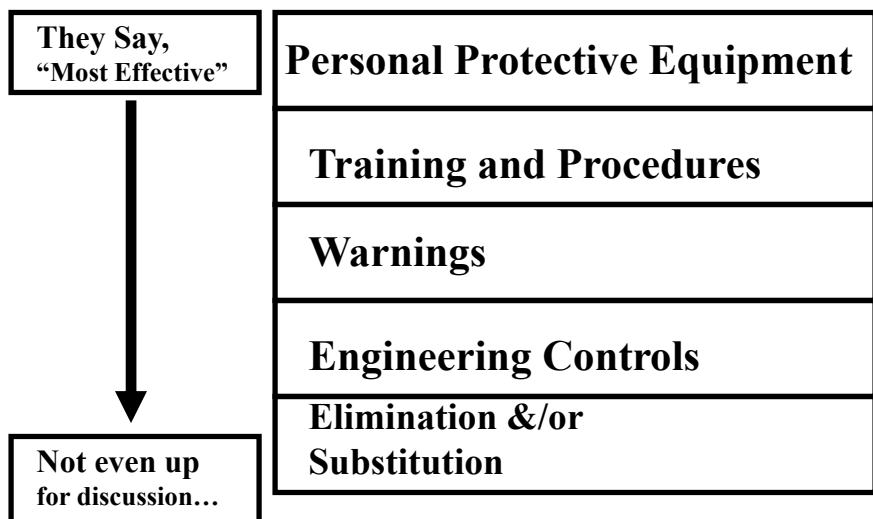




## Hierarchy of Health and Safety Controls



## Consequences Of A Behavior Based Program Is To Turn The Hierarchy Upside Down



## Common Behavior Based Program Elements

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- **Critical behavior lists**
- **Workers observe workers**
- **Training for observers**
- **Frequent observations of workers to identify at unsafe behaviors**
- **Heavy emphasis on PPE, “body position” and “line of fire”**
- **Commitment of resources**

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*“Staying out of the line of fire”* replaces effective safeguarding and design.

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*“Proper body position”* has become a replacement for a good ergonomics program and well designed work stations.

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And *“Personal Protective Equipment”* becomes a substitute for noise control, chemical enclosures, ventilation, and toxic use reduction.

Why eliminate the hazard when you can buy personal protective equipment?



- **The implication is that it is not hazards on the job that cause injuries and illnesses, but it is the behavior of those exposed to the hazards (victims) that cause injuries and illnesses.**
- 

- **BS Theory:**
  - Workers are the problem, not the solution.
  - Change the worker, not the hazard.

## Why Behavior-Based Programs Can Be Attractive

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- New management commitment to health and safety
- Involves workers (and the union)
- Gives management authority to some workers
- Does address some fraction of injury and illness causation
- Many workers and victims believe this stuff –that injuries and illnesses are their fault

## Management will provide “*PERKS*”

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- Time off the job
- Access to management
- Management willing to correct some conditions that they would not correct for the union
- Union behavioral safety coordinators given office and status
- Employer-paid trips to behavioral safety conferences

## Employer Programs, Policies & Practices Related to Behavior-Based Safety

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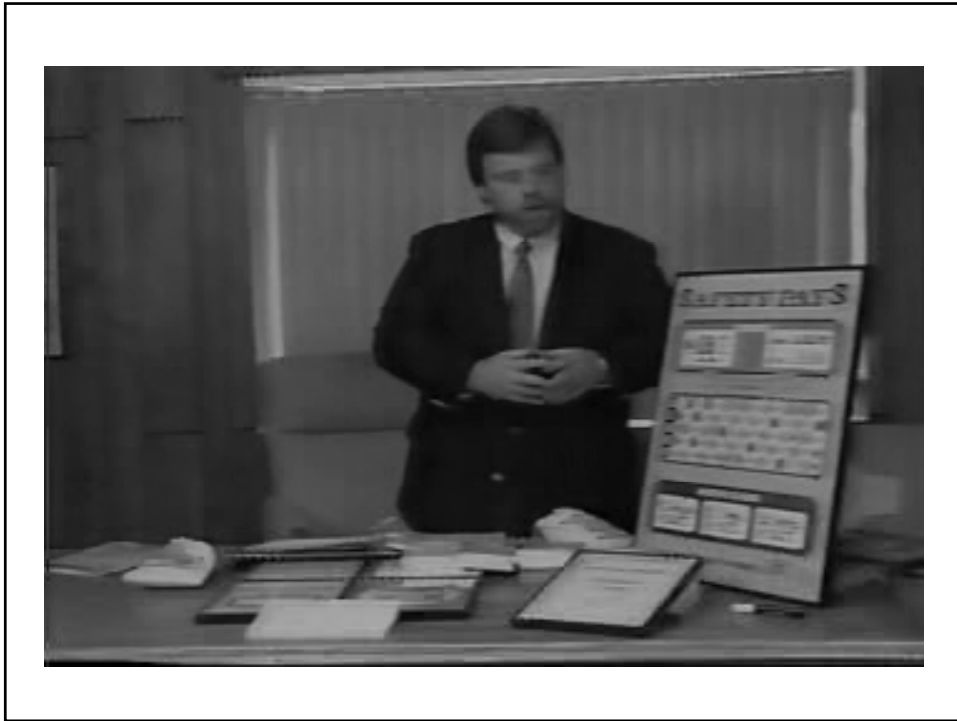
- Behavioral Observation Programs
- Safety Incentive Programs
- Injury Discipline Policies
  - (e.g. Accident Repeater Programs)
- Post-injury Drug Testing
- Programs that focus *solely* on Lost Work Days or Reported Injuries

## Disincentives to Reporting Injuries and Illnesses

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- Awards (prizes and money) for not have a recordable or lost time case (or having a low rate)
- Discipline and/or counseling issued after workers are injured
- Drug testing after every injury
- Peer pressure





New OSHA Recordkeeping Rule:  
§ 1904.36 Prohibition against discrimination

Section 11(c) of the Act prohibits you from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OSH Act.



Phillips Chemical Company, Pasadena, Texas 1989

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- Had just completed 5,000,000 hours without a lost time injury
- Explosion and fire
- 23 dead
- 232 injured

It has been  days since USW Local xxx told management to fix the broken ventilation and they still have not addressed this worker health hazard...

It has been  days since USW Local xxx told management to fix the broken ventilation and they still have not addressed this worker health hazard...



**“Everyone, and that includes you and me, is at some time careless, complacent, overconfident, and stubborn. At times each of us becomes distracted, inattentive, bored, and fatigued. We occasionally take chances, we misunderstand, we misinterpret, and we misread. These are completely human characteristics.”**

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**Al Chapanis, Former Professor of Human Factors  
Engineering Department, Johns Hopkins University**

**“Because we are human and because all these traits are fundamental and built into each of us, the equipment, machines and systems that we construct for our use have to be made to accommodate us the way we are, and not vice versa.”**

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**Al Chapanis, Former Professor of Human Factors  
Engineering Department, Johns Hopkins University**

## Fundamental Principles of A Union Approach to Safety and Health

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- Injuries and illnesses are the result of exposure to hazards
- Labor and management goals differ
- Union-only mechanism needed to protect our interests
- Worker and Union involvement needed in every aspect of program
- Union representatives need time, access and resources



### Union View - Identify Hazards

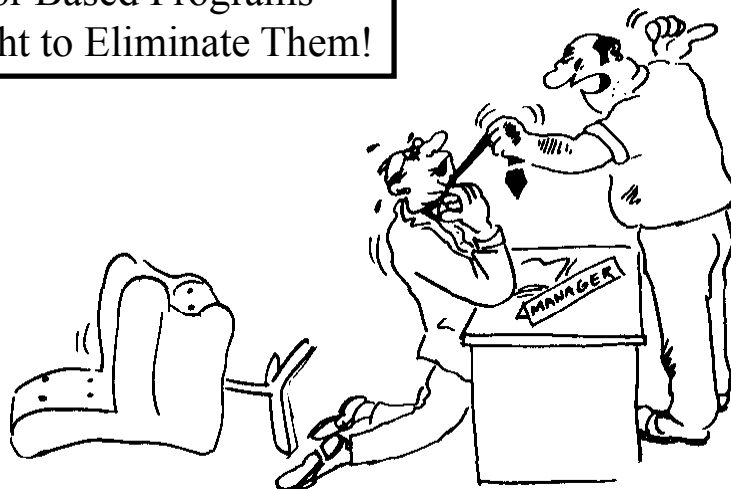
*A hazard is a condition or set of circumstances that can cause harm*

- Crushing
- Shearing
- Noise, vibration
- Chemical, gases, fumes, mists, dusts
- Entanglement
- Pinch point
- High pressure
- Electrical
- Ergonomics-posture, force, repetition
- Lifting
- Slips, Trips, Fall
- Fire
- Radiation
- Excessive hours of work
- Inadequate staffing
- Production pressures

## **Union View: Critical Worker Behaviors**

- **Identifying root causes of injuries and illnesses**
- **Communicating problems to Union health & safety committee**
- **Identifying potential health and safety grievances to file**
- **Refusing hazardous/unsafe work**
- **Reporting symptoms, injuries and illnesses**
- **Identifying management who are not addressing health and safety problems**

Explain To Management  
The Problems With  
Behavior Based Programs  
and Fight to Eliminate Them!



## Dupont STOP Program

- 96% of all accidents are caused by unsafe acts
- Observe worker behavior
- Heavy on discipline – injury discipline policies
- Often advocates use of safety incentive programs

### **Union Forces Management to Abandon DuPont STOP Program for Employees**

- **Employer planned to implement DuPont STOP**
- **The Union demanded to bargain**
- **Management refused to bargain or provide requested information to the Union**
- **The Union filed an unfair labor practice charge**
- **The NLRB supported the Union's position that management must bargain with the Union over a safety program that affects its members**

**Remember - health & safety is a  
mandatory subject of bargaining!**

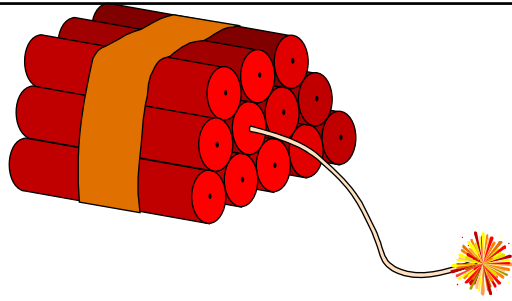
## Why Not Accept Systems with Behavior-Based Safety (BBS)?

- BBS is not about safety
- BBS is about shifting blame and focus -- from employers (& hazardous conditions) to workers (& unsafe acts)
- BBS is about power and control (management will allow “freedom within fences”)
- There is no room for unions’ collective thinking & approach in BBS
- BBS is a long-term union-busting strategy

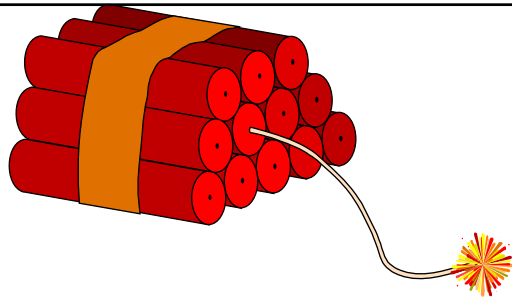
## What do OFS think of behavior based safety?



We absolutely want to get rid off it!



*Caution – “Blame the Worker” Behavioral Safety Programs Are Hazardous to Your Health & Safety*



*Caution – “Blame the Worker” Behavioral Safety Programs Are Hazardous to Your Solidarity!*



*"Management's blame the worker programs are as dangerous to our members as any other challenge that we face today. The USW must oppose these programs with all our energy. Instead we must work just as hard to implement comprehensive health and safety programs that find and eliminate unsafe workplace conditions that cause injuries and illness to our members."*

Leo Gerard, USW International President

**Whose behavior needs  
to be changed to  
improve health & safety  
at your workplace?**





Why eliminate the hazard when you can buy personal protective equipment?





# Blame the Worker

## *The Rise of Behavioral-Based Safety Programs*

By James Frederick and Nancy Lessin

OVER THE LAST DECADE, workplaces throughout the world have experienced massive restructuring that has included downsizing, increased hours of work (e.g., 12 hour shifts, mandatory overtime), intensification of work (increased work load and/or job duties), increased pace of work ("push for production") and a host of changes in technologies, work processes and management techniques. These changes, aimed at making workplaces more competitive and productive, have been associated with significant adverse health and safety impacts — repetitive strain injuries, stress, workplace violence, fatalities and other work-related injuries and illnesses.

Instead of examining how core work processes are affecting health and safety, many employers are directing attention to workers themselves as the problem rather than work restructuring and hazardous job conditions.

Enter "behavior-based safety" — safety programs that, depending on the particular behavioral safety program, claim that 80 to 96 percent of job injuries and illnesses are caused by workers' own unsafe acts. Behavior-based safety programs focus attention on worker carelessness and conscious or unconscious unsafe behaviors, and place the onus for a safe workplace on workers themselves.

### THE BEHAVIORAL SAFETY INDUSTRY

The "unsafe worker" statistics espoused by behavior-based safety consultants and repeated by employers purchasing or developing behavioral safety programs were

*James Frederick is an industrial hygienist with the United Steelworkers of America. Nancy Lessin is health and safety coordinator of the Massachusetts AFL-CIO.*



A machinist in Boston, Massachusetts.

derived from the work of insurance investigator H.W. Heinrich in the 1930s. Heinrich's research into injury causation consisted of his review of supervisors' accident reports, which critics pointed out naturally blame workers for accidents and injuries. He arrived at the statistic that 88 percent of workplace accidents and worker injuries were caused by workers' unsafe acts, numbers echoed by today's behavioral safety programs.

A variety of consultants and companies market behavioral safety programs to employers throughout the United States and around the world. The leading companies include Dupont (the Dupont STOP program), Behavioral Science Technologies, Aubrey Daniels (SafeR+ program), E. Scott Geller's Safety Performance Solutions (Total Safety Culture program), Topf Organization (SAFOR program) and Liberty Mutual Insurance Company (Liberty's Managing Vital



© JACK KURTZ/IMPACT VISUALS

Using a cutting torch in Allentown, Pennsylvania.

Performance — LMVP program). These programs identify “critical worker behaviors,” train “observers” (workers and/or supervisors who observe worker behaviors) and use some form of “critical behavior check-lists” to document when a worker has engaged in a safe behavior or committed an unsafe act.

Promotional materials for the Dupont STOP program say “STOP is people talking with people about safety. In a series of training programs, behavior is modified in favor of safety. The objective of the STOP program is to teach safety auditing skills, so supervisors and employees can observe workers who are performing normal work activities, reinforce safe work practices, and correct unsafe acts and conditions. STOP effectively communicates management’s commitment to safety through the entire organization. From the top manager down, all employees are involved in the program. Everyone has a role to play in the safety effort when STOP is on the scene.”

The rhetoric is similar from Aubrey Daniels International. “Our systems approach includes safety-related behaviors at all levels, ensuring that people from executives to frontline associates form a partnership of responsibility for creating and maintaining a safe workplace,” the company proclaims. “ADI uses Applied Behavior Analysis methods in every part of the safety intervention. This dedication to behavioral principles is reflected in the four basic steps of ADI’s SafeR+:

1. Target the behaviors that actually cause accidents. Some unsafe behaviors are obvious, but many critical risk-taking behaviors are ingrained, automatic and subtle and must be identified.
2. Complete observations and measurement in less than five minutes per day. A simple, but precise observation/measurement method allows for more data collection which facilitates fast improvement.
3. Integrate safety feedback into meetings, discussions and regular interactions. Numbers don’t change behavior, but sharing data in a positive and constructive performance context gives people the direction and opportunity to improve.
4. Create a culture that recognizes and rewards safe

behaviors. Frequent recognition/reward is the only way to establish and maintain safe behaviors.”

“Culture” — counterposed to work organization — is a major focus of the behavioral safety crowd. “The key to safety and environmental excellence lies in creating a new culture,” explains the Topf Organization. “Culture is defined as the ideas, customs, values, norms, attitudes, commitments, and behaviors of a group of people in a given period.”

Sometimes, the programs are less friendly in practice than they sound in promotional brochures. Some behavior-based programs emphasize employers disciplining workers. The training materials from a Dupont-based behavioral safety program at a New England defense manufacturer states, “Discipline for Safety Infractions. Do Not Wait for Injury.” Other programs, however, suggest that overt discipline associated with the program could be problematic.

But overt discipline or no, what unifies the behavioral safety programs is their focus on the workers, rather than working conditions.

In a Midwest tire manufacturer with a behavior-based safety program, the official accident report written up after a worker slipped and fell on ice in the parking lot stated, “Worker’s eyes not on path,” as the cause of the injury. The report did not mention the need to have ice and snow removed from the parking lot. It did not mention that the sidewalk had not been cleared of snow and ice for several weeks, even though workers were required to use the sidewalk periodically.

Some behavior-based safety program consultants have expanded their business internationally. One consulting firm, Behavioral Science Technologies, markets or implements its program in 17 countries. Behavioral Science Technologies conferences in the United States offer workshops in Spanish, attracting industry leaders and executives from countries in Central and South America.

#### FEAR AND INTIMIDATION ON THE JOB

Workers whose employers have implemented behavior-based safety programs describe an atmosphere of fear that descends upon the workplace, where workers are reluc-



© JIM WEST/IMPACT VISUALS

On the line at a Ford-Mazda joint venture in Flat Rock, Michigan.

tant to report injuries and illnesses for fear of being labeled an "unsafe worker."

At one factory that had implemented a behavioral safety program, the United Auto Workers Health and Safety Department reports, when a union representative asked workers during shift meetings to raise their hands if they were afraid to report injuries, about half of 150 workers raised their hands. Worried that some workers feared even raising their hand in response to the question, the union representative asked a subsequent group to write "yes" on a piece of paper if they were afraid to report injuries. Seventy percent indicated they were afraid to report injuries. Asked why they would not report injuries, workers said, "we know that we will face an inquisition," "we would be humiliated" and "we might be blamed for the injury."

Related to a behavior-based approach to safety are several other employer-initiated programs that also discourage workers from reporting injuries. Safety incentive or "safety bingo" programs offer cash or prizes to workers who do not report injuries. Another related strategy threatens workers who report injuries with discipline or other disincentives, such as drug testing, loss of overtime opportunity or days off with no pay.

Prizes for safety incentive programs range from jackets, pizza parties and gift certificates to automobiles and cash. At one Midwest plant, all workers who did not report an injury during the course of a year were invited to dinner. At the dinner, one of the workers' names was pulled from a hat. That worker was given a check for

\$10,000.

Earlier this year, Sysco Food Services implemented a point system for its delivery and warehouse workers, whereby workers accrue points for injuries, accidents and workers' compensation claims filed. A workers' compensation claim costs a worker one point; a workers' compensation claim involving days away from work is assigned five points. Workers are terminated if they accrue 30 points, or report five workers' compensation-related injuries.

The theory underlying these programs is that workers who work carefully do not get injured (and therefore deserve rewards), and those who work carelessly and become injured deserve punishment. "The

**Aubrey Daniels International  
Implementing the PM Process**

ADI's Performance Management (PM) process is based on the science of Applied Behavior Analysis and focuses on the positive approach to systematically change the way people work. PM, when implemented effectively, inevitably results in measurable and meaningful business achievements and an improved and more productive work environment.

Transferring PM skills and system management to an organization's internal performance managers — an essential for ongoing success — requires both training and follow-up coaching from an ADI professional. PM training and coaching includes:

- The ABC Model:** An analysis technique for connecting behavior with consequences and using that knowledge to maximize and reinforce desired behavior.
- Pinpointing Results & Behaviors:** The difficult art of identifying and specifically describing results and the behaviors required to attain those results.
- Measurement:** How to develop fair and accurate measures of desired behaviors and outcomes and how to make measurement an enjoyable, even reinforcing event.
- Feedback:** The specific and frequent sharing of performance data that leads and encourages employees to improve.
- Reinforcement:** Combining all of the tools of PM to determine when and how to recognize and reinforce improvement and achievement to attain and sustain discretionary effort.
- Monitor/Evaluate:** Continued monitoring of results and behaviors to evaluate progress, or lack thereof, to troubleshoot the process.

**What to expect: 6 Steps to Behavioral Solutions**

- Step 1. Analysis:** ADI works with your organization to increase the probability of a successful PM implementation by examining current conditions, cultures and issues. This allows you to apply PM so that it has an immediate, positive, significant and lasting impact on your workplace operations.
- Step 2. Planning:** ADI helps your organization develop detailed plans and schedules for every phase of PM application from training to process structure to follow-up requirements.
- Step 3. Training:** We offer several training methods to fit your needs including: On-site training for all PM participants; Advanced Performance Management Training (APMT) presented for selected representatives from your organization at ADI's Atlanta home office, to supplement and advance your on-site training and implementation; PM Basics qualifies your internal trainers to provide PM training to others in the organization.
- Step 4. Follow-up coaching and support:** After training is completed, ADI specialists work with PM participants and your designated internal consultants through contact and consultation in small group settings, by phone, fax and/or e-mail according to customer preference.
- Step 5. Skills transfer:** Supported by the follow-up process, skills transfer is designed with the objective of bringing PM performers to a self-sufficient level of future PM planning and implementation. ADI also offers continuing opportunities for education and training that allow you to maintain and enhance PM competencies over time.
- Step 6. Accountability:** ADI consultants assist your organization in the design, application and management of accountability procedures so that your company can establish PM as the core component of your management process. Our goal is to ensure the long-term success of PM initiatives and to support an evolving process that meets your business objectives over time.

theory behind safety incentive and disincentive programs is more than questionable," says Michael Sprinker, director of health and safety at the International Chemical Workers Union Council.

Critics say the real goal of these programs is to discourage worker reports of injury and illness. Discouraging injury reporting can be hazardous. Workers may not get the care and early treatment they need, and job hazards may not be identified and corrected.

"Our union's experience confirms that these programs only cause underreporting of injuries and illness," says Sprinker. "Peer pressure and pressure from management are factors that cause a 'put a cut hand in your pocket until you get home' practices in workplaces."

Employers have many reasons for wanting to discourage workers from reporting injuries. If workers do not report injuries as work-related, it can be difficult for them

to receive workers' compensation benefits — covering medical costs and/or lost wages — related to those injuries. Those costs are then shifted to workers' health insurance at the same time that employers are increasing the share of these costs that are borne by workers themselves. Fewer workers' compensation claims also translate into lower workers' compensation premium payments for employers.

In the United States, discouraging workers from reporting injuries may also help employers escape Occupational Safety and Health Administration (OSHA) inspections. The Department of Labor collects employers' records of work-related injuries and illnesses (known as OSHA 200 logs). Under a new OSHA initiative, OSHA inspectors will make unannounced inspections of employers with rates of injuries and illness above a specified level. Employers with injury rates below that level are unlikely to receive an OSHA inspection unless a very serious accident occurs in the workplace or someone files a complaint with OSHA.

#### UNION RESISTANCE

The national AFL-CIO along with a number of U.S. unions have issued policy positions opposing "blame-the-worker" approaches to health and safety.

"These programs and policies have a chilling effect on workers' reporting of symptoms, injuries and illnesses," states a 1999 AFL-CIO policy resolution, "which can leave workers' health and safety problems untreated and underlying hazards uncorrected. Moreover, these programs frequently are implemented unilaterally by employers, pitting worker against worker and undermining union efforts to

address hazardous workplace conditions through concerted action."



A 2000 United Steelworkers of America health and safety resolution offers a similar perspective.

"We will oppose those 'behavioral safety' programs that assume misbehavior is the primary cause of workplace accidents," the resolution says. "We will oppose 'safety incentive' programs that assume workers are too stupid to care about their own safety and must be bribed with trinkets. We will insist on safety programs that enlist the skill, knowledge and commitment of the workforce in finding and correcting hazards."

Workers, especially unionized workers, are not defenseless against behavioral safety programs.

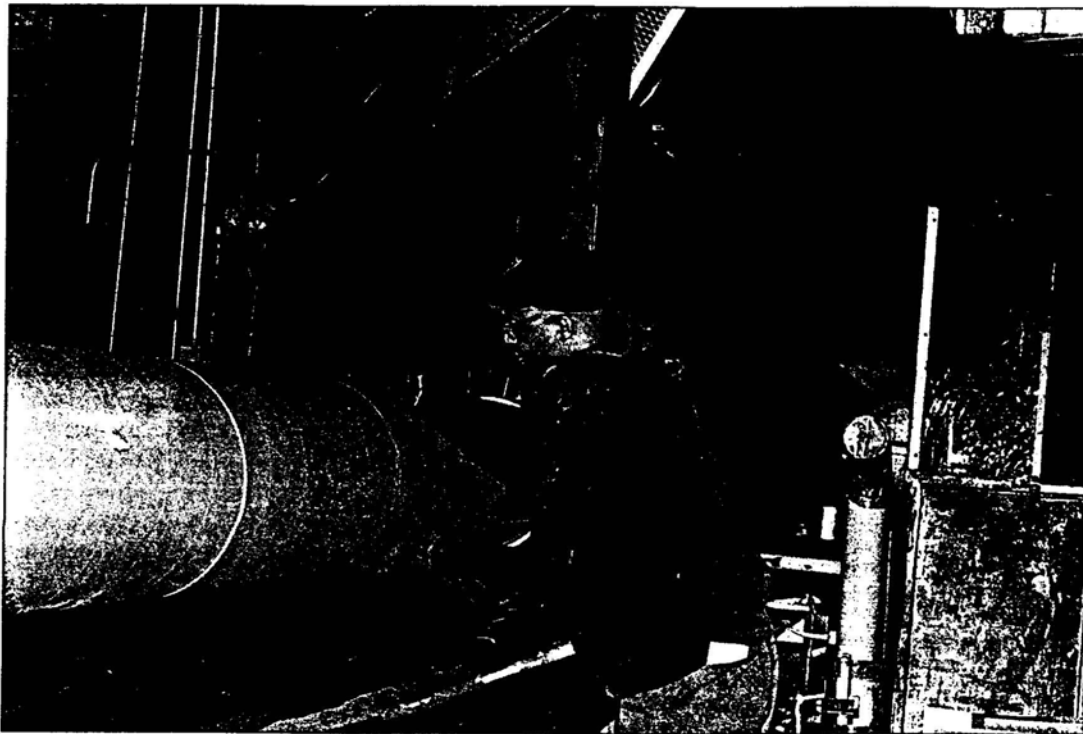
Labor law in the United States deems health and safety a

"mandatory subject of bargaining," meaning that employers cannot refuse to bargain

with unionized workers over health and safety issues and are prohibited from making unilateral changes in health and safety programs and policies without providing the union an opportunity to bargain. Thus, when and if an employer decides to initiate a behavior-based safety program, a safety incentive program or injury discipline policy — even mid-contract — unions can demand to bargain.

To counter management's proposal of a behavioral safety program, unions can propose a comprehensive worksite health and safety program — focusing on identifying and eliminating hazards and utilizing the recognized hierarchy of controls, which supports the elimination of hazards and the use of engineering controls as preferable to lower-level and less effective control measures such as using personal protective equipment. To counter an employer-proposed safety incentive program that offers prizes to workers who do not report injuries, unions can propose that rewards be offered to workers when they identify serious hazards or recommend ways to eliminate them.

All workers covered by the Occupational Safety and Health Act (OSH Act) may have some legal protections from programs that discourage or penalize workers from reporting injuries. Section 11(c) of the OSH Act prohibits discrimination against workers who exercise their health and safety rights under the Act. Since employers are required to record worker injuries on their OSHA 200 logs, workers have rights to report their injuries without fear of discrimination. A safety incentive program that denies prizes to workers who report injuries may violate the anti-discrimination provisions of the OSH Act. Likewise, policies that place workers reporting injuries on a disciplinary track or require drug tests also discriminate against workers for exercising their right to report injuries.



Handling a paper roll.

Additionally, many state workers' compensation law prohibit programs and policies that punish workers when they exercise their right to file workers' compensation claims. Those safety incentive and injury discipline programs that punish workers when they file a workers' compensation claim may be illegal under specific state laws.

#### OSHA AND NIOSH COMPLICITY

U.S. federal worker health and safety agencies are doing little to curb the proliferation of behavior-based safety, safety incentive and injury discipline programs, and in some cases are supporting them.

OSHA attempted in 1998 to get companies in its Voluntary Protection Program (VPP) — a Reagan era program that rewards employers with good safety records by exempting them from unannounced programmed OSHA inspections — to stop using safety incentive programs that offer

prizes to workers when they don't report injuries. A majority of VPP companies have implemented these types of safety incentive programs, which critics believe calls into question what their "exemplary safety" and low injury statistics actually mean.

OSHA's "Draft Policy on Employee Incentive Programs at Voluntary Protection Program sites" barred the use of safety incentive prize programs in VPP companies.

The VPP Participants Association (VPPPA), a non-profit organization comprised of VPP firms, greeted the draft policy with harsh criticism. In an August 1998 letter to OSHA chief Charles Jeffress, Lee Anne Elliott, executive director of VPPPA, accused OSHA of "unfairly target[ing] the nation's safety worksites," applying the policy "prematurely and incorrectly" and presuming "that a VPP facility's incentive program results in underreporting." In response to VPPPA's outcry, OSHA withdrew the draft incentive program policy in September 1998.

Later that year, OSHA released the results of a literature review it had conducted on safety incentive games. The report, released in November 1998, concluded that safety incentive programs that "focus on reduction in the number of injuries and illnesses do not improve safety practices," and that "incentive programs relying on material rewards have little or no lasting effect on safe work practices." No empirical research exists to verify claims that safety incentive games improve safety, the OSHA report found. Further, the report noted the concerns that programs "providing rewards for fewer injuries chills employee reporting of injuries rather than improving workplace safety and reduces the reliability of the data on injury logs." With this report completed, OSHA could have pursued its original course of action, banning safety incentive games in its VPP sites. It did not.

Meanwhile, behavior-based safety consultants are seeking to align with VPP companies. In recent years, several national conferences, some sponsored by behavioral safety consultants and some by the VPPPA, have offered workshops with titles such as "Alignment of the VPP and Behavioral Safety."

*Continued on page 17*

Continued from page 14

Every year, the VPPPA holds a conference for all VPP companies, and invites companies and organizations to help sponsor the conference and exhibit their wares at a "safety exhibition." The number of behavior-based safety consultants and companies filling these roles has steadily increased over the last few years. Workers in one facility were told by VPPPA members that they would be required to implement a behavior-based safety program if their plant was to become part of VPP.

Behavior-based safety consultants have also managed to win some backing from the National Institute of Occupational Safety and Health (NIOSH). NIOSH has awarded research grants, studying the impacts of behavior-based safety, to the very consultants who market and sell behavior-based safety programs.

NIOSH has awarded at least two grants to behavioral safety consultant E. Scott Geller. Prior to being awarded NIOSH funds, Geller conducted research in the mid-1980s in which he reviewed the effects of 28 programs used by nine different companies to get their employees to use seat belts. The results of his research: programs that rewarded people for wearing their seat belts with cash or prizes were the least effective as compared with those that offered no reward, both in the short term and the long haul. "The greater impact of the no-reward perspective," Geller and his colleagues concluded, was "not predicted and [is] inconsistent with basic reinforcement theory."

But two years later, as Alfie Kohn reported in his book, *Punished by Rewards*, Geller declared in another journal that "incentive strategies have been particularly promising as a method of increasing safety belt use," and then cited the very research that documented the opposite.

But this did not discredit Geller in NIOSH's eyes. NIOSH issued him a two-year grant in the 1990s to study the critical success factors for behavior-based safety. Geller's research involved placing a questionnaire about behavior-based safety in a safety and health "trade magazine" to collect company health and safety official's experiences and opinions regarding behavioral safety.

Geller is a repeat presenter at NIOSH conferences — regardless of the stated focus of the conference. Last year, NIOSH and the American Psychological Association held a conference on "Work, Stress and Health." There appeared E. Scott Geller — or at least graduate students working for him. They presented a session on how to increase employees' ear-plug-wearing behavior, proper lifting technique behavior ... and seat-belt-wearing behavior, using behavior modification approaches.

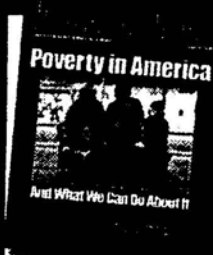
Asked if they had sent industrial hygienists and engineers into the plant to establish if all practicable engineering controls had been installed first before embarking on the project to push ear plugs, the graduate students were unable to answer. OSHA's Hearing Conservation Standard requires employers to engineer out noise and to instruct employees to use ear plugs only when this is not feasible.

#### THE HAZARD OF BEHAVIORAL SAFETY

The graduate students' inability to respond was not surprising: The blame-the-worker approach of behavior-based safety programs is incompatible with, and designed to represent an alternative to, efforts — including those mandated by law — to identify and eliminate or reduce the hazards responsible for the epidemic of worker injuries, illness and death. In a time of major work restructuring and speed up, critics say the focus on individuals at the expense of work environments makes behavior-based safety programs themselves a work hazard that must be eliminated. ■

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THAN IT IS TODAY.**


—NOAM CHOMSKY



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# It's the hazards, stupid

There's a lot of dangerous crap at work. You breathe it, you lift it, you touch it, you despair of it. Now, thanks to the Health and Safety Executive, you may have to swallow a lot more BS too. HSE is dusting off the discredited science of "behavioural safety" so however many hazards you face at work, when things go wrong you can safely assume "it's all your fault." Hazards editor Rory O'Neill reports.

In late June 2002, HSE published a report "that aims to promote more widespread application of behavioural safety principles to improve health and safety."

HSE's Dr Norman Byrom said: "There is potential to extend behavioural safety principles... more widely to encourage and promote behaviours that support the health and safety management system as well as the development of a positive health and safety culture."

So, what's wrong with that? The programmes reward workers when reported accidents fall. You can play safety bingo; sounds fun. There's prizes, maybe a car or a holiday. And those dangerous workers out there get their comeuppance.

The problem comes when you see what really happens. You might find reporting an

accident means your entire shift loses its bonus, so an accident magically disappears. You might find having an accident gets you fired. You will find there's only one winner, and it isn't you.

UK workers in the coal and steel trades have already seen BS schemes introduced with a detrimental effect on accident rates (*Hazards* 64). The schemes are being pushed in transport, communication and other sectors.

And behavioural safety targets workers' behaviour, when the overwhelming majority of health and safety problems at work – read your own reports, HSE – are caused by management corner-cutting, ignorance and a disregard for workers' health and safety.

In the US and Canada, major union organisations have warned against "blame the worker" BS systems.

UFCW, one the USA's largest unions, says: "By shifting the focus away from workplace hazards, such programmes leave significant safety and health problems unaddressed. UFCW members, stewards and representatives have worked hard to establish strong safety and health initiatives in all of our industries. Behaviour based safety programmes weaken these hard-won protections and discourage members from taking a more active role in the union."

Nancy Lessin has advised North American unions to avoid behavioural safety

initiatives. The health and safety coordinator for the union federation Massachusetts AFL-CIO says: "Focusing on worker behaviour as opposed to hazardous conditions as the cause of workplace injuries and illnesses leads to approaches where workers are blamed for 'bad' or 'unsafe' behaviours such as not wearing safety glasses or not following procedures. What gets missed by focusing on worker behaviour, what never gets asked, is 'why?'" (see right).

She adds: "Employers also like behaviour-based approaches because management is taken off the hook for fixing hazards.

"Gone are demands for engineering control, toxic use reduction, and ergonomic job design, as attention shifts to workers wearing personal protective equipment and using proper body position. Gone is any focus on how work is organised or

being restructured – issues like adequate staffing levels, limits on extended work hours, humane work load and work pace are not even considered."

In fact, BS schemes can increase the dangers of work. "These programmes and policies have a chilling effect on workers' reporting of symptoms, injuries and illnesses," says a policy resolution from AFL-CIO,



## Unsafe and unsound

Instead of having a focus on identifying hazards and eliminating or reducing them, the emphasis of a behavioural safety programme is on getting workers to work around hazards that shouldn't be there in the first place.

Workers are supposed to duck, dodge, lift safely, wear personal protective equipment... When a worker is injured, it is his or her fault for not working carefully enough. Discipline can become management's preferred response to worker injury.

Even in cases where a behavioural safety programme is implemented with assurances that there will be no discipline, workers can face inquisitions when they report injuries to determine what "unsafe behaviours" they were engaging in.

Workers avoid these inquisitions by ceasing to report accidents and injuries. When injuries aren't reported, hazards don't get identified or corrected. Nancy Lessin



the USTUC. It adds this "can leave workers' health and safety problems untreated and underlying hazards uncorrected."

Just as worrying, the use of these schemes may undermine the well-documented "union safety effect," where union organisation delivers dramatic reductions in workplace accident rates (*Hazards* 78). AFL-CIO notes "these programmes frequently are implemented unilaterally by employers, pitting worker against worker and undermining union efforts to address hazardous workplace conditions through concerted action."

Nancy Lessin says unions have to be alert to dangers, and should have a ready response.

"To counter management's proposal of a behavioural safety programme, unions can propose a comprehensive worksite health and safety programme – focusing on identifying and eliminating hazards and utilising the recognised hierarchy of controls, which supports the elimination of hazards and the use of engineering controls as preferable to lower-level and less effective control measures such as using personal protective equipment.

"To counter an employer-proposed safety incentive programme that offers prizes to workers who do not report injuries, unions can propose that rewards be offered to

workers when they identify serious hazards or recommend ways to eliminate them."

Leo Gerard, international president of the North American steelworkers' union USWA, gives this advice: "Management's blame the worker programmes are as dangerous to our members as any other challenge that we face today. The USWA must oppose these programmes with all our energy. Instead we must work just as hard to implement comprehensive health and safety programmes that find and eliminate unsafe workplace conditions that cause injuries and illness to our members."

That's no BS. It's good advice to unions in every industry, everywhere.

**NO BULL:** A USWA behavioural safety campaign said "No BS: Eliminate hazards – don't blame workers." The union says a behavioural safety model goes: Identification>Evaluation>Duck! [www.uswa.org/services/blameworker.htm](http://www.uswa.org/services/blameworker.htm)

**Information**

Nancy Lessin has prepared a *What's wrong with behavioural safety programmes?* briefing for *Hazards* readers. It is available, along with other union-friendly resources, on the *Hazards* Unions and behavioural safety webpages at: [www.hazards.org/bs](http://www.hazards.org/bs)

*Strategies to promote safe behaviour as part of a health and safety management system*, CRR430/2002 ISBN 0 7176 2352 1 price £15; also free in pdf format on the HSE research webpages. See page 30 for order details.

**Carrots and sticks**

Closely related to a behavioural safety approach are safety incentive programmes and injury discipline policies.

Safety incentive programmes offer prizes when no injuries are reported. Injury discipline policies deliver discipline or other punitive action such as drug testing when workers report injuries.

An injury discipline programme popular in the US is the "Accident Repeaters Programme," which identifies workers who have had a certain number of injuries – usually one or two in a 12 or 24 month period – and puts them in a programme where they get: Counselling if they report another injury; a written warning for their next injury; suspension for the next injury; and fired for a reported injury after that.

Another injury discipline programme popular in the US assigns a points system to injuries reported and/or compensation claims filed. An injury requiring only medical care and no days away from work is assigned one point; a lost-time accident is worth five points. When a worker reaches 30 points, he or she is fired. Nancy Lessin

**Why, why, why, why, why?**

Nancy Lessin is the top US expert on union responses to behavioural safety. She has this advice for union reps.

Health and safety approaches that focus on workers' behaviour condemn workers as the problem. Unions see workers as the solution.

There is no one better to identify the hazards on a job, or come up with ideas to eliminate or reduce those hazards, than the worker doing that job. If a job is being done "unsafely," a good rule of thumb is to "ask 'why?' five times."

For example:

**Andrea got something in her eye at work. But why? Because she wasn't wearing her safety glasses.**

**But why?**

**Because they were all scratched up and she couldn't see out of them.**

**But why?**

**Because her employer bought the really cheap glasses that get scratched all the time.**

**But why?**

**Because her employer wanted to save money.**

**But why?**

**Because profits are more important to her employer than worker safety and health.**

Asking "why" questions allows an inquiry to get to root causes – the source of the problem that will need to change in order to bring about a safer workplace.

Unions can then strategise about what it would take to get an employer to purchase adequate personal protective equipment, or use engineering controls to eliminate the need for workers to wear personal protective equipment, or in some other way make the workplace safer.

An approach that blames workers for their "bad behaviour" thwarts real prevention efforts. It's management behaviour that is putting workers' health and lives at risk, and management behaviour that must change in order to achieve safe and healthy workplaces.



**United Steelworkers  
Health, Safety & Environment Department**

**Safety Incentive and Injury Discipline Policies:  
The Bad, The Even Worse and the Downright Ugly**

**Safety Incentive Programs**

- *In a Washington state workplace, workers were offered three tokens worth \$1.00 each for every month they went without reporting carpal tunnel syndrome, heat stress or any other work-related injury or illness. More tokens were offered quarterly if the entire workforce did not report an injury or illness.*
- *A Midwestern industrial firm invited all workers who did not report a job injury or illness for the year to an annual banquet. There, the name of a banquet attendee was pulled out of a hat; that person left with a check for \$10,000.*
- *At a Northeastern construction site, monies are made available on a monthly basis to contractors who have low injury rates; that money is then divided among the contractor's workers who did not report injuries.*

These types of “safety incentive” programs have been around for a long time; today they are an increasingly popular part of employers’ so-called safety efforts. They are as damaging now as they were when they first began appearing decades ago.

The theory that supposedly underlies these programs is that workers’ unsafe behaviors are to blame for workplace injuries and illnesses. Under this theory, providing prizes and rewards will encourage workers to behave safely on the job and therefore not get injured. Absent in this “blame the worker” theory is the role that hazardous workplace *conditions* play in job-related injury, illness and death.

It is in employers’ interests to hold to such worker-blaming theories and provide rewards to workers when they do not report injuries. Here is what employers get from this deal:

- The fewer injuries and illnesses that workers report, the lower the number of “OSHA recordables” that must be entered on a company’s OSHA 300 log of worksite injuries and illnesses. The lower the injury rate on a firm’s log, the lower the chance that an employer will be targeted by OSHA for an inspection.
- When workers don’t report injuries and illnesses as work-related, they also may not file a workers’ compensation claim and/or may be denied a future claim for that injury. This in turn can reduce an employer’s workers compensation premiums and payments.

## **Harming Workers and Jeopardizing Worksite Safety**

While employers save money and can escape OSHA scrutiny, workers and workplaces suffer from the presence of these “safety incentive” programs:

- When workers are discouraged from reporting work-related injuries and illnesses, they may not receive early diagnosis and treatment of their ailments, as well as the compensation they deserve.
- When job injuries and illnesses are not reported, the hazards on the worksite that caused them are not identified and targeted for elimination or correction. Hazards in today’s workplaces that cause or contribute to job injury, illness and death include toxic chemicals; unguarded machines; understaffing; improperly designed tools, equipment and workstations; fatigue from long work hours; heavy work loads; rapid pace of work; production pressures and a myriad of other safety, chemical, biological, physical and work organization factors. Hazards that are not eliminated or reduced will go on to hurt or maim additional workers.

## **What Does OSHA Think of These Programs?**

An OSHA study that included a “literature review” of safety incentive programs concluded that there is no basis for employer claims that programs that provide prizes to workers who don’t report injuries actually make workplaces safer. The OSHA study also commented on the “chilling effect” that these programs have on worker reports of job injuries and illnesses.

OSHA has also cited and fined a company under the OSHA recordkeeping standard for having a safety incentive program that discouraged workers from reporting injuries and illnesses.

## **Injury Discipline Policies**

- *In a manufacturing plant in Oklahoma where there was an epidemic of back and repetitive strain injuries, all workers who reported an injury received a letter from the company stating, “It is your responsibility to perform your job in a safe manner to ensure that you are not a safety hazard to yourself and others. To remain in the employment of \_\_\_\_\_ your safety performance must become satisfactory to management. If you are involved in another unsafe act while at work, management will investigate the incident as well as your safety performance and will determine the status of your employment, which may include discipline up to and including discharge.”*
- *Following an Ohio company’s receiving a \$290,000 OSHA fine for lack of fall protection, electrical hazards and repeat lock-out/tag-out violations, a number of*

*employer policies were instituted that threatened workers with discipline and drug testing if they reported any work-related injuries or illnesses.*

Even more sinister is the other side of the “safety incentive” coin: employer policies that threaten and deliver discipline to workers who report job injuries and illnesses.

The same flawed theory underlies these policies: that it is workers’ unsafe acts rather than hazardous workplace conditions that cause job injuries and illnesses. Injury discipline policies literally add insult to injury. Rather than identifying root causes of occupational injuries and illnesses and addressing safety, chemical, biological, physical and work organization hazards, workers are blamed and punished for reporting their injuries.

Programs like these can be extremely effective in ending the reporting -- not the experience -- of work-related injuries and illnesses. The safety of workers and workplaces then suffer the same consequences as those mentioned earlier in the section on safety incentive programs.

### **Safety Incentive Programs and Injury Discipline Policies Are Worksite Hazards That Should Be Eliminated**

Safety incentive programs that in whole or in part provide prizes or cash to workers if they do not report a work-related injury or illness, and deny such rewards to workers who do report; and injury discipline policies that threaten and deliver discipline to workers who report their injuries and illnesses, are, in and of themselves, worksite safety and health hazards that deserve to be eliminated.

### **AFL-CIO Resolution – Opposes Reward and Discipline Programs for Job Injury and Illness**

At its October, 1999 convention, the national AFL-CIO passed a resolution entitled “Safe Jobs in a Changing World” that states in part:

“At the same time work restructuring and changes in employment are raising serious safety and health concerns, many employers are moving to shift responsibility for job injuries to workers by focusing on worker behavior instead of hazardous conditions.

“Across industries, a variety of programs are being implemented that provide incentives and awards to workers who do not report injuries, establish elaborate procedures for observing and documenting workers’ behavior and “unsafe acts” while ignoring employer mismanagement and the root causes of injuries, institute policies to discipline and fire workers who are injured, and/or impose drug testing for every worker who reports a job injury regardless of the cause.

“These programs and policies have a chilling effect on workers’ reporting of symptoms, injuries and illnesses, which can leave workers’ health and safety problems untreated and underlying hazards uncorrected. Moreover, these programs frequently are implemented unilaterally by employers, pitting worker against worker and undermining union efforts to address hazardous workplace conditions through concerted action.

“The AFL-CIO opposes employer programs and policies that shift responsibility for worker safety by focusing on worker behavior instead of workplace hazards and employer mismanagement and that create disincentives to reporting injuries or hazards. We believe such practices undermine worker protection and are illegal and discriminatory under the Occupational Safety and Health Act. We will seek explicit regulations and enforcement policies that prohibit such practices.”

The United Steelworkers and other unions also have policy statements and resolutions opposing these harmful policies and practices.

### **What Should Be Done, and Who Should Do It?**

Employers, unions, COSH groups, occupational health and safety professionals and OSHA all have roles to play in the effort to combat these hazardous safety incentive and injury discipline programs and policies.

- Employers should cease and desist from implementing these harmful programs and policies.
- Unions, COSH groups and occupational safety and health allies should develop materials, training and education about the hazards associated with safety incentive and injury discipline programs and policies.

In cases where employers persist in their attempts to implement or continue these programs:

#### **Request to Bargain**

Unions should consider requesting to bargain, and submitting information requests. Under the National Labor Relations Act (and many state’s labor laws) employers are prohibited from making unilateral changes in wages, hours and conditions of work (including health and safety) without notifying the union and providing an opportunity to bargain. Prizes in safety incentive programs may be viewed as “wages,” discipline in “injury discipline programs” is a “condition of work.” See USW’s factsheet “*Bargaining Over Injury Discipline Policies: Submitting Information Requests*” for more specific information about bargaining law (including mid-term bargaining), requesting to bargain over these programs, and the importance of filing information requests. Regarding safety incentive programs: employers’ safety budgets should be devoted to the identification, elimination and control of hazards, and to training on hazard recognition and control. If

employers want to give cash and prizes to workers related to safety, unions could bargain rewards for workers who identify serious health or safety hazards, or make recommendations on specific ways to eliminate or control job-site hazards.

### Use OSHA's Recording Keeping Standard That Prohibits Employer Discrimination Against Workers Who Report Injuries or Illnesses

OSHA's Recordkeeping Standard (29 CFR 1904) has a provision (20 CFR 1904.36) that states,

*"Section 11(c) of the [Occupational Safety and Health] Act prohibits you [the employer] from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records or otherwise exercises any rights afforded by the OSH Act."*

This provision of OSHA's Recordkeeping Rule suggests that safety incentive programs (that deny rewards to workers when they report an injury) and injury discipline policies (that threaten or provide disciplinary action or automatic drug testing when a worker reports an injury) may violate Section 11(c) of the Occupational Safety and Health Act.

Section 11(c) of the OSH Act states:

*11(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.*

### How To File A Complaint With OSHA About Employer Retaliation For Health and Safety Activities

- Complaints about retaliation – including complaints by workers who were denied prizes/rewards or were threatened with or received discipline because they reported an injury -- can be filed with OSHA.
- The 11(c) discrimination complaint can be a brief letter [there is no federal OSHA 11(c) form; states with OSHA State Plans may have specific forms for discrimination complaints] with a statement that includes:
  - who the employer is
  - what OSHA right was exercised (note the worker's report of a symptom, injury or illness and refer to 29 CFR 1904.36 of OSHA's Recordkeeping Rule, concerning workers' rights to report job injuries and illnesses without being discriminated against) that caused the retaliation
  - what specifically the retaliation was

- the date you reported the injury/illness and the date you were discriminated against by not receiving a prize/reward or suffering disciplinary action (this could include having to sit in a “counseling session” on “how to be a safer worker” as the first step on a progressive discipline track)
  - You do not need to send copies of documents or other evidence with your complaint, but do describe any evidence you have (such as the specifics of the safety incentive program or the injury discipline policy in place in your workplace)
- 11(c) complaints must be filed within 30 days of the “adverse action” (not receiving a reward, or receiving disciplinary action).
- Local unions can assist members in writing and filing OSHA 11(c) discrimination complaints. If an employer has or implements a safety incentive program and/or injury discipline policy, unions can consider informing the employer that the union will be assisting members in submitting OSHA 11(c) discrimination complaints for each discriminatory act that occurs as a result of the policy or practice. OSHA has special 11(c) discrimination complaint investigators who investigate these complaints. Call 1-800-321-OSHA if you need to identify the OSHA office closest to you. It is always best to file OSHA complaints by certified mail (return receipt requested), because you will have a record that the complaint was received by OSHA.





## **OSHA’s Recordkeeping Rule (29 CFR 1904) and Safety Incentive and Injury Discipline Policies and Programs**

OSHA’s Recordkeeping Rule (29 CFR 1904) requires many employers to keep records of their employees’ work-related injuries and illnesses and record them on OSHA Form 300 Log of Work-Related Injuries and Illnesses.

### **Section 29 CFR 1904.36 of OSHA’s Recordkeeping Rule states:**

*“Section 11(c) of the [Occupational Safety and Health] Act prohibits you [the employer] from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records or otherwise exercises any rights afforded by the OSH Act.”*

### **How Safety Incentive Programs and Injury Discipline Policies are Impacted by Section 1904.36 of OSHA’s Recordkeeping Rule**

This provision of OSHA’s Recordkeeping Rule suggests that safety incentive programs (that give rewards to workers who do not report injuries – but also *deny* rewards to workers when they report an injury) and injury discipline policies (that threaten or provide disciplinary action or automatic drug testing when a worker reports an injury) may violate Section 11(c) of the Occupational Safety and Health Act.

### **Section 11(c) of the OSH Act states:**

*(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.*

## How To File A Complaint With OSHA About Employer Retaliation For Health and Safety Activities

- Complaints about retaliation – including complaints by workers who were denied prizes/rewards or who were threatened with or received discipline because they reported an injury -- can be filed with OSHA.
- The 11(c) discrimination complaint can be a brief letter [there is no federal OSHA 11(c) form; states with OSHA State Plans may have specific forms for discrimination complaints] with a statement of:
  - who the employer is
  - what OSHA right was exercised (refer to 29 CFR 1904.36 of OSHA’s recordkeeping rule, concerning workers’ rights to report job injuries and illnesses without being discriminated against by losing a prize or receiving discipline) that caused the retaliation
  - what specifically the retaliation was
  - the date you reported the injury/illness and the date you were discriminated against by not receiving a prize/reward or suffering disciplinary action (this could include having to sit in a “counseling session” on “how to be a safer worker” as the first step on a progressive discipline track)
  - You do not need to send copies of documents or other evidence with your complaint, but do describe any evidence you have (such as the specifics of the safety incentive program or the injury discipline policy in place in your workplace)
- 11(c) complaints must be filed within 30 days of the “adverse action” (not receiving a reward, or receiving disciplinary action).
- Local unions can assist members in writing and filing OSHA 11(c) discrimination complaints. If an employer has or implements a safety incentive program and/or injury discipline policy, unions can consider informing the employer that the union will be assisting members in submitting OSHA 11(c) discrimination complaints for each discriminatory act that occurs as a result of the policy or practice. OSHA has special 11(c) discrimination complaint investigators who investigate these complaints. Call 1-800-321-OSHA if you need to identify the OSHA office closest to you. It is always best to file OSHA complaints by certified mail (return receipt requested), because you will have a record that the complaint was received by OSHA.

# Blame Game

## USW Forces Employer to End Injury Discipline Policy



Karen Blood and Michael Piper  
Photo by Scott LaPrade

Over the last six years Mike Piper reported several accidents at the paper mill where he works, but most of them were not serious enough to require first aid.

So Piper, president of Local 880 in West Groton, Mass., was stunned when his employer, specialty paper maker Hollingsworth & Vose, issued warnings to him and 16 other employees that threatened them with termination if they got hurt again.

"It's easier to blame the workers than to try and fix the problems," said Piper, who recalls being cut by a knife, burned on an industrial dryer and shocked by a static electric charge from a fly roll that had a cracked Teflon cover.

Michele Kardon, who works in the beater room where paper making ingredients are mixed, was disciplined after she was hurt stepping in an uncovered hole in the floor. Four other accidents she reported were related to equipment problems.

"It's ridiculous," she said.

Injury discipline policies like those Piper and his co-workers faced are not new, but are increasingly popular among employers who are looking for ways to hold down injury and illness statistics. They are the ugly twin of "safety incentive" programs that offer rewards to workers when they do not report injuries on the job.

### Fear and intimidation

"Employers are using the iron fist," said USW safety and health specialist Steve Sallman. "It's basically fear and intimidation. People fear heavy discipline up to being fired, so people are not reporting injuries or illnesses for fear of disciplinary action. This is creating a false sense that the workplace is now safer ... when that is not the reality."

In Piper's case, the company's action came about a year after the local union suggested a proactive approach to curb rising injury rates: identify and fix hazards before accidents occur.

"The company basically told us to stuff it," Piper said. "And so things began to deteriorate."

With the assistance of Nancy Lessin, a USW health and safety expert based in New England, local members beat back the company's negative approach using federal Occupational Safety and Health Administration (OSHA) standards as tools.

A provision in OSHA's record keeping standard (29 CFR 1904.36) reminds employers that Section 11(c) of the Occupational Safety and Health Act prohibits them from discriminating against workers for exercising their rights.

The same provision also makes clear that reporting a work-related injury or illness is a protected right under OSHA. That means those employers who issue verbal or written warnings, discharge or threaten to discharge workers for reporting work-related injuries or illnesses are in violation of the Act.

### Individual complaints filed

Roughly half of the 17 disciplined workers at Hollingsworth & Vose filed individual complaints with OSHA about the threatened retaliation. After being contacted by OSHA, the company agreed to halt the injury discipline policy and withdrew the warnings.

This tool is available to unions if their employers are covered by OSHA. While the charge can be difficult to prosecute, Lessin said just letting an employer know that the union is assisting its members in filing OSHA 11 (c) cases has deterred employers.

Even though Hollingsworth & Vose backed off the discipline program, the intimidation had an impact, employees said. Many of those who declined to file were apparently worried about retaliation from the company.

Managers "did their job by scaring people," Kardon said. "It's to the point where no one wants to report anything, which is going to make it worse."

"Even when they backed off, they didn't apologize," said Clayton Woodward, a maintenance worker whose list of reported injuries included burning his arm on an unprotected steam pipe and bumping his head on an exposed angle iron. "They still say it's our fault."

Those filing complaints also included

an electrician who slipped and fell in the company parking lot because of snow and ice while answering a middle of the night call to fix a problem.

"They told him he needed to walk more carefully or choose a better parking spot. It was a company lot," Piper said. "We've complained about snow removal for years and years and people are still falling down."

### Not the only company

In all industrial sectors, the relentless drive to increase productivity can create conditions that increase the risk of workplace injury and illnesses.

Workers in general are putting in longer workdays and working understaffed and with heavier work loads as management combines jobs and intensifies work.

Rotating shifts and 12-hour workdays that are sometimes made longer by mandatory overtime are becoming more commonplace. Preventative maintenance is not always timely and is sometimes the exception instead of the rule.

"When employers downsize, when they work understaffed, when they push production, when they have people work extended hours – all of these things contribute to negative health and safety effects," Lessin said. "Injury rates go up."

As injury rates rise, employers have been figuring out how to hide the injuries rather than make the workplace safer for employees.

One of the ways this is done is through injury discipline policies like the one

introduced at Hollingsworth & Vose. There are also safety incentive programs that provide prizes and rewards to workers when they do not report injuries.

Employers benefit when they continue to blame workers for accidents and institute reward programs to persuade workers not to report their injuries. Here's how:

- The fewer injuries and illnesses that workers report, the lower the number of "OSHA recordables" that must be entered on a company's OSHA 300 log of work site injuries and illnesses. The lower the injury rate on a firm's log, the lower the chance that the employer will be targeted by OSHA for an inspection.

- When workers don't report injuries and illnesses as work related, they also may not file workers' compensation claims. This in turn can reduce an employer's workers compensation costs.

### Workers, workplaces suffer

While employers can escape OSHA scrutiny and save money, workers and their workplaces suffer. Here are some of the ways:

- When workers are discouraged from reporting work-related injuries and illnesses, they may not receive early diagnosis and treatment for ailments, as well as the compensation they deserve.

- When job injuries and illnesses are not reported, the work site hazards that caused them are not identified and targeted for elimination or correction. Hazards that are not eliminated or reduced will go on to hurt or maim other workers.

## Protecting Your Rights

In many cases, the grievance procedure is an available avenue to fight injury discipline policies. Members can both file a grievance and pursue a complaint with OSHA.

Unions covered by the National Labor Relations Act (NLRA) or state labor law that tracks the NLRA can also request to bargain over a new or changed injury discipline policy. The NLRA prohibits employers from making unilateral changes in mandatory subjects of bargaining without notifying the union and providing an opportunity to bargain. Health and safety and discipline are both mandatory subjects of bargaining.

Help is available from the USW's Health, Safety and Environment Department at 412-562-2581 or online at [safety@usw.org](mailto:safety@usw.org).

If you go the OSHA route, the 11(c) complaints must be filed within 30 days of the adverse action. Complaints can be made in a brief letter as there is no federal form available.

Local unions can assist members in writing and filing OSHA 11 (c) complaints. The local may consider informing the employer that the union will be assisting members in submitting complaints for each discriminatory act.

Call 1-800-321-OSHA for the closest OSHA office. It is always best to file OSHA complaints by certified mail with return receipt requested. That way you will have a record that the complaint was received.



## **USW Local 105 Forces Company to End ‘Blame-the-Worker’ Safety Incentive Program**

For two years USW Local Union 105 in Bettendorf, Iowa raised concerns with their employer, Alcoa-Davenport Works, about management’s discriminatory safety prize programs that disqualified workers from participating in prize drawings if they had an OSHA-recordable injury or illness (including work-induced hearing loss).

“We tried to convince Alcoa that they could not discriminate against our members for getting hurt on the job or reporting their injuries or illnesses,” said Jeff Hartford, USW Local 105’s Recording Secretary. But Alcoa continued the practice.

“Many employers that we work with have various programs, policies or procedures in place that discourage our members from reporting injuries,” said Jim Frederick, assistant director of the USW Health, Safety and Environment Department. “In this way employers keep their injury rates appearing to be low, hiding true injury and illness experience in a workplace. When injuries aren’t reported, workers may not get the medical care they need, and underlying hazards go unaddressed.”

In June, 2008 Hartford attended a training program at USW District 11’s summer school titled Union Approach to Health and Safety. There Jeff learned that prize programs, such as the one crafted by Alcoa, that discriminate against injured workers are actually illegal – they violate the Occupational Safety and Health Act.

OSHA’s Recordkeeping Standard has a section (29 CFR 1904.36) that reminds employers that it is an OSHA violation to discriminate against workers for exercising their rights under the OSH Act, and that reporting an injury is the right of every worker under the Act.

Upon returning from District 11’s summer school, Hartford used union rights under the National Labor Relations Act to request information from Alcoa about their prize program, including the list of injured workers whose names had been removed from drawings. In July, USW Local Union 105 contacted Iowa OSHA with their concerns about the program and evidence that Alcoa had discriminated against members for suffering and reporting work-related injuries and illnesses.

On July 31<sup>st</sup>, Iowa OSHA sent Alcoa management in Bettendorf, Iowa a letter stating,

“...[No] person shall discharge or in any manner discriminate against an employee for exercising their rights under or related to the [Occupational Safety and Health] Act. ...One of these rights is related to reporting injuries and illnesses. ...Employees who have had injuries/illnesses occurring in the work environment can not be retaliated against. If their names are being removed [from a safety prize drawing] they are being discriminated against. This type of action has a dampening affect on all employees and suggests that they are not to report

injuries/illnesses which also leads to not reporting possible unsafe conditions that need to be looked at.”

Alcoa in Bettendorf, Iowa responded to the Iowa OSHA letter, stating that they now have no plans to continue this program.

“USW locals across the country are confronted with management’s “blame-the-worker” safety programs that deny rewards or threaten discipline for workers who report injuries,” said Nancy Lessin from the United Steelworkers’ Tony Mazzocchi Center, who was an instructor in the class Jeff Hartford took at the District 11 summer school. “Kudos to USW 105 – they have joined a growing list of USW Local Unions who are challenging these illegal and discriminatory employer practices –and winning!”

“We encourage all local unions to attend district education schools and participate in courses such as the Union Approach to Health and Safety course,” said Emil Ramirez, USW District 11 Assistant to the Director. “The information and tools relayed to our members are vital in their efforts to provide safe workplaces for our members and build strong local unions.”

“It’s a small victory we had over Alcoa,” commented Jeff Hartford, “but the importance is the fact that, without labor schools and furthering our members’ education, it would not have been possible. I hope this information helps other union members and leaders, and helps other local unions take on these illegal employer policies and programs that discourage our members from reporting workplace injuries.”

July 31, 2008

Ron Snider  
ALCOA, Labor Relations Dept.  
4879 State Street  
PO Box 3567  
Bettendorf, Iowa 52808

Dear Mr. Snider,

The Iowa Division of Labor enforces the Iowa Occupational Safety and Health Act. Within this Act is Chapter 9, Discrimination Against Employees. Iowa Code section 88.9(3) provides, in general, that no person shall discharge or in any manner discriminate against any employee for exercising their rights under or related to the Act.

One of these rights is related to reporting injuries or illnesses, workers' compensation claims, etc. It has been brought to our attention that a yearly drawing is done for employees maintaining a safe work environment and reducing injuries and illnesses. The USW L#105 recently discovered a number of employee names have been taken out of the drawing each year if they had any type of injury. Even though we like to see companies rewarding employees for a successful year, we cannot condone discrimination.

This comes under discrimination of the IOSH Act. Employees who have had injuries/illnesses occurring in the work environment cannot be retaliated against. If their names are being removed, and that appears to be the case, they are being discriminated against. This type of action has a dampening affect on all employees and suggests they are not to report injuries/illnesses which also leads to not reporting possible unsafe conditions that need to be looked at. This creates not only a problem of discrimination but a medical problem that even the most minor injury without proper attention could become a serious condition later and possible discipline for that employee for not having reported the injury at the time it happened, hence the dampening effect.

The Iowa Occupational Safety & Health Act does not approve of this action against employees.



Ron Snider  
July 31, 2008  
Page -2-

Unfortunately, it would be impossible to correct this unfair act for the past years. Therefore, IOSH would like your assurance that in the future this retaliation of removing names from the drawing will cease. With ALCOA's assurance, in writing, we will close the file as being settled and no further action will be taken at this time.

If you have any questions concerning this matter, please feel free to contact Leah Schade, Discrimination Investigator.

Sincerely,

Mary L. Bryant  
IOSH Administrator

Copy to:  
CF#08024  
J. Hartford, USW #105





**HIDDEN TRAGEDY:  
Underreporting of Workplace Injuries and  
Illnesses**

**A MAJORITY STAFF REPORT BY  
THE COMMITTEE ON EDUCATION AND LABOR  
U.S. HOUSE OF REPRESENTATIVES**

**THE HONORABLE GEORGE MILLER  
CHAIRMAN**

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**June 2008**

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## Executive Summary

The Occupational Safety and Health Act of 1970 requires the Department of Labor to collect and compile accurate statistics on the extent of occupational injuries, illnesses and fatalities in the United States. Employers are also required to keep accurate records of workplace injuries, illnesses and deaths. Top officials at the Department of Labor (DOL) and Occupational Safety and Health Administration (OSHA) often cite declining injury, illness and fatality numbers to demonstrate the effectiveness of their programs and to fight off criticism that OSHA has abandoned its original mission of setting and enforcing workplace safety and health standards.

But extensive evidence from academic studies, media reports and worker testimony shows that work-related injuries and illnesses in the United States are chronically and even grossly underreported. As much as 69 percent of injuries and illnesses may never make it into the Survey of Occupational Injuries and Illnesses (SOII), the nation's annual workplace safety and health "report card" generated by the Bureau of Labor Statistics (BLS). If these estimates are accurate, the nation's workers may be suffering three times as many injuries and illnesses as official reports indicate. Despite these reports, OSHA has failed to address the problem, relying on ineffective audits to argue that the numbers are accurate.

Experts have identified many reasons for underreporting. Twenty percent of workers—including public employees and those who are self-employed—are not even counted by BLS. Work-related illnesses are difficult to identify, especially when there are long periods between exposure and illness, or when work-related illnesses are similar to other non-work-related illnesses. In addition, recent changes in OSHA's recordkeeping procedures have affected the accuracy of the count of musculoskeletal disorders (MSDs). Finally, some employers are confused about reporting criteria and OSHA staff is often not well-trained to provide accurate advice.

But a major cause of underreporting, according to experts, is OSHA's reliance on self-reporting by employers. Employers have strong incentives to underreport injuries and illnesses that occur on the job. Businesses with fewer injuries and illnesses are less likely to be inspected by OSHA; they have lower workers' compensation insurance premiums; and they have a better chance of winning government contracts and bonuses. Self-reporting allows employers to use a variety of strategies that result in underreporting of injuries and illnesses:

- Workers report widespread intimidation and harassment when reporting injuries and illnesses. Reports, testimony and news accounts show that many employers have fired or disciplined workers who report injuries and illnesses or complain

about safety hazards. Others have added “demerits” to an employee’s record for reportable injuries or illnesses or for absenteeism that allegedly result from “safety violations.”

A recent *Charlotte Observer* series, “The Cruellest Cuts,” details the experiences of poultry workers who were disciplined, harassed and fired for reporting injuries, like shattered ankles, numb hands from tens of thousands of repetitive motions every day, and serious knife cuts. Many of their injuries often never appeared in the plant’s OSHA injury and illness logs. Steelworkers have described a problem called “bloody pocket syndrome,” where workers hide their injuries until after their shift to avoid being disciplined.

- Employers have been reported to provide inadequate medical treatment and force workers back to work too soon after serious injuries – sometimes right after surgery – so that their injuries will not be properly recorded.
- While they may be well-intentioned, widespread and popular safety incentive programs which provide awards for a period of time without a recordable injury, can have the effect of putting pressure on workers not to report their injuries.

Keeping track of the number of workplace injuries and illnesses that occur every year in the United States is not just an exercise in paperwork. For individual employers and workers, accurate counting of workplace injuries and illnesses is essential to identify and address safety and health hazards and to ensure that workers receive appropriate medical treatment. On a national level, accurate records are important to evaluate the state of worker health and safety in the country so that OSHA can effectively allocate its scarce resources, accurately target its inspections and evaluate the effectiveness of its efforts.

Several studies in the 1980s identified serious problems in the system of recordkeeping for injuries, illnesses and fatalities. As a result of those studies, significant changes were made in the way that fatality data were collected, and other changes were made in employers’ reporting requirements. Twenty years later, as more evidence of underreporting is generated, it is time to take another serious look at the recordkeeping system.

This report reviews the importance of accurate recordkeeping, evidence that injuries and illnesses are significantly underreported, the reasons why injury and illness statistics are underreported, methods that some employers use to discourage reporting, other measures that may be more helpful for OSHA and employers to identify workplace safety problems, and OSHA’s failure to address these problems adequately.

In compiling this report, majority staff has conducted interviews with a large number of employers, employees and labor representatives and has reviewed numerous academic studies, news articles and investigations, employer safety programs, and federal and state reports and investigations.

## Introduction

The Occupational Safety and Health Act of 1970 requires the Department of Labor to collect and compile statistics on the extent of occupational injuries, illnesses and fatalities in the United States. Employers are also required to keep accurate records of workplace injuries, illnesses and deaths. But extensive evidence from academic studies, media reports and worker testimony show that work-related injuries and illnesses in the United States are chronically underreported. A number of reports blame much of this phenomenon on intimidation and harassment of workers in retaliation for reporting injuries.

This report reviews the importance of accurate recordkeeping, evidence that injuries and illnesses are significantly underreported, the reasons why injury and illness statistics are underreported, methods that some employers use to discourage reporting and OSHA's failure to address these problems.

## Why is Accurate Recordkeeping Important?

***The lack of accurate surveillance information leads to the inability to allocate appropriate resources, the inability to initiate and prioritize targeted interventions, and the inability to evaluate the effectiveness of those interventions.***

-- Professor K D Rosenman, Department of Medicine, Michigan State University

For individual employers and workers, accurate counting of injuries, illnesses and other safety and health indicators is essential to identify the root causes of workplace incidents and illnesses, to address unsafe workplace conditions, to ensure that workers get appropriate medical treatment and to establish an effective management safety system.

In addition, accurate recordkeeping is essential on the national policy level to ensure that the goals of the Occupational Safety and Health Act, to ensure safe workplaces, are fulfilled:

- **Targeting of OSHA Inspections:** OSHA relies on accurate injury and illness data to target its inspections at the most dangerous worksites. Inaccurate data mean that OSHA may not be inspecting high hazard facilities.
- **Setting OSHA's priorities:** OSHA needs information on where workers are getting injured, sick and killed, in order to identify high-hazard industries where aggressive enforcement programs may be required, and to determine what new standards are needed and how to target its compliance assistance efforts.

- **Judging the effectiveness of OSHA programs:** An accurate and reliable assessment of the extent of occupational injuries, illnesses and fatalities is essential to enable policy makers to determine whether OSHA's programs are succeeding or failing and where improvements can be made.

Under the Bush Administration, OSHA has been criticized by Congress, the media, labor unions and citizens for failing to fulfill the original mandate of the Occupational Safety and Health Act. Numerous Congressional hearings have been held over the past year to oversee the performance of OSHA and the DOL. At almost every hearing where top OSHA or DOL officials have appeared, their main and often only defense against every issue raised – failure to issue standards, failure to issue promised guidelines, favoring voluntary programs over mandatory standards and enforcement, or failure to enforce ergonomic violations – has been that injuries, illnesses and fatalities have been going down, so the agencies must be doing something right.

**Congresswoman McCarthy.** I am asking, do you feel that you have enough inspectors to do the work that needs to be done around the country?

**Assistant Secretary Foulke.** I would say that we are obviously doing the job we need to be doing, because if you look today, the most recent data that we have, we had the lowest injury, illness and fatality rates ever.

-- Hearing on the Combustible Dust Explosion and Fire Prevention Act of 2008, March 12, 2008

- **Determining the state of workplace safety and health in this country:** There is no doubt that the state of health and safety in this country has improved since OSHA was created. But far too many workers are still killed and injured on the job. According to government statistics, 16 workers are killed in this country every day of the year from falls, trench collapses, getting caught in machinery, electrocutions, explosions, violence, and vehicle crashes.<sup>1</sup> NIOSH estimates that ten times that number die from occupational diseases such as cancer or respiratory diseases<sup>2</sup>. In addition, over 11,000 workers are injured every day – one every seven seconds.<sup>3</sup> Are workplace safety trends still improving? Could we be doing better? What are the research needs? Accurate statistics are necessary to make these determinations.

## Background: The Recordkeeping System

<sup>1</sup> Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, (2006), at [http://www.bls.gov/iif/oshwc/foi/foi\\_revised06.pdf](http://www.bls.gov/iif/oshwc/foi/foi_revised06.pdf)

<sup>2</sup> Kyle Steenland, Carol Burnett, Nina Lalich, et al., *Dying for Work: The Magnitude of US Mortality From Selected Causes of Death Associated With Occupation*, 43 AM. J. OF INDUSTRIAL MED. 461, (2003).

<sup>3</sup> Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses*, at <http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf>

The Occupational Safety and Health (OSH) Act requires employers to keep accurate records of workers' injuries and illnesses, and mandates OSHA to develop regulations "requiring employers to maintain accurate records of...work-related deaths, injuries and illnesses."<sup>4</sup> OSHA establishes definitions and recordkeeping guidelines for employer reporting of injuries, illnesses and fatalities. Employers must only record injuries and illnesses if they involve lost work time, medical treatment other than first aid, restriction of work or motion, loss of consciousness, or transfer to another job. Employers are responsible for keeping a log of injuries and illnesses (OSHA 300 Log). The log must be available to employees and their representatives, and the Annual Summary of the log must be posted in the workplace each year from February 1 to April 30. In addition, the employer must investigate the circumstances of all cases recorded in the log and prepare an incident report outlining the factors that led to the incident.<sup>5</sup>

Under the OSH Act, the Secretary of Labor is charged with the responsibility to "develop and maintain an effective program of collection, compilation an analysis of occupational safety and health statistics," and to compile accurate statistics on work-related injuries and illnesses.<sup>6</sup> This charge has been delegated to BLS.<sup>7</sup>

The BLS selects a representative number of employers to report injury and illness data for use in creating the annual Survey of Occupational Injuries and Illnesses (SOII). The SOII constitutes the nation's official annual workplace injury and illness "report card." But the SOII excludes millions of workers, including self-employed individuals, farms with fewer than 11 employees, employees of federal, state and local government agencies, and private household workers.<sup>8</sup>

After a number of Congressional hearings on underreporting in the 1980s and 1990s, the National Academy of Sciences<sup>9</sup> and the Keystone Institute<sup>10</sup> conducted studies on the effectiveness and accuracy of OSHA recordkeeping. The NAS study found serious and willful underreporting among major corporations and looked at remedies to the problem.

As a result of this work, the method of collecting workplace fatality statistics was changed. Since 1992, workplace fatality statistics have been collected in a different manner than injuries and illnesses. Although employers are required to report all fatalities to OSHA, the BLS also makes independent efforts to establish the number of workers killed on the job each year. This program, called the Census of Fatal Occupational Injuries (CFOI), also uses such sources as death certificates, workers' compensation

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<sup>4</sup> Occupational Safety and Health Act of 1970, 29 U.S.C. § 657.

<sup>5</sup> Occupational Safety and Health Administration, Recording and Reporting Occupational Injuries and Illnesses, 29 C.F.R. § 1904 (1994).

<sup>6</sup> Occupational Safety and Health Act of 1970, 29 U.S.C. § 673.

<sup>7</sup> Occupational Safety and Health Administration, Recording and Reporting Occupational Injuries and Illnesses, 29 C.F.R. § 1904 (2003).

<sup>8</sup> Bureau of Labor Statistics, *Occupational Safety and Health Summary Data* (February 05, 2002), at <http://www.bls.gov/iif/oshsum1.htm>.

<sup>9</sup> NATIONAL ACADEMY OF SCIENCES, COUNTING INJURIES AND ILLNESSES IN THE WORKPLACE: PROPOSAL FOR A BETTER SYSTEM, (Earl S. Pollack & Deborah Gellerman Keimig, eds. 1987).

<sup>10</sup> The Keystone Center, *The Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping, Final Report*, (1989).

records, news accounts, and employer and police reports to Federal and State agencies to verify the accuracy of workplace fatality statistics. Consequently, CFOI is considered to be more accurate and reliable than SOII. Prior to the launch of CFOI in 1992, workplace fatality estimates made by various organizations varied greatly from 3,000 to 11,000 deaths nationally per year.<sup>11</sup>

Also as a result of these studies, OSHA developed the Site Specific Targeting program (SST) in the mid 1990s, designed to target inspections at the most dangerous workplaces. In order to do this, OSHA developed the OSHA Data Initiative (ODI), which enables the agency to annually collect injury and illness information directly from employers in 80,000 larger establishments in high hazard industries, excluding the construction and maritime industries (determined by previous reported injury and illness rates.) The companies with the highest rates within those industries are among those selected for targeted inspections.<sup>12</sup>

## **The Status of Recordkeeping: An Academic Research Review**

Numerous studies have found that the Bureau of Labor Statistics Survey of Occupational Illnesses and Injuries (SOII) drastically underestimates the number of workplace injuries and illnesses suffered by American workers each year. Studies also question the extent of the downward trend reported by the SOII.

According to the studies cited below, the BLS annual survey may fail to report nearly 70 percent of lost-work time injuries and illnesses. Although the SOII portrays dramatic decreases in the rate of worker injury and illness throughout the last decade, independent analyses suggest that actual occupational injury and illness rates have remained constant or declined only modestly in recent years.<sup>13-14</sup> In fact, one study demonstrates that changes in OSHA's recordkeeping requirements—rather than a real reduction in workplace injuries and illnesses—have contributed significantly to the decline in injuries and illnesses reported in the SOII.<sup>15</sup>

Simply put, the SOII cannot be trusted as a gauge of the safety of American workplaces. As a result of its reliance on the flawed employer-based system underlying the SOII, OSHA may be failing to inspect dangerous workplaces, leaving many American workers at risk of injury, illness and exploitation.

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<sup>11</sup> Guy Toscano & Janice Windau, *The Changing Character of Fatal Work Injuries*, MONTHLY LABOR REV., October 1, 1994, 17, at <http://www.bls.gov/opub/mlr/1994/10/art2full.pdf>

<sup>12</sup> Occupational Safety and Health Administration, *Site-Specific Targeting 2008 (SST-08)*, CPL-08-03 (CPL 02) (May 19, 2008), at [http://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02\\_08-03.pdf](http://www.osha.gov/OshDoc/Directive_pdf/CPL_02_08-03.pdf).

<sup>13</sup> Lee S. Friedman & Linda Forst, *Occupational Injury Surveillance of Traumatic Injuries in Illinois, Using the Illinois Trauma Registry: 1995-2003*, 49 J. OCCUPATIONAL & ENVTL. MED. 401, (2007).

<sup>14</sup> Lee S. Friedman & Linda Forst, *The Impact of OSHA Recordkeeping Regulation Changes on Occupational Injury and Illness Trends in the US: a Time-series Analysis*, 64 OCCUPATIONAL ENVTL. MED. 454, (2007).

<sup>15</sup> *Id.*



***Estimates of the BLS undercount vary, but it is clear that the SOII misses a significant number of workplace injuries and illnesses.***

- Researchers at Michigan State University found that the SOII missed up to 68 percent of work-related injuries and illnesses occurring annually in Michigan from 1999 to 2001. After comparing BLS statistics to a number of other databases, the researchers found that the OSHA logs captured only around 31 percent of illnesses and 33 percent of injuries reported in other databases.<sup>16</sup>
- Another study that compared the SOII with worker's compensation records in six states estimates that the SOII missed almost 340,000 lost-time injuries in the sampled industries from 1998 to 2002. At most, the BLS survey reported 76 percent of all injuries in the six states in the sampled industries. Many more injuries and illnesses were reported to the state workers' compensation system than to the BLS.<sup>17</sup>
- A study of the Denver International Airport (DIA) construction project provides evidence that the SOII may underestimate injury and illness rates in the construction industry by over 50 percent. The researchers used workers' compensation and payroll data to estimate the total number of lost-work-time injuries during the project. It found that the overall injury rate for the DIA project was more than twice the rate reported by BLS for the construction industry during the project years.<sup>18</sup>
- One study estimates that the SOII misses between 33 and 69 percent of all work-related injuries and illnesses when the excluded categories of workers (e.g. government employees and the self-employed) are included in the count. In developing their estimate, the researchers took into account relative job risks and previous studies' findings regarding injury and illness underreporting in specific job categories.<sup>19</sup>
- Another analysis finds that for 1998, the actual number of workplace injuries and illnesses for private industries currently included in the BLS survey was 40 percent higher than the SOII estimate. If government employees and the self-employed are included, then the occupational injury and illness estimate for 1998 rises to 80 percent higher than the BLS estimate. The researchers used the National Health Interview Survey, conducted by the National Center of Health

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<sup>16</sup> Kenneth D. Rosenman, Alice Kalush, Mary Jo Reilly, et al., *How Much Work-Related Injury and Illness is Missed by the Current System?*, 48 J. OCCUPATIONAL & ENVTL. MED. 357, (2006).

<sup>17</sup> Leslie I. Boden & Al Ozonoff, *Capture-recapture Estimates of Nonfatal Workplace Injuries and Illnesses*, 18 ANNALS OF EPIDEMIOLOGY 261, (2008).

<sup>18</sup> Judith E. Glazner, Joleen Borgerding, Jan. T. Lowery et al., *Construction Industry Rates May Exceed National Estimates: Evidence from the Construction of the Denver International Airport*, 34 AM. J. INDUSTRIAL MED. 105, (1998).

<sup>19</sup> J. Paul Leigh, James P. Marcin, & Ted R. Miller, *An Estimate of the U.S. Government's Undercount of Nonfatal Occupational Injuries*, 46 J. OCCUPATIONAL & ENVTL. MED. 10, (2004).

Statistics, to estimate injury rates and then compared their findings to the BLS estimates.<sup>20</sup>

***The annual downward trend reported in the SOII is also questionable.***

- While BLS figures show a consistent 37.4 percent decline in workplace injuries in Illinois between 1998 and 2003, an analysis employing Illinois Trauma Registry (ITR) data demonstrates a fairly level rate of traumatic workplace injuries in the state over the same period. The researchers argue that since the ITR is based on trauma center records from across the state and does not depend on employer self-reporting, it likely reflects a more accurate picture of the trends in occupational injuries than the SOII.<sup>21</sup>
- A study by NIOSH researchers using data from non-fatal hospital emergency department (ED) admissions finds that “no substantial reduction was observed in the overall number and rate of ED-treated occupational injuries/illnesses during 1996-2004.” This finding stands in contrast to the SOII, which documented a decline in injuries and illnesses for those years.<sup>22</sup>

Not only do the findings of this study bring into question the BLS’s reported decline in injuries and illnesses, but it also brings into question the total number of injuries and illnesses reported by the BLS. First, the authors point out that workers suffering from chronic occupational illnesses rarely go to emergency rooms for treatment (and that these illnesses are difficult to ascribe to previous workplace exposures). Second, previous studies show that emergency room admissions account for only around one-third of all occupational injuries and illnesses<sup>23</sup> implying that the real rate may be closer to 7.5 per 100 workers, rather than the 5.0 reported by BLS.

- According to researchers at University of Illinois at Chicago, 83 percent of the reported decrease in occupational injuries and illnesses in the US from 1992 to 2003 was caused by changes in recordkeeping rules in the 1990’s and early 2000’s, and only 17 percent of the decrease over that time were actually due to a true decrease in injuries and illnesses.<sup>24</sup>

***Ergonomic injuries are significantly underreported.***

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<sup>20</sup> Gordon Smith, Helen Wellman, Gary Sorock, et al., *Injuries at Work in the US Adult Population: Contributions to the Total Injury Burden*, 95 AM. J. PUB. HEALTH 1213, (2005).

<sup>21</sup> Friedman & Forst, *supra* note 13.

<sup>22</sup> S.J. Derk, S.M. Marsh & L.L. Jackson, *Nonfatal Occupational Injuries and Illnesses—United States, 2004*, MORBIDITY & MORTALITY WEEKLY REPORT (April 27, 2007), at <http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5616a3.htm>.

<sup>23</sup> S.J. Derk, S.M. Marsh & L.L. Jackson, *Nonfatal Occupational Injuries and Illnesses Among Workers Treated in Hospital Emergency Departments—United States, 2003*, MORBIDITY & MORTALITY WEEKLY REPORT (April 28, 2006), at <http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5516a2.htm>.

<sup>24</sup> Friedman & Forst, *supra* note 14.

In February 2008, the *Charlotte Observer* published a six-part series called “The Cruellest Cuts: The Human Cost of Bringing Poultry to Your Table.” The *Observer* reported on the unsafe conditions in poultry plants in North and South Carolina, focusing on pressures on workers not to report injuries. According to the report, House of Raeford's 800-worker poultry processing plant in West Columbia, S.C., reported no musculoskeletal disorders over four years, although twelve employees who worked at the plant during that time said they suffered pain brought on by MSDs and two said they had surgery for carpal tunnel at company expense.

Similarly, House of Raeford's Greenville, S.C., plant has boasted of a five-year safety streak with no lost-time accidents. But the *Observer* reported that the plant kept that streak alive by bringing injured employees back to the factory hours after surgery.<sup>25</sup>

According to Tom Armstrong, a University of Michigan professor who has studied the prevalence of MSDs in poultry processing, “it’s highly unlikely a large poultry plant could go consecutive years without a case of carpal tunnel or tendonitis. ‘I’d be skeptical of the record-keeping in a situation like that.’<sup>26</sup>

Other studies have confirmed the *Observer's* conclusions that MSDs are underreported.

- In developing OSHA’s ergonomics standard in 2000, OSHA cited extensive peer-reviewed studies that documented extensive and widespread underreporting on the OSHA Log of occupational injuries and illnesses in general. Based on this evidence as well as evidence and testimony submitted during the hearing and public comment process, OSHA concluded that work-related MSDs such as back injuries, carpal tunnel syndrome, and tendonitis were being substantially underreported on OSHA Logs and that the number of lost-time, work-related MSDs quantified in the Agency’s risk assessment on the basis of the BLS data was understated by at least a factor of two.<sup>27</sup>
- A recent *American Journal of Industrial Medicine* study has confirmed OSHA’s findings that ergonomic injuries are underreported. Using worker’s compensation and physician reporting data from Connecticut, researchers estimate that from 1995 to 2001, the actual number of work-related upper-extremity MSDs in Connecticut was as much as six times higher than reported in the SOII. The researchers also conclude that there is no evidence to support the overall declines in MSDs indicated by the BLS survey.<sup>28</sup>
- A study of hotel workers in Las Vegas showed that more than three-quarters suffered work-related pain which was severe enough for over 80 percent to take

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<sup>25</sup> Kerry Hall, Ames Alexander & Franco Ordonez, *The Cruellest Cuts: The Human Cost of Bringing Poultry to Your Table*, CHARLOTTE OBSERVER, Feb. 10, 2008, at 1A.

<sup>26</sup> *Id.*

<sup>27</sup> OSHA Ergonomics Program; Final Rule, 29 C.F.R. § 1910 (2000, amended June 30, 2003).

<sup>28</sup> Tim Morse, C. Dillon, E. Kenta-Bibi et al., *Trends in Work-related Musculoskeletal Disorder Reports by Year, Type, and Industrial Sector: A Capture-Recapture Analysis*, 48 AM. J. INDUS. MED. 40, (2005).

pain medication and over 60 percent to see a doctor. Yet two thirds of those workers did not report their injuries to their supervisors.<sup>29</sup>

## **Why Are Injuries And Illnesses Underreported?**

There are a number of reasons that injuries and illnesses are underreported to OSHA and the BLS. Many categories of workers are not counted by the BLS. Some workers do not want to get caught up in the slow difficult workers' compensation process. Others are not aware that their injury or illness is work-related or reportable, or do not report because they are afraid of being stigmatized. Some employers find OSHA's recordkeeping criteria confusing. But of far more concern are the incentives that employers have to underreport, and actions that some employers take to intimidate and harass workers who report injuries and illnesses.

***Certain categories of workers, accounting for a significant portion of the workforce, are excluded from the survey.***

Government workers, the self-employed, and farms with fewer than 11 employees are excluded from the SOII, further exacerbating the survey's undercount of occupational injuries and illnesses. These uncounted workers, over whom OSHA has limited jurisdiction, amount to over 20 percent of the total workforce. Government workers alone—including police officers, firefighters and public works employees who often work in high-risk conditions—accounted for over 14 percent of the labor force in 2007.<sup>30</sup>

***Occupational illnesses are particularly difficult to identify as work-related.***

Workers, employers and medical professionals often fail to detect the work-relatedness of occupational diseases such as asthma, heart disease, liver and kidney disorders and MSDs. This problem is particularly difficult with diseases that have long latency periods (the time between exposure and disease). For certain cancers, for example, twenty to thirty years may pass from the time of workplace exposure to the time of diagnosis. In addition, diseases such as asthma that are similar to non-occupational diseases are difficult to connect to workplace exposures.<sup>31</sup> Most physicians receive little training in occupational disease recognition and often fail to connect disease with work.<sup>32-33</sup>

The United States has no comprehensive occupational health data collection system, making it particularly difficult to collect occupational illness statistics. Many states have no mandates requiring health care professionals to report cases of occupational injury or

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<sup>29</sup> Theresa Scherzer, Reiner Rugulies, & Niklas Krause, *Work-related Pain and Injury and Barriers to Workers' Compensation Among Las Vegas Hotel Room Cleaners*, 95 AM. J. PUB. HEALTH 483, (2005).

<sup>30</sup> Bureau of Labor Statistics, *Current Population Survey* (2007), at <ftp://ftp.bls.gov/pub/special.requests/lf/aat12.txt>.

<sup>31</sup> Ruth Ann Romero Jajosky et al., *Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan, and New Jersey, 1993–1995*, MORBIDITY & MORTALITY WEEKLY REP. (June 25, 1999), at <http://www.cdc.gov/MMWR/preview/mmwrhtml/ss4803a1.htm>.

<sup>32</sup> P.J. Landrigan & D.B. Baker, *The Recognition and Control of Occupational Disease*, 266 JAMA 676, (1991).

<sup>33</sup> M.B. Lax, *Occupational disease: Addressing the Problem of Under-Diagnosis*, 6 NEW SOLUTIONS 81, (1996).

illness, and numerous studies have noted inadequate reporting even in those states that have a mandate.<sup>34</sup>

***Immigrants are less likely to report workplace injuries and illnesses.***

- Immigrant workers, among the most vulnerable to employer exploitation, face many barriers in reporting workplace injuries and illnesses and in obtaining appropriate medical care. They often confront language problems and are more likely to work in jobs that do not provide health insurance or paid sick leave. If they are undocumented, they may fear employer retaliation that could result in the loss of their jobs or even deportation.<sup>35-36</sup>
- A study by researchers at the Wake Forest University School of Medicine found that injury and illness rates for Latino poultry workers in six counties in western North Carolina exceeded rates reported by plants to OSHA. The researchers suggested that many factors could contribute to the lack of injury and illness reporting by immigrants, including language barriers, fear of losing a job, incentive programs that reward low rates of absenteeism, and lack of access to health care.<sup>37</sup>
- Researchers at the UCLA Labor Occupational Safety and Health Program surveyed a group of 75 immigrants in the Los Angeles area who worked in low-wage, low skill jobs. They found that only 63 percent of the workers who experienced an injury reported it, and many of the workers knew others who did not report injuries that they suffered.<sup>38</sup>
- Even with unionization, immigrant workers may hesitate to report injuries and illnesses. Seventy-five percent of unionized hotel workers in a 2005 study reported work-related pain, but only 20 percent filed workers' compensation claims. The fear of getting "in trouble" or being fired was among the primary concerns for workers who did not report their injuries.<sup>39</sup>

***Workers are often reluctant to apply for workers' compensation.***

Workers are often discouraged from filing workers' compensation complaints because of the difficulty of the system and because employers sometimes discourage workers from applying for workers' compensation.<sup>40</sup>

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<sup>34</sup> Lenore S. Azaroff, Charles Levenstein & David Wegman, *Occupational Injury and Illness Surveillance: Conceptual Filters Explain Underreporting*, 92 AM. J. PUB. HEALTH 1421, (2002).

<sup>35</sup> Jajosky, *supra* note 31.

<sup>36</sup> Marianne P. Brown, Alejandra Domenzain, & Nelliana Villoria-Siegert, *Voices from the Margins: Immigrant Workers' Perceptions of Health and Safety in the Workplace* (December 2002), at <http://www.iosh.ucla.edu/publications/voicesreport.pdf>.

<sup>37</sup> Sara A. Quandt, Joseph G. Grzywacz, Antonio Marin et al., *Occupational Illnesses and Injuries Among Latino Poultry Workers in Western North Carolina*, 49 AM. J. INDUS. MED. 343, (2006).

<sup>38</sup> Brown, Domenzain, & Villoria-Siegert, *supra* note 36.

<sup>39</sup> Scherzer, Rugulies & Krause, *supra* note 29.

<sup>40</sup> Azaroff, Levenstein, & Wegman, *supra* note 34.

Long waiting periods, insufficient wage replacement and fights over the work-relatedness of occupational illnesses can discourage workers from utilizing the workers' compensation system, particularly if they are covered by health insurance.<sup>41</sup>

The system is particularly difficult for immigrant workers who may not be aware that they are covered by the workers' compensation system. For low income workers, the waiting periods, disputes and low wage replacement can mean unemployment and financial disaster.

### ***The musculoskeletal disorder column has been taken off of the OSHA 300 Log.***

In 2001, OSHA published a change in recordkeeping requirements that would have required employers to check a special box on their injury/illness logs if an injury was an MSD.<sup>42</sup> This information would enable OSHA to better understand the magnitude and distribution of work-related MSDs, and would also provide a useful analytical tool at the establishment level. The Bush administration then delayed the effective date, and eventually repealed the provision altogether.

Although employers are still required to record on the log MSDs that are work-related and result in lost work time, some fear that the elimination of the specific reporting requirement has led to even more severe underreporting of MSDs.<sup>43</sup> This problem is compounded by the fact that employers and physicians may fail to diagnose an MSD as work-related because many work-related musculoskeletal disorders mimic non-occupational disorders.

### ***Some workers and employers do not understand the reporting system.***

Some experts who advise corporations on injury and illness reporting rules note that many employers are confused about reporting criteria and OSHA staff is often not well-trained to provide accurate advice.<sup>44</sup>

In addition, some mental health care workers who are assaulted by patients may not report their injury to workers' compensation or their employer, believing that such

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<sup>41</sup> *Id.*

<sup>42</sup> The former Log (200 Log) included a column devoted to "repeated trauma" cases, which were defined as including noise-induced hearing loss cases as well as cases involving a variety of other conditions, including certain musculoskeletal disorders. Hearing Loss and MSD's were separated into two columns in the original 300 Log.

<sup>43</sup> AFL-CIO, *Comments of the American Federation of Labor and Congress of Industrial Organizations on OSHA'S Proposed Delay of the Effective Date of Employer Injury and Illness Recordkeeping Requirements for Musculoskeletal Disorders and Hearing Loss* (March 20, 2002) (on file with Committee staff); AFSCME, *Comments of the American Federation of State County and Municipal Employees on OSHA'S Proposed Delay of the Effective Dates for Employer Injury and Illness Recordkeeping Requirements Related to Musculoskeletal Disorders and Hearing Loss* (August 30, 2002) (on file with Committee Staff).

<sup>44</sup> Interview by Committee staff with Steve Newell, Senior Consultant, ORC Worldwide (June 13, 2008).

assaults are “part of the job.”<sup>45</sup> According to interviews with committee staff, health care workers in understaffed institutions feel that if they take time off for injuries, their patients will be left without care.<sup>46</sup>

### ***Employers have an incentive to underreport.***

There are many incentives built into the injury and illness reporting system for some employers to underreport injuries and illnesses.

#### **1. Low injury and illness rates decrease the chance of being inspected by OSHA.**

As described above, OSHA’s Site Specific Targeting Program (SST) targets employers with high injury and illness rates for inspection. The system is based on employer self-reporting of injuries and illnesses. The higher an employer’s rate, the more likely the employer is to receive an OSHA inspection. The program therefore provides incentives for some employers to cheat.

In addition, OSHA’s Ergonomic Enforcement Plan, which relies on the lost workday rate reported by employers, also provides employers with an incentive to underreport. If an employer reports a low rate of ergonomic injuries and has an ergonomic program on the books, “OSHA will determine whether to conclude the ergonomics portion of the inspection.”<sup>47</sup>

Duke University researcher Hester Lipscomb, however, points out in a study of African-American women poultry workers, that

Unfortunately, this approach fails workers such as the women in our study who were in industries where under-reporting of injuries has been suggested. Not only was the validity of the data on which injury rates were based questioned; the establishments have an economic incentive to under-report in order to avoid evaluations.<sup>48</sup>

#### **2. Low numbers of injuries and illnesses decrease workers’ compensation expenses.**

Under workers’ compensation programs, employers must often pay the entire cost of treatment, unlike regular health insurance which involves co-pays. In addition, work-related injuries and illnesses can raise employers’ workers’ compensation premiums.

#### **3. Low injury and illness rates can earn businesses bonuses and incentives.**

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<sup>45</sup> L. Erickson & S.A. Williams-Evans, *Attitudes of Emergency Nurses Regarding Patient Assaults*, 26 J. EMERGENCY NURSING 210, (2000).

<sup>46</sup> Phone Interviews by Committee Staff with Worker Representatives, Washington, D.C. (May 2008).

<sup>47</sup> Occupational Safety and Health Administration, *OSHA’s Ergonomic Enforcement Plan*, at [http://www.osha.gov/SLTC/ergonomics/enforcement\\_plan.html](http://www.osha.gov/SLTC/ergonomics/enforcement_plan.html).

<sup>48</sup> H.J. Lipscomb, J.M. Dement, C.A. Epling, M.A. McDonald, and A.L. Schoenfisch, *Are We Failing Vulnerable Workers? The Case of Black Women in Poultry Processing In Rural North Carolina*, 17 NEW SOLUTIONS 1-2 (2007).

States and other public entities sometimes offer bonuses to contractors who can show exemplary safety records upon completion of projects. Contractors with better safety records also have a better chance of winning government contracts.<sup>49</sup>

#### **4. Low injury and illness numbers look good to the public and to customers.**

Companies may boast to their customers, stockholders and the surrounding community about the number of days they have gone without a recordable injury.<sup>50</sup> In addition, high injury and illness numbers make employers ineligible for certain OSHA award programs such as the Voluntary Protection Program.<sup>51</sup>

#### ***Methods used by employers to discourage accurate reporting.***

Evidence compiled from worker interviews, labor union reports, academic studies and media investigations show that employer actions – some intentional and some unintentional – can discourage workers from reporting injuries and illnesses. As described below, these actions include directly intimidating and harassing workers, discouraging workers from receiving appropriate medical attention that might trigger the recording of an injury on the OSHA log and bringing seriously injured workers back to work immediately after surgery to ensure that no lost work-time is recorded that may raise workers compensation rates.

**Direct intimidation of workers:** The direct intimidation of workers to discourage reporting of injuries and illnesses takes many forms, both subtle and overt. Reports, testimony and news accounts show that many employers discourage reporting and retaliate against workers who report injuries and illnesses or complain about safety hazards. Disciplinary actions and intimidation may include job loss, pay cuts, denial of overtime or promotion opportunities, and/or harassment.

Workers in many industries have expressed their fear that reporting an injury or illness could cause them to lose their job. This fear is particularly acute in industries like poultry and meatpacking that rely heavily on immigrant workers, a population particularly vulnerable to employer exploitation.

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<sup>49</sup> Elizabeth Douglass, *Edison Says Safety Data Were Rigged*, L.A. TIMES, October 22, 2004, at A1; Occupational Safety and Health Administration, *State Incentives Promoting Voluntary Compliance* (Aug. 2, 2007), at [http://www.osha.gov/dcsp/osp/oshspa/2002\\_report/state\\_incentives.html](http://www.osha.gov/dcsp/osp/oshspa/2002_report/state_incentives.html).

<sup>50</sup> Los Angeles County Metropolitan Transportation Authority, *Metro Gold Line Eastside Extension is More Than 80 Percent Complete* (May 23, 2008), at [http://www.metro.net/news\\_info/press/Metro\\_087.htm](http://www.metro.net/news_info/press/Metro_087.htm); *North Pole Workshop, North Pole Workshop Boasts Stellar Safety Record; Rest of Area Logs Injuries* (Dec. 25 2007), at <http://www.ohsonline.com/articles/56997>; National Semiconductor Corporation, *National Semiconductor Achieves One Million Hours of Manufacturing with No Lost Time Injuries* (Apr. 29, 2002), at <http://www.national.com/news/item/0.1735.758.00.html>; GlaxoSmithKline, *Corporate Responsibility Report 2005* (Mar. 24, 2006), at [http://www.gsk.com/responsibility/cr\\_report\\_2005/employees/hs-injury-illness-rate.htm](http://www.gsk.com/responsibility/cr_report_2005/employees/hs-injury-illness-rate.htm); Holz Rubber Co., *Holz Rubber Company Achieves No Lost-Time Injuries for One Year* (Nov. 1 2005), at <http://news.thomasnet.com/companystory/474094>.

<sup>51</sup> Occupational Safety and Health Administration, *Recognizing Excellence in Safety and Health Voluntary Protection Programs* (March 15, 2007), at [http://www.osha.gov/dcsp/vpp/vpp\\_kit.html](http://www.osha.gov/dcsp/vpp/vpp_kit.html).



- California state auditors and OSHA investigators identified repeated instances of worker intimidation and harassment intended to discourage occupational injury and illness reporting during the Kiewit-Pacific/FCI Constructors/Manson Construction—A Joint Venture (KFM) San Francisco Bay Bridge reconstruction project.<sup>52</sup>
- In 2008, the *Charlotte Observer's* “The Cruellest Cuts” report documented how the North Carolina poultry industry exploits immigrant workers’ fears of deportation to suppress reporting of painful and debilitating injuries. The newspaper interviewed more than 50 workers no longer employed at the poultry processing firm House of Raeford and ten of those reported that they were fired after reporting injuries.<sup>53</sup>
- At the Smithfield Packing Co. pork slaughterhouse in Tar Heel, North Carolina, workers reported being harassed and even terminated after reporting injuries and describe managers denying that injuries happened at work. In 2002, Melvin Grady tore his Achilles tendon when he slipped on a stairway at the Smithfield plant. According to Grady, Smithfield denied that the claim was work-related and informed Grady that he could not receive workers’ compensation benefits. The company sent him “short-term disability” payments for several weeks after he had surgery on his leg. In December 2002, Smithfield demanded that Grady provide a doctors’ note giving him permission to work without restrictions. When Grady, still recovering from his surgery, could not get the note from his doctor, Smithfield terminated him.<sup>54</sup>

Teresa Nieto stated that after a frozen hog carcass fell onto her back, she received only cursory care from the plant clinic. According to Nieto, upon returning to work, her supervisor and a member of the plant’s security team confronted her, threatening that they would send her to court for “acting up” and that no hog had fallen on her.<sup>55</sup>

- Workers in the steel industry report that they risk their jobs when they report safety hazards or even minor injuries. Steelworkers describe “bloody pocket syndrome” where workers who may have as little as a cut on their hand will hide it, fearing retaliation, and wait until after their shift to go to the hospital.<sup>56</sup>

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<sup>52</sup> California State Auditor, *San Francisco-Oakland Bay Bridge Worker Safety: Better State Oversight Is Needed to Ensure That Injuries Are Reported Properly and That Safety Issues Are Addressed*, Report 2005-119 (February 9, 2006), at [www.bsa.ca.gov](http://www.bsa.ca.gov).

<sup>53</sup> Hall, Alexander & Ordonez, *supra* note 25.

<sup>54</sup> Human Rights Watch, *Blood, Sweat, and Fear: Workers’ Rights in U.S. Meat and Poultry Plants* (January 2005), at <http://www.hrw.org/reports/2005/usa0105/usa0105.pdf>

<sup>55</sup> Research Associates of America, *Packaged with Abuse: Safety and Health Conditions at Smithfield Packing’s Tar Heel Plant 9* (January 2007), at [http://www.smithfieldjustice.com/Documentos/Annual\\_Report/Static%20copy%20of%20Safety%20and%20Health%20Report.pdf](http://www.smithfieldjustice.com/Documentos/Annual_Report/Static%20copy%20of%20Safety%20and%20Health%20Report.pdf)

<sup>56</sup> Will Buss, *Steelworkers Perform Myriad of Tasks Consolidation Forces, Workers To Learn Different Tasks*, *Belleville News-Democrat*, April 4, 2005, at 1B.

- A contractor on the Colorado-to-Ohio Rockies Express natural gas pipeline is facing allegations from former safety inspectors that the company used threats, intimidation and attempted bribery to skirt safety requirements. The inspectors have stated that the company hid worker injuries and, in order to meet ambitious project deadlines, cut corners that endangered worker safety.<sup>57</sup>
- Rose Roddy was told by the Vice President of Human Resources at Peerless-Premier Appliance Co. that she would be deemed “industrially unemployable” by the company if she continued to suffer injuries on the job because she had suffered 14 “injuries” over her 24-year employment with the company – including “exposure to gas fumes” and “carbon monoxide exposure.”<sup>58</sup>
- Buzzi Unicem USA has a policy that describes measures that may be taken against an employee for a “safety rule” violation that results in ““medical treatment” for injuries or illnesses by a licensed physician or other health care giver.”<sup>59</sup> The “program,” involving three steps, places responsibility for accidents or illnesses squarely on the worker’s shoulders. Step three results in the employee’s termination.

**Bringing seriously injured workers right back to work:** To avoid lost work-time which will raise workers’ compensation rates, employers may bring employees who have suffered injuries back to work immediately for “light duty” work – even after major surgery.

- The KFM San Francisco Bay Bridge Project investigation provides an example of this employer tactic. After suffering a major knee injury, Arne Paulson was carried onto tugboats for months by co-workers so that no “lost time” or “restricted work” was recorded.<sup>60</sup>
- During his testimony before the Committee in 2007, Keith Ludlum, an employee at Smithfield Packing’s Tar Heel plant, told the story of a worker who broke his leg on the job. The worker, who required a full leg cast, was informed that he had to return to work the day after the accident or he would lose his job. Since he reported to work the next day, Smithfield avoided reporting a lost work day due to injury on its OSHA log.<sup>61</sup>

**Discouraging appropriate medical attention:** Employers may discourage workers

<sup>57</sup> Tom Beyerlein, *Concerns About Pipeline Were Ignored, Inspectors Say*, Dayton Daily News (May 18, 2008), at <http://www.daytondailynews.com/search/content/oh/story/news/local/2008/05/18/ddn051808pipelineinside.html>.

<sup>58</sup> Letter to Rose Roddy from Phyllis K. Schleicher, Vice President of Human Resources, Peerless-Premier Appliance Co. (January 10, 2003) (on file with committee staff).

<sup>59</sup> Memorandum on Buzzi Unicem USA, Safety and Health Rule Infraction Guidelines (March 31, 2006) (on file with committee staff).

<sup>60</sup> Erik N. Nelson, *Bay Bridge Worker Lost Job Due to Knee Injury*, INSIDE BAY AREA, August 24, 2006.

<sup>61</sup> *Strengthening America’s Middle Class Through the Employee Free Choice Act Hearing Before the House Comm. on Education and Labor, Subcomm. on Health, Employment, Labor, and Pensions*, 110<sup>th</sup> Cong. (2007) (written testimony of Keith Ludlum, employee of Smithfield Packing Co.).

from receiving appropriate medical attention in order to avoid triggering an injury or illness report. Employers often have their own on-site health care staff that is trained in which treatments do and do not constitute first aid because injuries requiring treatment beyond first aid are recordable.<sup>62</sup> Injuries requiring only first aid are not recordable.

Some workers have turned to a company health clinic only to be sent back to the production line with minimal treatment. Others have been discouraged from receiving treatment from anyone but the company doctor. Several case studies provide the stories of workers who were discouraged from receiving appropriate medical attention.

They'd say, "Oh, you're not hurting." They made me feel that I was bothering them to go to the nurse, that I was supposed to take the pain.

— Charlotte Outerbridge, *The Cruellest Cuts: The Human Cost of Bringing Poultry To Your*

- House of Raeford poultry worker Celia Lopez's hands began to hurt so badly that she could barely keep working after lifting and weighing thousands of turkey breasts each day. The first aid attendant and physician's assistant at the plant kept giving her pain relievers but refused to send her to a doctor. Finally, months later she went to a doctor and was diagnosed with carpal tunnel syndrome. The doctor who performed the surgery said that had she come in earlier, before the damage was so severe, she might have avoided surgery.<sup>63</sup>
- After Smurfit-Stone employee Francisco Pulido severed his left pinkie to the first knuckle, he was taken to Pinnacle Urgent Care, where he had to wait for the clinic to open because it was after hours. Pulido was finally treated, but not until he began to go into shock from "extreme pain." Smurfit-Stone then suspended Pulido for 3 days.

CalOSHA later fined the company \$3,700 for failing to properly train its employees. Smurfit Stone and Pinnacle managers are being prosecuted because they "allegedly discouraged employees from reporting on-the-job injuries and filing workers' compensation claims, threatened them with suspensions and terminations for trying to file claims, and engaged in other improper practices in an apparent attempt to reduce the packing company's insurance costs."<sup>64</sup>

Meanwhile, as a current and former manager faced insurance fraud charges, Smurfit-Stone trumpeted its "incredible record of safety achievement" and celebrated its "safest year in company history in 2007."<sup>65</sup>

<sup>62</sup> Azaroff, Levenstein, & Wegman, *supra* note 34.

<sup>63</sup> Ames Alexander, Franco Ordonez & Kerry Hall, *Workers Say They're Denied Proper Medical Care*, CHARLOTTE OBSERVER, Feb. 12, 2008.

<sup>64</sup> Jim Johnson, *New Charges in Salinas Workers' Comp Case*, THE MONTEREY COUNTY HERALD, January 3, 2008.

<sup>65</sup> *Smurfit-Stone Completes Safest Year in Company History*, PRNEWswire, February 5, 2008.

**Discouraging physicians from reporting injuries or diagnosing illnesses:** When workers must receive treatment, employers may “bargain” with or even threaten doctors to prevent the diagnosis of a recordable injury or illness.

- On the KFM San Francisco Bay Bridge project, welder Chris Hallstrom told Cal/OSHA that one of KFM’s safety managers would always accompany him into the exam room when being seen by a doctor for a work-related injury. The safety managers would attempt to “bargain over the wording of the work status report and the job restrictions” to try to avoid the triggering of a report.<sup>66</sup>
- The American College of Occupational and Environmental Medicine, representing 5,000 doctors, recently sent a letter to OSHA stating that doctors are routinely pressured to under-treat and mistreat workplace injuries and illnesses. For example, an employer may pressure doctors to treat a cut with bandages instead of stitches to avoid a triggering a report of an injury. Treatment with stitches is considered “medical attention beyond first aid” and renders the injury reportable, while treatment with bandages is considered “first aid” and not reportable.<sup>67</sup>

**“No fault” absentee policies:** Some companies give employees a fixed number of days off for all purposes, including sick and vacation leave and recuperation from a workplace injury or illness. If workers use up all permissible days, they may be terminated, even if they miss days due to work-related injuries.

Bashas’, which operates a food distribution warehouse that distributes food and merchandise to more than 166 grocery stores throughout Arizona, uses a point system for absences and tardiness. Although time lost due to industrial injury is supposed to be excluded from this point system, injured workers report that they have been assessed points and had their pay cut for going to the doctor or missing time due to work-related injuries.<sup>68</sup>

**Safety incentive programs and games:** Safety incentive programs and games that provide monetary prizes or days off when a work crew succeeds in going “accident free” for a certain time period are marketed as a way to improve worker safety and health by giving workers an incentive to work safely. As described below, however, depending on how an incentive program is structured, reluctance to lose the bonus or peer pressure from other crew members whose prizes are also threatened reduces the *reporting* of injuries and illnesses on the job, rather than reducing the actual number of workplace injuries and illnesses.

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<sup>66</sup> Garrett D. Brown & Jordan Barab, “Cooking the Books”—*Behavior-Based Safety at the San Francisco Bay Bridge*, 17 NEW SOLUTIONS 4 (2007).

<sup>67</sup> Alexander Ames, *Doctors Feel Push to Downplay Injuries*, CHARLOTTE OBSERVER (April 9, 2008), at <http://www.charlotte.com/217/story/587539.html>.

<sup>68</sup> Staff Interviews with former Bashas’ Supermarkets Workers, Washington, D.C. (June 10, 2008).

“The incentive plan works against reporting injuries. Everybody trying to keep their jobs—don’t make waves. When you reported injuries, they treated you as a criminal... KFM created an atmosphere where you didn’t want to report.”

— David Roundtree, a welder on the KFM San Francisco Bay Bridge Project

“Traditional” incentive programs – those that offer prizes if no injuries are reported – have also been criticized by OSHA and other accident analysis experts. A 1998 OSHA study concluded that these programs may have a “chilling effect”<sup>69</sup> on the workplace – creating a hostile working environment. According to Richard Fairfax, director of compliance programs for OSHA, “the fact that some employers use these programs in lieu of formal safety and health programs is of very real concern to us.... There have been cases where injured employees were pressured not only by fellow employees, but by their supervisors, to not report injuries in order to maintain eligibility for safety incentives.”<sup>70</sup>

- Throughout the reconstruction of the eastern span of the San Francisco Bay Bridge in California, Kiewit-Pacific/FCI Constructors/Manson Construction – A Joint Venture (KFM) reported an injury rate 55 to 72 percent below the rates experienced by other major bridge construction projects in the bay. But KFM’s record turned out to be too good to be true. In June 2006, Cal/OSHA issued “Willful” citations against KFM for failing to record at least 13 worker injuries at the bridge, to investigate reported accidents, and to record injuries within the time period required by law.<sup>71</sup>

KFM offered monetary incentives to all employees for meeting quality and completion goals, but only if no Log 300 recordable injuries were reported. The program allowed employees to receive substantial bonuses—upwards of \$1,500 in some cases. The career advancement of managers, foreman, and supervisors was also dependent on achieving a clean safety record. If a single worker reported an injury, the entire crew would lose its bonus.<sup>72</sup>

Pile excavation crew foreman Arne Paulson stated: “It was known by everyone *not* to report any injuries because that would mean no BBQ, no tool prizes, no tool box prizes. Everyone would want to know who ‘lost’ the prizes for the crew, so everyone was terrified to report anything.”<sup>73</sup> Welder Mario Armani said the cash “bonus program keeps guys away from reporting accidents, many injuries

<sup>69</sup> Dennison Associates, *An Analysis of Safety Incentive Programs* (June 1998), (report for the Occupational and Health Administration).

<sup>70</sup> William Atkinson, *Good Safety Incentives Gone Bad*, MC MAGAZINE (Spring 2002), [http://www.precast.org/publications/mc/SafetyArticles/02\\_Spring\\_IncentivesGoneBad.htm](http://www.precast.org/publications/mc/SafetyArticles/02_Spring_IncentivesGoneBad.htm).

<sup>71</sup> Brown & Barab, *supra* note 66, at 312.

<sup>72</sup> *Id.*, at 314.

<sup>73</sup> *Id.*, at 315.

are not reported, many employees would clean out their own eyes [metal shivers from grinding] or have their co-workers do it.”<sup>74</sup>

- In 2004, the discovery of unreported injuries and illnesses at Southern California Edison caused the company to give back \$35 million in taxpayer funded safety incentive funds received from the state of California over the course of 7 years. The company’s own investigation found that their safety incentive program “may have discouraged the reporting of some incidents” and created pressure not to report injuries.<sup>75</sup>
- A 1998 report by Denison Associates, commissioned by OSHA, found that “there is no evidence that safety incentive programs, standing alone, improve safety. To the contrary, some safety incentive programs adversely affect safety.” The study noted that reports of the success of these programs are based on anecdotes and do not distinguish between reported injury reductions that are due to safer working conditions and those attributable to reporting practices.<sup>76</sup>

Not all safety incentive programs are bad. For example, “non-traditional” programs that provide rewards to workers for attending training classes and safety meetings and identifying and reporting unsafe conditions, close calls and minor injuries can promote safety without discouraging reporting of injuries or unsafe conditions. These programs also require trust between managers and workers so that workers do not fear discipline or accusations that they have hurt productivity when problems are reported.<sup>77</sup>

**Manager incentives and bonuses:** General foreman, superintendents, craft superintendents, job superintendents and project managers on the California Bay Bridge project received significant monetary awards and “merit cards” essential for salary increases and individual career advancement. But the awards were dependent on no injuries or illnesses being reported. Foremen, fearful of losing their bonuses, would pressure workers not to report, and workers, afraid of angering their foremen, would comply.<sup>78</sup>

**Drug testing after every accident or injury:** To intimidate workers, employers may require that workers are tested for drugs or alcohol before receiving treatment, irrespective of any potential role of drug intoxication in the incident.

- Smurfit-Stone employee Jesse Vasquez alleges that he was subjected to a drug test at the request of his manager before he could receive treatment for a back injury. His manager is currently facing allegations of workers’ compensation fraud.<sup>79</sup>

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<sup>74</sup> *Id.*, at 315.

<sup>75</sup> Elizabeth Douglass, *Edison Says Safety Data Were Rigged*, L.A. TIMES, October 22, 2004, at A1.

<sup>76</sup> Dennison Associates, *supra* note 69.

<sup>77</sup> James L. Nash, *Rewarding the Safety Process: “Nontraditional” Incentive Programs Can Improve Safety – Without Making OSHA Nervous*, OCCUPATIONAL HAZARDS, Mar. 1, 2000.

<sup>78</sup> Brown & Barab, *supra* note 66, 314.

<sup>79</sup> Johnson, *supra* note 64.

- A study of Las Vegas hotel workers found that 32 percent of workers who reported musculoskeletal injuries said they were forced to take a drug test after reporting their injury to workers' compensation,<sup>80</sup> even though studies show that these injuries are caused by physical workload, the increase in the workload and ergonomic problems – not drugs.<sup>81</sup>

**Contractors and contracting out dangerous work:** When outside contractors injured or killed, their injuries or deaths are not listed on the main employer's OSHA log, nor do they register in the primary employer's industrial classification.

Almost half of the workers on the BP Texas City refinery site were contractors on the day in 2005 when a massive explosion killed 15 workers. All of the workers killed that day were contractors. None of the fatalities or the injured contractors was listed on BP's OSHA 300 Log, nor did they register in the industrial classification for refineries.<sup>82</sup>

The lack of site logs is a major problem impacting the effectiveness of OSHA's SST program in petrochemical, chemical and other industries. The SST targets companies in industry classifications that show high injury and illness numbers for priority inspections. But contractor injuries, illnesses and deaths will show in the industry classification of the contractor, not in the industry classification of the site owner, meaning that where contractors suffer a large number of injuries or fatalities, the industry may seem much safer than it actually is.<sup>83</sup>

The use of outside contractors is growing throughout American industry and has major implications on workplace safety, especially in large complex operations such as the petrochemical and chemical industries. This problem was first noted in the 1991 John Gray Institute report following the catastrophic 1989 explosion at Philips 66 in Pasadena, Texas that killed 23 workers and injured 232 others.<sup>84</sup>

According to the John Gray report, because most facilities did not keep track of the injury and illness records of their contractors, valuable information was unavailable to plant managers "for the purpose of selecting, monitoring and controlling safety outcomes for contract labor." The report noted that the current system does "not provide an accurate reflection of the composition of the experiences of workers in the petrochemical industry." In addition, OSHA did not require the primary employer to keep a site log (an injury and illness log that includes all workers on a site, regardless of employer), making

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<sup>80</sup> Scherzer, Rugulies, & Krause, *supra* note 29.

<sup>81</sup> Niklas Krause, Theresa Scherzer & Reiner Rugulies, *Physical Workload, Work Intensification, and Prevalence of Pain in Low Wage Workers: Results From a Participatory Research Project With Hotel Room Cleaners in Las Vegas*, 48 AM. J. INDUS. MED. 326, (2005).

<sup>82</sup> U.S. Chemical Safety and Hazard Investigation Board, *Investigation Report: Refinery Explosion and Fire*, Report No. 2005-04-I-Tx (March 2007), at [http://www.csb.gov/completed\\_investigations/docs/CSBFinalReportBP.pdf](http://www.csb.gov/completed_investigations/docs/CSBFinalReportBP.pdf).

<sup>83</sup> Lise Olsen, *Murky Stats Mask Plant Deaths*, HOUSTON CHRONICLE (May 16, 2005), <http://www.chron.com/disp/story.mpl/business/3183356.html>

<sup>84</sup> John Calhoun Wells, Thomas A. Kochan & Michal Smith, *Managing Workplace Safety and Health: The Case of Contract Labor in the U.S. Petrochemical Industry* (July 1991) (report for the Occupational Safety and Health Administration).

this information unavailable to OSHA.

Similarly, construction projects also employ a large number of sub-contractors who keep their own separate injury and illness logs, making it difficult for OSHA to determine the safety performance of large sites or of general contractors. Again, no site log is required by OSHA.<sup>85</sup>

In order to address this problem, the 1989 Keystone Report recommended that “a ‘contractor site log’ (i.e., copies of the subcontractor logs) be maintained for major construction sites and major construction rehabilitation activities.”<sup>86</sup> Similarly for the petrochemical industry, the John Gray report recommended that “OSHA require plants to collect and record site specific injuries and illness data for all workers on site.”<sup>87</sup>

OSHA does not require construction contractors to maintain a site log, although OSHA’s Process Safety Management Standard does require employers covered by standard to maintain an internal site log, although these are not collected by OSHA as part of its Specific Targeting program (SST), nor by BLS in compiling the SOII or its census of occupational fatalities.<sup>88</sup>

The problem does not only exist in the petrochemical industry. A 2003 *Omaha World-Herald* report portrays the health and safety risks faced by the workers who perform the highly hazardous job of cleaning meatpacking plants each night. Their injuries escaped the notice of the OSHA targeting program because they worked for a cleaning company contracted by the plant owners. Any recordable injury that they suffered was classified not with meatpacking industry statistics, but rather in an industry category that included the professions of housekeepers and office cleaners – a lower-risk category that was not included in OSHA’s inspection targeting list.<sup>89</sup>

**Misclassification of workers:** When workers are misclassified as “independent contractors” instead of regular employees, the employer can avoid workers’ compensation payments and recording injuries on the OSHA 300 log since self-employed individuals are not covered by these systems. As mentioned above, when employers contract jobs to outside contract employers, injuries among the contract workers do not have to be recorded on the contracting employer’s OSHA log even if they occur at the employer’s site.<sup>90</sup>

According to a 2000 U.S. Department of Labor study, audits of employers in nine states found that between 10 and 30 percent of firms misclassify their employees as

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<sup>85</sup> The Keystone Center, *supra* note 10.

<sup>86</sup> The Keystone Center, *supra* note 10.

<sup>87</sup> John Calhoun Wells, Thomas A. Kochan & Michal Smith, *Managing Workplace Safety and Health: The Case of Contract Labor in the U.S. Petrochemical Industry* (July 1991) (report for the Occupational Safety and Health Administration).

<sup>88</sup> Occupational Safety and Health Administration Process Safety Management Standard, 29 CFR § 1910.119 (1992).

<sup>89</sup> Jeremy Olson, and Steve Jordan, *On the Job of Last Resort: Meat Plant Risks Extend to Nightly Clean-up Work*, *The Omaha World-Herald*, October 12, 2003, at 1A.

<sup>90</sup> Lise Olsen, *supra* note 83



independent contractors.<sup>91</sup> Employers have a strong economic incentive to misclassify employees as independent contractors. In addition to not paying the employer share of Social Security, Medicare, or unemployment taxes, employers also do not have to provide contractors with workers' compensation insurance.<sup>92</sup> As a result, injuries suffered by independent contractors – including those who are misclassified – do not go on the employers' logs and do not increase the workers' compensation premiums or the likelihood that they will be inspected by OSHA.

At a March 2007 hearing before the U.S. House of Representatives Committee on Education and Labor, Subcommittee on Workforce Protections, Cliff A. Horn of the Mason Contractors Association of America and John J. Flynn of the International Union of Bricklayers and Allied Craftworkers testified that employee misclassification is widespread in their industries. Flynn pointed out that when employers neglect their responsibility to pay workers' compensation, then the U.S. health care system often absorbs the cost of their care.<sup>93</sup>

## Underreporting Problems in the Railroad Industry

In 2007, the U.S. House of Representatives Committee on Transportation and Infrastructure conducted an in-depth review of railroad employee injury reporting practices in response to evidence of a long history of underreporting and complaints of harassment of employees who report injuries. Committee staff compiled more than 200 individual cases of alleged management harassment following injury reports.<sup>94</sup>

Some of the techniques used by railroad management include:

- **"Risky" employee assessments:** Employees are placed in disciplinary jeopardy by being assigned points for safety incidents, rule infractions, and injuries regardless of the cause, often before an investigation is done.
- **Targeting employees for increased monitoring and testing:** Injured employees are "targeted" for close supervisor scrutiny, where minor rule infractions result in employee termination following injuries.
- **Supervisors discouraging employees from filing accident reports:** Front-line supervisors often try to subtly prevent employees from filing injury reports and/or lost workday reports in an attempt to understate or minimize on-the-job injury statistics

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<sup>91</sup> Planmatics, Inc., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs* (prepared for U.S. Dep't of Labor) (2000), at <http://wdr.doleta.gov/owsdrr/00-5/00-5.pdf>

<sup>92</sup> Government Accountability Office, *Employer Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, GAO-06-656 (July 2006).

<sup>93</sup> *Providing Fairness to Workers Who Have Been Misclassified as Independent Contractors Hearing Before the House Comm. on Education and Labor, Subcomm. on Workforce Protections*, 110<sup>th</sup> Cong. (2007) (written testimony of Cliff A. Horn of the Mason Contractors Association of America).

<sup>94</sup> *The Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroads Hearing Before the House Comm. on Transportation and Infrastructure*, 110<sup>th</sup> Cong., (2007).

- **Supervisors attempting to influence employee medical care:** Railroad supervisors are often accused of trying to accompany injured employees to their medical appointments to try to influence the type of treatment they receive. In addition, they try to send employees to company physicians instead of allowing them to choose their own treatment providers.
- **Light duty work programs v. injury leave:** Injured employees are required to come to work, often doing nothing but sitting in an empty room and allowing carriers to minimize the required reporting of lost work days.
- **Availability policies:** These policies require employees to work a certain number of days per year. If the employee cannot work the required number of days, he or she is no longer a full-time employee.
- **Supervisor compensation:** Some companies base management compensation upon performance bonuses, which can be based in part upon recordable injury statistics within their supervisory area.

The report concluded:

Today's railroad regulatory environment is more oriented toward assigning blame to a single individual, without a thorough examination of the underlying causes that led that single individual to commit an error. This approach is apparent in both railroad internal investigations of injury accidents, as well as FRA regulatory reports.<sup>95</sup>

## **Behavioral Safety: Bad for Safety, Bad for Recordkeeping Accuracy**

The theoretical underpinning of many safety programs that rely on discipline or rewards is the belief that most workplace accidents are caused by the unsafe behavior of workers. Rewarding good behavior or punishing bad behavior, according to this philosophy, can prevent accidents.

But experts in analyzing accident causation note that, since workers are human and inevitably make errors, the consequence of rewards or punishment is often a failure to report incidents, rather than a reduction of injuries and illnesses. Most have rejected the theory of the “careless worker” and the behaviorist theory for the following reasons:

- In order for an accident to happen, an unsafe condition must be present. These may range from conditions like slippery floors or objects that are too heavy for workers to lift safely, to management system errors such as allowing or encouraging frequent deviation from safe procedures, not providing training to

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<sup>95</sup> *Id.*

workers, ignoring past warnings and close calls and lack of oversight by supervisors or enforcement agencies.

One of those conditions is pressure for more production. Andrew Hopkins, a sociologist and safety analyst, explains:

Production pressures routinely lie behind unsafe actions by workers in this way. Despite all the company rhetoric about putting safety first, the experience of many workers, not all, is that production takes precedence over safety....Such pressures are particularly intense when pay systems are tied to production, so that lost time is lost pay, or where there are quotas, with penalties for not achieving the quota.<sup>96</sup>

Where such conditions exist, punishing the worker will not prevent future accidents. The most effective solution is to identify and address the root cause of the problem, which in this case is too much emphasis on increased production at the expense of safety.

- While there is almost always a human element involved in accidents, most incidents (major and minor) have many complex causes and human error is almost never one of the *root* causes. Worker errors are generally the *consequences* – or last link in a causal chain, not the *causes* themselves.<sup>97-98</sup>

Following the catastrophic 2005 explosion at BP’s Texas City refinery that killed 15 workers, BP immediately fired several workers and managers. The initial results of the BP’s internal investigation blamed the accident on the “surprising and deeply disturbing” actions of these employees.<sup>99</sup> The 2007 Chemical Safety Board investigation report, however, found a multiplicity of causes for the explosion, including cost-cutting at the top of the corporation that affected safety conditions, outdated equipment, malfunctioning valves and indicators, worker fatigue, poor training, locating trailers too close to hazardous areas and ignoring numerous warnings and “near misses.”<sup>100</sup>

Similarly, the commission that was assembled to investigate the 2003 Columbia space shuttle disaster criticized managers’ tendency to blame the actions of individual workers (or even single causes) when investigating accidents:

Many accident investigations do not go far enough. They identify the technical cause of the accident, and then connect it to a variant of “operator error” – the line worker who forgot to insert the bolt, the

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<sup>96</sup> Andrew Hopkins, *What Are We To Make Of Safe Behaviour Programs?*, 44 SAFETY SCIENCE 583, (2006).

<sup>97</sup> *Id.*

<sup>98</sup> *Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-Site Employers Hearing Before the House Comm. On Education and Labor, Subcomm. on Workforce Protections*, 110<sup>th</sup> Cong. (2007) (written testimony of Frank A. White, Senior Vice President, ORC Worldwide).

<sup>99</sup> T.J. Aulds, *BP Blames Employees for Fatal Blasts*, THE GALVESTON COUNTY DAILY NEWS, May 18, 2005.

<sup>100</sup> U.S. Chemical Safety and Hazard Investigation Board, *supra* note 88.

engineer who miscalculated the stress, or the manager who made the wrong decision. But this is seldom the entire issue. When the determinations of the causal chain are limited to the technical flaw and individual failure, typically the actions taken to prevent a similar event in the future are also limited: fix the technical problem and replace or retrain the individual responsible. Putting these corrections in place leads to another mistake – the belief that the problem is solved.<sup>101</sup>

- Blaming workers for accidents can make safety problems worse.

Programs that have the result of discouraging workers from reporting incidents that may be predictive of future or more serious accidents can have a detrimental effect on worker safety. The Chemical Safety Board, in its report on the 2005 BP Texas City explosion that killed 15 workers, noted that one thing missing at BP was a “reporting culture where personnel are willing to inform managers about errors, incidents, near-misses, and other safety concerns.” When workers were not encouraged to report, managers did not investigate incidents or take appropriate corrective action.<sup>102</sup>

Instead of punishing pilots or other workers for the “errors” that they make, the Federal Aviation Authority has taken a completely different approach to addressing the problem of preventing accidents, according to a recent report by the U.S. House Transportation Committee:

Recognizing these human factors and complex accident causation principles, the FAA began to promote and establish voluntary reporting programs such as NASA's Aviation Safety Reporting System ("ASRS"), where anyone in the aviation system could report a mistake or a violation and receive immunity from the finding of a civil penalty violation. In addition, the FAA has established a 'Voluntary Self Disclosure' program where both organizations and individuals can disclose a violation, cease and desist from the unsafe practice, develop a corrective action plan, and be immune from civil penalty action. The dramatic improvement in U.S. air safety over the last two or more decades has been directly linked to the implementation of these "non-punitive" principles in the regulatory environment.<sup>103</sup>

Not all incentive programs are detrimental, as mentioned above, nor is all safety-related discipline a problem if it is actually justified. There are situations where despite repeated training, frequent warnings and consistent enforcement of safety policies, there is clear, willful disregard of an established rule by workers or managers and some disciplinary action from the employer may be necessary. In rare cases OSHA has chosen not to cite an

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<sup>101</sup> Columbia Accident Investigation Board, *Columbia Accident Investigation Board Report Volume I*, 97, (2003), at [http://caib.nasa.gov/news/report/pdf/vol1/full/caib\\_report\\_volume1.pdf](http://caib.nasa.gov/news/report/pdf/vol1/full/caib_report_volume1.pdf)

<sup>102</sup> U.S. Chemical Safety And Hazard Investigation Board Investigation Report, *supra* note 88.

<sup>103</sup> *The Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroads Hearing Before the House Comm. on Transportation and Infrastructure*, 110<sup>th</sup> Cong., (2007).

employer, based on “unavoidable employee misconduct,” recognizing that the employer had no control over an employee’s actions and had done everything in its power to ensure safe working conditions.

Some employers, however, try to blame workers for the incident, even though the employer has legal responsibility for safety in the workplace and other factors are almost always to blame. For example, according to a former supervisor, Cintas, a large industrial laundry company, has a company policy to write up a disciplinary action immediately after every accident – before any investigation is done.<sup>104</sup>

After an employee is hurt or killed, the employer often blames the worker for not following proper procedures, although further investigation generally finds that procedures are rarely followed (with full knowledge of supervisors), or workers have not been trained in the procedures, or the procedures are so old that they do not match the actual working conditions.<sup>105</sup>

Other organizational factors such as fatigue or work overload can also explain a worker’s failure to follow proper procedures. Many workers report, for example, that while the *written* procedures may say to shut off a machine and wait for maintenance to come and repair it, the *unwritten* rule is to do anything necessary to make the production quota by the end of the day or face disciplinary action.

- After Eleazar Torres Gomez was pulled into a 300 degree oven and killed while attempting to unjam an industrial laundry conveyor at a Cintas industrial laundry in Tulsa Oklahoma in 2007, the company immediately blamed him for his own death. According to a Cintas press release,

Although the investigation is still ongoing, it is clear that our partner did not follow established safety rules which would have prevented this tragic accident. Unfortunately, the partner climbed on top of a moving conveyor to dislodge a jam, contrary to all safety training and procedures, and fell into a dryer.<sup>106</sup>

OSHA later issued a \$2.8 million citation against Cintas, finding that “management at the Cintas Tulsa laundry facility ignored safety rules that could have prevented the death of this employee.”<sup>107</sup> According to press reports, the OSHA investigation found that because workers were under a lot of pressure to keep the lines moving, they routinely tried to unjam the machines while they were still running, with management’s full knowledge.<sup>108</sup>

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<sup>104</sup> Phone Interview by Committee staff with former Cintas Supervisor, Washington, D.C. (May 17, 2008).

<sup>105</sup> Hopkins, *supra* note 96.

<sup>106</sup> Cintas, *Media Statement Regarding: March 6 Incident in Tulsa, OK* (March 22, 2007), at [http://www.cintas.com/Company/News\\_Media/press\\_releases/Tulsa\\_OK.aspx](http://www.cintas.com/Company/News_Media/press_releases/Tulsa_OK.aspx)

<sup>107</sup> Occupational Safety and Health Administration, *U.S. Department of Labor's OSHA Proposes \$2.78 Million Fine Against Cintas Corp. Following Tulsa, Okla., Employee Death in Industrial Dryer* (August 16, 2007), at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=14397](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=14397).

<sup>108</sup> James Bandler and Kris Maher, *House Panel to Examine Cintas Plants' Safety Record*, WALL ST. J., Apr. 23, 2008, at B1.

- When a Caterpillar worker at the company’s Peoria plant was injured after being shocked while repairing a machine, he and his co-workers were disciplined for not following proper “lockout-tagout” procedures, even though the machine had been miswired during a previous modification and there was no written procedure that applied.<sup>109</sup>
- Brent Churchill, a lineman for Central Maine Power, was electrocuted in 2000 after failing to put his insulating gloves on before reaching for a 7,200 volt cable. Because of mandatory overtime, Churchill had slept a total of five hours over the previous two and a half days. His death lent momentum to the passage of the passage in Maine of the country’s first law limiting the number of hours an employee can be required to work.<sup>110</sup>

## OSHA’s Role in Ensuring Accurate Reporting

**OSHA audits.** OSHA conducts recordkeeping audits which, according to the agency, indicate that injury and illness logs are a reasonably accurate reflection of those injuries and illnesses actually reported by employees at work. Under the program, OSHA inspectors interview a “sample of employees” about reporting procedures and look for mistakes and inconsistencies by reviewing medical records, workers’ compensation records, insurance records and, “if available,” payroll absentee records, company safety incident reports and company first aid logs.<sup>111</sup>

But OSHA’s auditing method may miss those workers who are afraid to report or choose not to report an injury or illnesses to the employer, to workers’ compensation or to insurance. Unless OSHA’s “sample of employees” identifies workers who have suffered unreported injuries or illnesses *and* who are not afraid to talk to the OSHA compliance officer, OSHA audits will not identify those missing injuries or illnesses, nor the reasons that they have not been reported.

The California Bay Bridge Auditors’ Report identified the same problem when it questioned whether employer injury reports are accurate, noting that CalOSHA “does not have a process to verify the reasonable accuracy of the annual injury reports employers are required to maintain”, that CalOSHA “has no legal requirement to collect these reports” nor a “systematic process to detect injuries that go unrecorded.”<sup>112</sup>

Finally, as noted above, by making ergonomic inspections dependent on recorded MSDs, OSHA’s Ergonomics Enforcement Program actually rewards employers for underreporting their ergonomic injuries.

<sup>109</sup> Interview by Committee Staff with Caterpillar Employee, Washington, D.C. (June 3, 2008).

<sup>110</sup> Mary Williams Walsh, *As Hot Economy Pushes Up Overtime, Fatigue Becomes a Labor Issue*, N.Y. TIMES, Sept. 17, 2000, at 32.

<sup>111</sup> Occupational Safety and Health Administration, *Audit and Verification Program of Occupational Injury and Illness Records*, CPL-02-00-138 (January 12, 2006), at

[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=3329](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=3329).

<sup>112</sup> California State Auditor, *supra* note 52.

**Other OSHA procedures.** Paragraph 11(c) of the Occupational Safety and Health Act makes it a violation of the Act to “discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to” the Act.<sup>113</sup>

There is, however, no specific mention of employer actions that would discourage reporting. This section of the OSH Act is rarely used against such actions, although Paragraph 1904.36 of OSHA’s recordkeeping regulation notes that Paragraph 11(c) also applies to discrimination against an employee for reporting a work-related fatality, injury or illness. The recordkeeping regulation itself, however, does not explicitly prohibit discouragement of reporting, forcing workers to go through the ineffective and time consuming 11(c) process.<sup>114</sup>

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<sup>113</sup> Occupational Safety and Health Act, 29 U.S.C. § 660.

<sup>114</sup> Occupational Safety and Health Administration, Recording and Reporting Occupational Injuries and Illnesses, 29 C.F.R. § 1904 (Jan. 19, 2001).

## Other Measures Can Be Used To Target Unsafe Workplaces

Injury, illness, and fatality rates are not the only way – or even the best way in many cases – to assess and ensure workplace safety. In petroleum refineries, chemical plants, and other complex operations dependent on process safety, records of process upsets, “near miss” reports, audit results, equipment inspections and reports of small chemical releases are much better indicators of potential hazards than counts of slips, trips and falls that comprise most injury reporting.<sup>115</sup>

These “leading indicators” – observations that can help predict safety problems – can be just as important and more useful than “lagging indicators” – looking at the injuries that have already occurred in preventing future incidents. But these leading indicator measures are not usually recorded by employers and if recorded, are not monitored by OSHA or BLS.<sup>116-117</sup>

At a U.S. House of Representatives Committee on Education and Labor hearing last year on the catastrophic explosion at BP’s Texas City refinery, it was revealed that both the company and OSHA were using only injury statistics to assess the safety of refineries. Yet many experts agree that these statistics are meaningless when attempting to determine how likely it is that a refinery may experience a catastrophic explosion. Much better are “process safety” indicators: how well the company follows up on near misses; how well the company maintains its equipment and how willing the company is to shut down a process when there are problems.<sup>118</sup>

In addition, workplace illnesses are especially difficult to count. Many work-related illnesses mimic the flu or other common household maladies. Others may cause serious disease like cancer or heart disease many years or decades after workers were exposed. The injury and illness statistics that OSHA currently collects are therefore almost useless in targeting inspections at workplaces where employers are exposed to workplace health hazards.<sup>119</sup>

## Conclusion

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<sup>115</sup> John Calhoun Wells, Thomas A. Kochan & Michal Smith, *Managing Workplace Safety and Health: The Case of Contract Labor in the U.S. Petrochemical Industry* (July 1991) (report for the Occupational Safety and Health Administration).

<sup>116</sup> *Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-Site Employers Hearing Before the House Comm. On Education and Labor, Subcomm. on Workforce Protections*, 110<sup>th</sup> Cong. (2007) (written testimony of Frank A. White, Senior Vice President, ORC Worldwide).

<sup>117</sup> U.S. Chemical Safety and Hazard Investigation Board Investigation Report, *supra* note 88.

<sup>118</sup> *The BP-Texas City Disaster and Worker Safety Hearing Before the House Comm. on Education And Labor*, 110<sup>th</sup> Cong. (2007).

<sup>119</sup> NATIONAL ACADEMY OF SCIENCES, *supra* note 9.



Although the Occupational Safety and Health Act of 1970 requires the Department of Labor to collect and compile statistics on the extent of occupational injuries, illnesses and fatalities in the United States, and requires employers to keep accurate records of workplace injuries, illnesses and deaths, strong evidence from academic studies, media reports and worker testimony cast serious doubt on the accuracy of these numbers.

This report has reviewed the importance of accurate recordkeeping, evidence that injuries and illnesses are significantly underreported, the reasons why injury and illness statistics are underreported, methods that some employers use to discourage reporting, and OSHA's failure to address these problems.

If policy makers are going to be able to assess the success or failure of this country's efforts to address the problem of workplace death and injury, accurate statistics are essential. And if workers are to have faith in the system, they must also have faith that OSHA and policy makers are aware of the hazards that workers face and the injuries and illnesses they suffer.

It is incumbent on the Occupational Safety and Health Administration and Bureau of Labor Statistics, working with other agencies and experts, to assess the full extent of this problem and develop solutions.

## **Appendix 1: House Hearings on Worker Health and Safety, 110th Congress**

*"The BP-Texas City Disaster and Worker Safety"*

Full Committee

Thursday, March 22, 2007

*"Protecting the Health and Safety of America's Mine Workers"*

Full Committee

Wednesday, March 28, 2007

*"Have OSHA Standards Kept up with Workplace Hazards?"*

Subcommittee on Workforce Protections

Tuesday, April 24, 2007

*"Evaluating the Effectiveness of MSHA's Mine Safety and Health Programs"*

Full Committee

Wednesday, May 16, 2007

*"Workplace Safety: Why do Millions of Workers Remain without OSHA Coverage?"*

Subcommittee on Workforce Protections

Tuesday, May 24, 2007

*"The S-MINER Act (H.R. 2768) and the Miner Health Enhancement Act of 2007 (H.R. 2769)"*

Subcommittee on Workforce Protections

Thursday, July 26, 2007

*"Why Weren't 9/11 Recovery Workers Protected at the World Trade Center?"*

Full Committee

Wednesday, September 12, 2007

*"Workplace Tragedies: Examining Problems and Solutions"*

Subcommittee on Workforce Protections

Monday, January 14, 2008

*"H.R. 5522, The Combustible Dust Explosion and Fire Prevention Act of 2008"*

Full Committee

Wednesday, March 12, 2008

*"Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-Site Employers"*

Subcommittee on Workforce Protections

Wednesday, April 23, 2008

## **Appendix 2: Glossary**

ACOEM – American College of Occupational and Environmental Medicine  
ASRS – Aviation Safety Reporting System  
BLS – Bureau of Labor Statistics  
CalOSHA – California OSHA  
CFOI – Census of Fatal Occupational Injuries  
CPS – Current Population Survey  
DOL – Department of Labor  
ED – Emergency Department  
FAA – Federal Aviation Administration  
FRA – Federal Railroad Administration  
GAO – Government Accountability Office  
IRS – Internal Revenue Service  
ITR – Illinois Trauma Registry  
MSDs – musculoskeletal disorders  
NEISS – National Electronic Injury Surveillance System  
NHIS – National Health Interview Survey  
NIOSH – National Institute for Safety and Health  
ODI – OSHA Data Initiative  
OSHA – Occupational Safety and Health Administration  
SOII – Survey of Occupation Injuries and Illnesses  
SST – OSHA’s Site-Specific Targeting program





HEALTH, SAFETY,  
& ENVIRONMENT  
DEPARTMENT  
safety@usw.org  
412-562-2581

# FACT SHEET

## OSHA's Voluntary Protection Program

In 1982, OSHA established its *Voluntary Protection Program* (VPP) to recognize and reward employers with excellent safety and health programs. The reward was freedom from some OSHA inspections. In general, OSHA will only inspect a VPP site where the law requires it, for example where they receive a complaint or after a fatal accident. Safety and health programs that qualified for VPP were expected to have worker involvement, and the support of the union where there was one.

VPP was always controversial in the labor movement. VPP workplaces tout low rates of job injuries and illnesses, many are non-union, and often have policies and practices that discourage workers from reporting injuries. Some unions wanted nothing to do with VPP. Others were more willing to accept the program. In recent years, OSHA has heavily promoted the program, in some cases creating corporate-wide programs, in other cases accepting employers with questionable safety programs.

Some employers see VPP as an end in itself, regardless of the actual health and safety conditions in the workplace. In some cases, the employer has made promises to gain the union's support, only to break them when they are accepted into VPP. Many companies have attempted to enter into the program with no real intention of working with the union or making needed improvements in health and safety. Some unions believe that entering into the VPP process has benefited them by increasing their leverage to gain improvements. Unionized employers must have the union's support

to enter VPP. This can give the union some power to bargain for concrete improvements to the safety program.

If your local union is asked by management to support a VPP application, we urge you to **contact the USW Health, Safety and Environment immediately at (412) 562-2581 or [safety@usw.org](mailto:safety@usw.org)**. We can help you evaluate their application and the existing safety program. We can help you negotiate for improvements.

Here are some of the principles we use in evaluating proposed VPP programs:

1. The employer must have an excellent safety *and health* program with full union participation. It is the USW's position that the basis of the program must respect the labor agreement and the rights of the union and individual workers. *The basis of the program must be finding and eliminating or reducing workplace hazards, not employee behavior* and the workplace program must also be based on an understanding that OSHA standards are minimum requirements, and must address all hazards in the workplace, whether or not they are regulated by OSHA.

***When workplace health and safety excellence is the goal, VPP may certainly result. However when VPP is the goal, improvement in workplace health and safety does not necessarily result, and conditions may even become worse.***

2. At a minimum, the safety program must include the right to refuse unsafe work; a strong joint safety and health committee, where the union, not the company chooses its representatives; and, the right of union safety committee members to talk to employees, visit all parts of the plant, participate in incident investigations and workplace audits, and, meet apart from management, all on company time; effective safety and health training; the right of entry for safety and health representatives from the International Union; and, company-paid attendance at the USW's annual safety and health conference for one or more union members of the joint safety and health committee (the USW HSE department can help you review and establish each of these).

3. Since even a good program can be improved, the employer must agree to negotiate improvements in their safety and health program. The improvement will, of course, vary from location to location. The improvement must be agreed to in a written agreement, which will remain in force even if OSHA does not ultimately grant VPP status.

4. Since VPP depends on accurate injury *and illness* reporting, the employer must agree in writing to eliminate and not to institute any policy, practice or program which punishes or discourages the reporting of injuries, illnesses, symptoms, accidents or near misses. This includes positive and negative incentive programs based on injury rates, automatic post-injury drug testing (i.e. testing without reasonable suspicion), and the use of discipline as a tool for safety management. Discipline must be reserved for cases of malicious or defiant disregard of

reasonable and properly communicated safety rules.

If you have further questions or need assistance, please contact the USW HSE Department.

## Legal Principles Concerning Mid-term Collective Bargaining and Union Representation

### The National Labor Relations Act Section 7 - Right to Organize and Collectively Bargain

*“Employees shall have a right to self-organization, to join, form, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.”*

Note: The duty to bargain and the union’s rights under bargaining law, exist at all times, not only at contract time. The Supreme Court has ruled in *Conley v. Gibson* 355 U.S. 41 that: *“...collective bargaining is a continuing process, involving day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract...”* In *NLRB v. Acme Indus. Co.* 385 U.S. 42 the court stated: *“Similarly the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of the agreement.”* Section 8(a)(5) of the NLRA makes it an Unfair Labor Practice (ULP) for the employer *“...to refuse to bargain collectively with the representatives of his employees...”*

### The Duty to Bargain

- What it is
- The employer and the union must “meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.”
- The terms of the union contract are fixed for the duration of the contract; there is no duty to bargain over these terms until the contract is due to expire.
- The employer has a continuous duty to bargain over any wages, hours, and other terms and conditions of employment that are not covered by the contract.
  
- Mandatory and non-mandatory subjects
- "Mandatory subjects" of bargaining are any "wages, hours, and other terms and conditions of employment." The parties must be willing to bargain over these issues in good faith.
- A “non-mandatory subject” is anything else, such as matters concerning those concerning the nature and direction of the business or internal union affairs. There is no duty to bargain over such subjects under the law.
  
- No unilateral changes
- The employer must give the union adequate notice and an opportunity to bargain.
- If the union demands to bargain, the employer may not make a change without either gaining agreement from the union or reaching a good faith impasse in bargaining
- If the employer makes a change without meeting one of these conditions, it has made a “unilateral change”, and the union may file an unfair labor practice charge.
  
- Management rights and deferral to arbitration
- Management rights clauses may waive the union’s right to bargain
- The NLRB only finds a waiver when it is “clear and unmistakable”

- The NLRB usually defers to the arbitration process to decide disputes over the interpretation of management rights clauses.
- NLRB Remedies
- Cease and desist
- Restore *status quo ante*
- Make whole
- Order to bargain in good faith
- Post a notice to employees
- The union's right to information
- The union has a right to most information that the employer has which is relevant to bargaining over mandatory subjects.
- Few exceptions
- No deferral to arbitration if employer fails to provide
- No impasse if request has not been met
- When connected with unilateral change, NLRB may refuse to defer both charges

### **Exclusive Representation**

- Once employees have chosen a union to represent them, no other organization can represent the members of the bargaining unit.
- Any committee on which bargaining unit members serve, that in any way deals with mandatory subjects of bargaining, is legally an extension of the union.

### **No Employer Domination of a Labor Organization**

- Any committee or organization of any kind that deals with mandatory subjects of bargaining is considered a labor organization under the law.
- Management may not dominate or interfere with a labor organization.
- If management sets up a committee without full agreement of the union, and if that committee deals with any issue concerning wages, hours, or other terms and conditions of employment, then that committee is illegal.
- A committee set up by management is illegal even if it doesn't engage in actual bargaining. Even if all the committee does is to discuss issues, the committee is illegal.

### **The "Equality Principle"**

- Under the law, anyone who represents the union in any way is considered to be the equal of management when engaged in representational activity.

### **No Retaliation or Threats**

- It is illegal for employers to "interfere with, restrain, or coerce employees" in the exercise of their rights as employees and union representatives.





## **Bargaining Over Injury Discipline Policies: Submitting Information Requests**

Many employers have already or wish to implement policies and programs that discipline workers who report work-related injuries, illnesses and accidents. Discipline can include counseling sessions, verbal and written warnings, suspension or unpaid time off work, and termination. Some policies also provide for automatic drug testing for workers who report injuries. The United Steelworkers (USW) opposes such programs.

These programs do not improve workplace health and safety, and they discourage workers from reporting job injuries or filing workers compensation claims. When injuries aren't reported, workers may not get the medical care they need, and the hazards that caused the injuries are not identified and corrected. However, these programs benefit management. They provide management with a lower number of reported accidents for them to record on their injury and illness logs, and fewer workers' compensation claims, meaning lower workers' compensation insurance premiums for the employer. Fewer injuries and illnesses recorded on the OSHA logs can mean less frequent visits from OSHA.

### **What can my local union do about these programs?**

Workers often ask, 'can my employer implement this kind of program?' The answer is yes and no. Injury discipline programs and policies are mandatory subjects of bargaining. In general, employers are required to notify the union before any such policy is implemented, and bargain with the union prior to implementing such a policy ***if the union requests to bargain***. The union should ***promptly*** request bargaining, and begin to file information request questions to obtain information that will assist them in bargaining. If the employer refuses to bargain, the union has six months to file unfair labor practice charges. If the union does not request to bargain, management can implement these programs. If your workplace has had a program for more than six months, it can be a topic for bargaining at the next round of contract negotiations. A local union may still be able to request bargaining if local union officers were not properly notified about the new

#### *Sample Informational Request Letter*

**United Steelworkers Local Union XXX**

Date

Plant Manager, HR/IR Manager, or Safety Manager

In accordance with our rights under the National Labor Relations Act and in order to carry out our negotiations on the [insert the program/policy name here] the United Steelworkers Local Union XXX requests the following information.

Have you conducted or caused to be conducted an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees and/or supervisors to be injured or made ill? If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

If you have any questions, please let me know. The union will await management's response to this request.

Sincerely,

Local Union President or USW Staff Representative

program or policy and given an opportunity to bargain by the employer. USW local unions should exercise their bargaining rights by promptly requesting to bargain over these programs, and submitting information requests. USW local union health and safety committee members should work with their local union leadership and USW staff representative to ensure that the request to bargain is properly executed.

Information requests provide the means for unions to get information about a program or policy that is needed for effective bargaining. **Further, as long as there is a valid information request outstanding that an employer has not responded to in good faith, an employer is prohibited under the National Labor Relations Act from declaring impasse in bargaining and implementing its policy or program.**

Below is a sample list of information request questions for an employer who is seeking to introduce an injury discipline policy/program. There are many follow-up questions to each of these, as well as many other questions that can be submitted. Information requests should be submitted to management in writing. The questions below can be incorporated for use into a letter to management.

**Sample Information Request Questions Regarding Injury Discipline Policies**

1. Have you conducted or caused to be conducted an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees and/or supervisors to be injured or made ill?

If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

2. Have you conducted any study or analysis that led you to believe that the [*insert name of new policy/program*] is the appropriate program to reduce work-related injuries and illnesses at this workplace?

If so, please provide evidence upon which you rely for this belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, and/or consultants whose information created this belief.

3. Please indicate if any of the reasons listed below are your reasons for creating the [*insert name of new policy/program*]

	<u>Yes</u>	<u>No</u>
Reduce injuries in the workplace	___	___
Increase productivity at the workplace	___	___
Reduce workers' compensation claims	___	___
Enter fewer injuries/illnesses on OSHA 300 Log	___	___

Reduce absenteeism	___	___
Symbolic evidence of corporate responsibility	___	___
Increase overall organizational effectiveness	___	___
Reduce damage to company property	___	___

For each of the reasons that you have checked, please provide documentation that the [*insert name of new policy/program*] will address, ease or cure the problem.

4. Does the company believe that the [*insert name of new policy/program*] will in fact reduce work-related accidents, injuries and illnesses? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and the names and addresses of organizations, and/or consultants whose information created that belief.

5. Do you know how many lost work hours in the past twelve months were related to supervisors and/or employees being injured or made ill on the job?

If no, do you have any program in place or in the planning stage to make this determination?

If yes, how many of those lost hours came from employees in the bargaining unit?

If yes, how many different individual employees were involved in accumulating these lost hours?

If yes, which of these employees were injured or made ill as the primary result of an at risk behavior, unsafe behavior or unsafe act and which of these employees were injured or made ill as the primary result of exposure to a health or safety hazard on their job? Provide all documentation used to support these determinations.

6. Please provide a list of all names, dates, incidences and injury, illness and/or property damage outcomes over the last five years in which supervisors and/or bargaining unit employees have failed to perform job assignments in a safe manner, with accompanying incident reports documenting this failure.

7. Please provide a list of all names, dates, incidences and injury, illness and/or property damage outcomes over the last five years in which supervisors and/or bargaining unit employees have been involved in a work-related injury, illness or accident as a result of exposure to an unsafe or unhealthy workplace condition (hazard), with accompanying incident reports documenting the unsafe/unhealthy condition or hazard.

8. Please provide a copy of all "incident investigation forms" beginning October 1, 2000 to the present for all salaried and bargaining unit employees.
9. Please provide a list of all OSHA recordable and nonrecordable symptoms, injuries and illnesses affecting bargaining unit employees and supervisors beginning October 1, 2000 to the present, along with accompanying incident reports detailing such symptoms, injuries and illnesses.
10. Please provide a list of all incidents that led to the destruction of property beginning October 1, 2000 to the present, including the approximate value of property damage for each incident, along with copies of incident reports regarding such property damage.
11. [note – this question should only be used if a program is in place at your workplace that focuses on employees involved in multiple injuries, illnesses, and/or near misses] Please provide a list of all supervisors and bargaining unit employees who have received counseling under the "accident repeater program," dates that they received counseling, and all accompanying paperwork and forms related to counseling sessions for each supervisor and/or bargaining unit employee counseled. Also indicate for each person on the list whether or not any further disciplinary action was taken regarding that individual, the date of the disciplinary action and what that disciplinary action was.

### **What if management does NOT agree to negotiate?**

If management contends that they have the right to unilaterally implement this program or policy because of the *management rights clause* in the contract; or, if they refuse to negotiate from the union's request, the local union should contact their staff representative and consider filing a charge with the National Labor Relations Board for management's failure to bargain.

### **Where can my local union get help?**

The USW urges local union members to work with their health & safety committee and local union leadership if an injury discipline program is proposed by management to ensure that the local union has a full understanding of the company's proposal. The local union leadership should work with the USW staff representative to determine how to best address the union's concerns with the proposal from management. The USW Health, Safety and Environment Department can provide assistance to your local union following a request through the USW District. Additional information can be found on this topic at <http://www.usw.org> (select resources - health, safety & environment). Local union representatives are also welcome to submit questions about these programs by email to [safety@usw.org](mailto:safety@usw.org).

In addition to answering questions the Health, Safety and Environment department is interested in learning more about these programs that are in place in our facilities. Interested local unions are welcome to provide us with the information about these programs at your workplaces and descriptions of how the union has taken these programs on in your workplace.

**Information Request Questions To Consider**  
**Re: Injury Discipline Practices – 5/09**

1. Have you conducted or caused to be conducted an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees to be injured or made ill?

If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

2. Please provide a list of bargaining unit employees who, between January 1, 2005 and the present, were injured or made ill as the primary result of an 'at-risk' behavior, unsafe behavior or unsafe act. Provide names, dates, locations, information about the nature of the injury or illness, and all documentation used to support the determination of "at-risk behavior", "unsafe behavior" or "unsafe act."
3. Please provide a list of bargaining unit employees who, between January 1, 2005 and the present, were injured or made ill as the primary result of exposure to a health or safety hazard on their job. Provide names, dates, locations, information about the nature of the injury or illness, and all documentation used to support the determination that an unsafe or unhealthy workplace condition or hazard caused the injury/illness.
4. Please provide a list of names of bargaining unit employees who have been involved in incidents involving injury, illness and/or property damage between January 1, 2005 and the present in which bargaining unit employees have failed to perform job assignments in a safe manner, with accompanying incident reports documenting this failure. Include on the list the dates of the incidents and the nature of the injury, illness and/or property damage
5. Please provide a list of names of bargaining unit employees who have been involved in incidents involving injury, illness and/or property damage between January 1, 2005 and the present in which bargaining unit employees have been involved in a work-related injury, illness or accident as a result of exposure to an unsafe or unhealthy workplace condition (hazard), with accompanying incident reports documenting the unsafe/unhealthy condition or hazard. Include on the list the dates of the incidents and the nature of the injury, illness and/or property damage.
6. Please provide full OSHA 300 logs from January 1, 2005 to the present.

7. Please provide all completed OSHA 301 Injury and Illness Incident Report Forms from January 1, 2005 to the present
8. Please provide a list of all bargaining unit employees who, between January 1, 2005 and the present, have received any type of warning or disciplinary action, the dates that they received the warning and/or disciplinary action, and all accompanying paperwork and forms related to the warning or disciplinary action including the reason for the warning and/or disciplinary action. Also indicate for each person on the list whether or not any further disciplinary action was taken regarding that individual, the date of the disciplinary action and what that disciplinary action was.
9. Please provide copies of all written policies and procedures regarding health and safety, including the dates that each of the polices/procedures became effective.
10. Please provide copies of records of all health and safety training programs conducted with bargaining unit employees, including dates, name of trainer(s), curricula and materials (including written, video, powerpoint and dvd) used in the training, topics covered, length of each training session, and the names of those attending each training. If any of this training was on-line, please include all of the above for the on-line programs as well.

**SAMPLE REQUEST TO BARGAIN OVER THE INTRODUCTION OF A BEHAVIOR-BASED SAFETY PROGRAM**

[Date]

[Employer Name/Address]

Dear \_\_\_\_\_ :

The United Steelworkers Local Union (USW) xx hereby requests decisional and effects bargaining over [Name of Employer]'s new, updated or revised approach to occupational safety and health, as described by the [name of new program, if it has a name – or name or description of new element] and any other new safety-related initiatives that [name of employer] is or may be planning on implementing including but not limited to those with elements of behavior-based safety, safety observation, safety-related incentives and/or discipline. This request is applicable to any and all areas in which [name of employer] is considering implementing any of these programs.

Any implementation of a new or revised health and/or safety program such as that described by the [name of new program] is a change in conditions of employment and/or it impacts conditions of employment (including but not limited to health and safety, training and/or discipline) and is therefore a mandatory subject of bargaining.

In accordance with the National Labor Relations Act, and until we have reached a conclusion to our negotiations, the USW further insists that management immediately cease and desist from implementing the program described in [name of program or new program element], any element or portion thereof, or any other new health or safety-related initiatives.

Please let us know when you will be available to bargain.

Attached is a list of information needed by the USW to represent our members on conditions of work including health and safety, and in order for the USW to bargain over these issues. We are, however, willing to begin the bargaining before all of the information is received.

Sincerely,

Cc:





**Sample Letter with Information Requests Regarding the Introduction  
of a Behavior-Based Safety Program**

[date]

[Employer: Name/Address]

Dear \_\_\_\_\_ :

The United Steelworkers Union (USW) Local xxxx requests the following information from [Name of Employer] regarding occupational health and safety programs and practices that [Name of Employer] has implemented or is planning on implementing:

1. Any and all assessments made over the last three years of health and safety conditions at [name of employer] facilities that have caused or could cause bargaining unit employees and/or supervisors to be injured or made ill.
2. Any and all incident, accident, injury and illness reports (including name(s), dates, specifics of injuries, illnesses and property damage) that [name of employer] wrote, conducted or caused to be conducted over the last three years:
  - (a) that demonstrate that a major or contributing cause of the incident, accident, injury or illness was one or more unsafe or unhealthy workplace conditions. Please include a full description of the unsafe or unhealthy workplace conditions identified;
  - (b) that demonstrate that a major or contributing cause of the incident, accident, injury or illness was an inadequate Safe Job Procedure (SJP) or other written procedure, the lack of a written procedure, or inadequate training. Please include a full description of problems identified;
  - (c) that demonstrate that a major or contributing cause of the incident, accident, injury or illness was one or more "at risk" behaviors on the part of the worker or workers involved. Please include a full description of the "at risk" behaviors identified

- (d) that demonstrate that the major or contributing cause of the incident, accident, injury or illness was one or more “at risk” behaviors, decisions, or orders on the part of a supervisor or other management-level employee of [name of employer]. Please include a full description of the “at risk” behaviors, decisions, or orders identified;
  - (e) that demonstrate that the major cause of the incident, accident, injury or illness was one or more “at risk” behaviors or other act on the part of an outside contractor working in a [name of employer] facility. Please include a full description of the “at risk” behaviors or acts identified
3. A copy of any and all contracts, agreements, reports, and related documents concerning workplace health and safety, provided to [name of employer] by [name of behavior-based consultant; or if name is unknown, by any company or vendor of behavior-based safety training and/or materials] or between [name of employer and name of behavior-based safety vendor – or, any company or vendor of behavior-based safety training and/or materials], over the last five years.
  4. A copy of all plans, training materials, workbooks, videos, DVD’s, CD’s and other written, printed and/or electronic materials used in conjunction with the [name of new behavior-based safety program, or – if there is no specific name of new program, just “new behavior-based safety program that {name of employer} would like to implement”].
  5. The dollar value of any and all prizes that [name of employer] plans to make available to members of USW Local xxxx in conjunction with changes to the behavioral observation program
  6. The current list of workplace health and safety hazards that observers are supposed to use when doing observations in conjunction with the behavioral observation program that [name of employer] is seeking to change/implement.
  7. The current list of “safe” and “unsafe” behaviors that observers are supposed to use when doing observations in conjunction with the behavioral observation program that [name of employer] is seeking to change/implement.

Under the National Labor Relations Act, the USW has the right to represent our members on conditions of work, including occupational safety and health. In order to represent our members on these issues, we are requesting the

information included in this information request. Please provide this information as soon as possible, but no later than [date]. If any part of this request is denied or if any material is not available, please inform us in writing and provide the remaining items by the above date, which the USW will accept without prejudice to our position that we are entitled to all documents and information sought in this request. This letter is submitted without prejudice to the USW's right to file subsequent requests.

Sincerely,

cc:



## Behavior-Based Safety Program Information Request Questions

1. Have you conducted, or caused to be conducted, an assessment of health and safety conditions at this workplace that have caused or could cause bargaining unit employees to be injured or made ill?

If yes, please provide a copy of any such list, report or other document that identifies such workplace conditions.

2. Have you conducted any study or analysis that led you to believe that the [name of behavior based safety program] is the appropriate program to reduce work-related injuries and illnesses at this workplace?

If so, please provide a copy of any such report, study, analysis or related documentation that supports this belief.

3. Please provide a copy of any other report, study, article, book title, promotional material or other documentation which you reviewed that supported your belief that [name of behavior based safety program] would be the appropriate program to reduce work-related injuries and illnesses at this workplace.

4. Please provide a copy of any other report, study, article, book title, promotional material or other documentation which you reviewed that supported your belief that [name of injury discipline program] would be the appropriate program to reduce work-related injuries and illnesses at this workplace.

5. Does the company believe that the [name of behavior based safety program] will in fact reduce work-related accidents, injuries and illnesses? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and the names and addresses of organizations and/or consultants whose information created and/or supported this belief.

6. Please provide a list of all other employers that you have contacted, spoken with or know about that have used the [name of behavior based safety program] during any period over the last five years.

- a. Which of these employers currently have [name of behavior based safety program] functioning in their workplace at this time?
- b. For those employers who do not currently have [name of behavior based safety program], what were their reason for discontinuing the program?

7. What percentage of work-related accidents, injuries and illnesses in this workplace do you believe occurred as the result of unsafe or unhealthy working conditions?

Please provide copies of any and all lists, reports, accident /incident investigations, studies and other documents that led you to this conclusion.

8. What percentage of work-related accidents, injuries and illnesses in this workplace do you believe occurred as the result of workers' unsafe acts or behaviors?

Please provide copies of any and all lists, reports, accident/incident investigations, studies and/or other documents that led you to this conclusion.

9. What percentage of work-related accidents, injuries and illnesses in this workplace do you believe occurred as the result of workers violating work rules or safe work procedures?

Please provide copies of any and all lists, reports, accident/incident investigations, studies and/or other documents that led you to this conclusion.

10. Please provide a list of the names of bargaining unit employees who in the last 2 years, were involved in work-related accidents or experienced a work-related injury or illness that occurred primarily as the result of the workers' unsafe act or unsafe behavior. Please also provide the date of each of these accidents, injuries and/or illnesses and a copy of accident/incident investigations.

11. Please provide a list of the names of bargaining unit employees who in the last 2 years, were involved in work-related accidents or experienced a work-related injury or illness that occurred primarily as the result of a violation of a work rule or safe work procedure. Please also provide the date of each of these accidents, injuries and/or illnesses and a copy of accident/incident investigations.

12. Please provide a list of the names of bargaining unit employees who in the last 2 years, were involved in work-related accidents or experienced a work-related injury or illness that occurred primarily as the result of an unsafe or unhealthy workplace condition. Please also provide the date of each of these accidents, injuries and/or illnesses and a copy of accident/incident investigations

13. Does the company believe that a behavioral safety program would cut down on lost time, sick days and/or tardiness?

If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, and/or consultants whose information created that belief.

14. Please indicate if any of the reasons listed below are your reasons for wishing to implement the behavioral safety program?

	YES	NO
Reduce accidents at the workplace	_____	_____
Increase productivity at the workplace	_____	_____
Reduce the use of the company health care plan	_____	_____
Reduce absenteeism	_____	_____
Symbolic evidence of corporate responsibility	_____	_____
Increase overall organizational effectiveness	_____	_____
Reduce damage to company property	_____	_____
Demonstrate the company's moral standards	_____	_____
Reduce Workers' Compensation costs	_____	_____

For each of the reasons you have checked yes, please provide documentation that the behavioral safety program ease or cure the problem.

15. Does the company believe that a behavioral safety program would cut down on lost time, sick days and/or tardiness?

If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, and/or consultants whose information created that belief.

16. Does the company believe that a behavioral safety program would cut down on accidents?

If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, consultants whose information created that belief.

17. Do you know how many accidents, if any, in the past twelve months, were due to unsafe acts?

If no, do you have any program in place or in the planning stage to make this determination?

If yes, provide a list of those accidents and indicate how many of those accidents came from employees in the bargaining unit?

If yes, provide OSHA 300 logs (complete) for January 1, 2002 to date as well as OSHA 200 logs (complete) for 1996, 1997, 1998, 1999, 2000, 2001.

18. Does the company believe that a behavioral safety program would increase productivity?

If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, consultants whose information created that belief.

If yes, please provide any documentation as to how you would measure the relationship between productivity and a behavioral safety program.

19. What value, if any, does a focus on worker behavior have to the company's image?

- a. Have any corporate executives given talks, workshops or presentations about a focus on worker behavior in the workplace?
- b. Has the company engaged in any community programming about worker behavior in the last twelve months?
- c. Have company employees attended any programs in the last 6 months about unsafe acts or a focus on worker behavior in the workplace? If yes, please identify program.

20. What is the nature of the "unsafe behaviors" that your policy is attempting to address?

21. Which of the following alternatives to a workplace focus on worker behavior, if any, have you investigated?

- Training supervisors to detect performance problems that may affect safety
- Hazard Recognition Program
- Health Promotion Programs
- Programs to reduce employee turnover
- Programs to reduce employee stress

22. Will any government funds be used for paying for any part of the behavioral safety program? If yes, please identify the funding program, the amount of funds and the mission of the program.

23. Has the company signed a contract with any entity, e.g. consultant, training provider, incentive supplier, etc. to conduct any portion of the proposed program?

If yes, please provide a copy of the contract or agreement.

24. Has the received proposals with any entity, e.g. consultant, training provider, incentive supplier, etc. to conduct any portion of the proposed program?

If yes, please provide a copy of the contract or agreement.



25. Are the costs of the proposed behavioral safety program going to be paid from existing budget allocated to health and safety issues or is additional money going to be budgeted for the program?
26. Will information about the time, date and results of any behavioral observation performed on bargaining unit employees be kept confidential?  
  
If yes, how do you plan to maintain confidentiality of this information?
27. When, if ever, are the results of the observations destroyed? If they are stored in a computer, please provide the protocol by which they will be erased from back up systems? How are paper records destroyed, e.g., shredded, sent to landfill?
28. Does the company plan to share with any individuals outside the worksites covered by this collective bargaining agreement, the results of the behavioral observations performed on employees of the bargaining unit?
29. What penalties, if any, might a bargaining unit employee suffer if he/she has a poor result on a behavioral observation?
30. What training, if any, will be done as part of the a focus on the worker behavior program for employees at this facility?
31. Please identify any federal law, rule or regulation or any state law, rule or regulation that requires you to implement a behavioral safety program.
32. If an individual refuses to participate in an observation, what disciplinary action, if any, might the individual expect?
33. What happens to an individual who refuses to be observed because he/she believes he/she is being singled out because of having exercised legal rights, e.g., filed a grievance, Workers' Compensation claim or OSHA complaint?
34. Will a union representative be notified before any observation is performed?
35. What accidents, if any, would prompt the company to order a bargaining unit employee to be drug tested?
36. Under what circumstances, if any, would a bargaining unit employee be asked to take a drug test if he/she were the victim of a workplace accident?
37. How will worker behavior be incorporated into accident investigation procedures?
38. Has a list of unsafe behaviors been developed by the employer or consultant for use at this facility?

39. What procedures are in place to ensure that observations are performed consistently by various program participants?
40. Did the company consult with any experts or for-profit organizations in developing its program?  
  
If yes, please give us their names and addresses and describe their qualifications.
41. How many behavioral safety observation programs, if any, has the company implemented in other facilities?
42. Is there is a written protocol/procedure manual or guidelines for the behavioral safety program? Please provide a copy to us.
43. If you have an estimate of the number of bargaining unit employees who will be absent due unsafe worker behavior discipline, on a yearly basis, please provide.
44. What if any support of the behavioral safety program does management expect or desire from the union?
45. What if any plan does the employer have for either party to end the behavioral safety program?
46. How does the employer plan to incorporate this program into the facility collective bargaining agreement?
47. If incentive awards will be issued as part of this program, what value do these rewards have on an annual basis?
48. What is the budget for the behavioral safety program for the first year and planned for years after?
49. How much bargaining unit time is expected to be allocated to the behavioral safety program for the first year and for years after?
50. Has the employer reviewed the documentation from the union documenting concerns with these programs? Is the employer willing to support a union provided training course for key personnel on this topic?

*Updated 9/2/02 8:57 PM*

## Workplace Drug Testing: Employer Has the Duty to Provide Information For Bargaining

Clara Oleson, University of Iowa Labor Center

Drug testing of private sector employees is a mandatory subject of bargaining<sup>1</sup>. This gives the union the right to request from the employer information necessary to carry out its bargaining obligation. The failure to provide information constitutes a violation of the NLRA, Sec. 8(a)(5)<sup>2</sup>

*“Unions have a broad right to information relevant to the negotiation and administration of the collective bargaining agreement. This obligation is based on the principle that the employer’s duty to bargain includes the duty to provide the union with the information it needs to engage in informed bargaining.”<sup>3</sup>*

The following questions serve various direct and indirect purposes and may be used in various combinations at various times in the process of bargaining. Some questions are designed to disclose the nuts n’ bolts of a proposal, others to uncover the employers’ definition of the problem so the union can determine if the employer understands the problem and whether a drug testing policy will really solve it. Other questions may make the employer seriously consider the ramifications of a drug testing policy, including cost, implementation problems and impact on employee morale. Also, questions which have not been answered can delay.<sup>4</sup> Distribution of the questions to members can educate them as to the complexity of the drug testing issue and the seriousness of the union’s efforts to safeguard their interests.

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<sup>1</sup> See “Guideline Memorandum from the Office of the General Counsel of the NLRB on Drug and Alcohol Testing of Employees”, September 8, 1987.

<sup>2</sup> NLRB v. Acme Industrial Co., 385 U.S. 432, (1967)

<sup>3</sup> Feldacker, Bruce, Labor Guide to Labor Law, Third Edition, Prentice Hall, p162

<sup>4</sup> Impasse is not reached if there remain unanswered questions put forth by the union which are relevant to the mandatory subject of bargaining. The employer may only unilaterally implement its final offer after impasse. Feldacker, Bruce Labor Guide to Labor Law, Third Edition, Prentice Hall, p. 164

# I. QUESTIONS ABOUT THE PURPOSE OF THE PROPOSED DRUG TESTING POLICY:<sup>5</sup>

General questions to determine the scope of the policy envisioned by the company, their perception of the problem of substance abuse in the workplace and the reasonableness of the policy.

The use of the word drug in any question includes alcohol and legal and illegal drugs, unless otherwise noted.

1. Have you conducted or have you caused to be conducted a needs assessment of the workplace to determine what, if any, substance abuse policy is needed?
2. Does the company feel it is condoning drug abuse if it does not have a workplace drug testing policy?
3. Please indicate if any of the reasons listed below are your reasons for doing drug testing?

	Yes	No
Reduce accidents at the workplace	_____	_____
Increase productivity at the workplace	_____	_____
Reduce the use of illicit drugs in the community at large	_____	_____
Reduce the use of the company health care plan	_____	_____
Reduce absenteeism	_____	_____
Deter illegal drug use	_____	_____
Symbolic evidence of corporate responsibility	_____	_____
Increase overall organizational effectiveness	_____	_____
Reduce damage to company property	_____	_____
Demonstrate the company's moral standards	_____	_____
Reduce Workers' Compensation costs	_____	_____
Stop sale of illegal drugs on company property	_____	_____
Stop possession of illegal drugs on company property	_____	_____
Stop distribution of illegal drugs on company property	_____	_____

For each of the reasons you have checked yes, please provide documentation that drug testing will ease or cure the problem.

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<sup>5</sup> Elkouri, Frank and Elkouri, Edna Asper, Resolving Drug Issues, Bureau of National Affairs, Inc., Washington, D.C., 1993, p.240. The existence of a drug problem in the workplace is one factor an arbitrator will consider in a drug testing arbitration case, but the rationale for the drug testing policy will, more importantly set the scope of the employer's authority to reach into off-duty conduct to protect the reputation of the employer or to bolster their position as a fighter in the "War on Drugs."

4. Does the company believe that a drug testing policy would cut down on lost time, sick days or tardiness? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, and/or consultants whose information created that belief.
  - 4a. Do you know how many lost hours in the past twelve months, if any, were do to employee substance abuse?  
If no, do you have any program in place or in the planning stage to make this determination?  
If yes, how many of those lost hours came from employees in the bargaining unit?  
If yes, how many different individual employees were involved in accumulating these lost hours?  
If yes, what drugs were involved ?
  
5. Does the company believe that a drug testing policy would cut down on accidents? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, consultants whose information created that belief?
  - 5a. Do you know how many accidents, if any, in the past twelve months, were due to employee substance abuse?  
If no, do you have any program in place or in the planning stage to make this determination?  
If yes, how many of those accidents came from employees in the bargaining unit?  
If yes, how many different individual employees were involved in those accidents, please indicate whether they were victims or perpetrators of the accidents and what drugs were involved.
  
6. Does the company believe that a drug testing policy would increase productivity? If yes, please provide the evidence upon which you rely for that belief, including but not limited to titles of books, articles, etc. and names and addresses of organizations, consultants whose information created that belief.  
If yes, please provide any documentation as to how you would measure the relationship between productivity and a drug testing policy?
  
7. What value, if any, does drug testing have to the company's image?
  - 7a. Does the company belong to any organizations which engage in legislative lobbying on drug testing in the workplace?
  - 7b. Have any corporate executives given talks, workshops or presentations about drug testing in the workplace?
  - 7c. Has the company paid for any advertising in the last twelve months on the issue of drug use or drug testing?
  - 7d. Has the company engaged in any community programming about drug use or drug testing in the last twelve months?

7e. Has the company attended any programs in the last 6 months about drug use or drug testing in the workplace?

8. What is the nature of the “drug problem” that your policy is attempting to address?  
8a. What drugs are involved?
9. Please provide any evidence, excluding personally identifiable information, that drugs are being sold or transferred at the workplace or have been sold or transferred in the past twelve months.
10. Please provide any evidence, excluding personally identifiable information, that illegal drugs are being used at the workplace or have been used in the past twelve months.
11. Please provide any evidence, excluding personally identifiable information, that legal drugs are being used illegally at the workplace or have been used in the past twelve months.
12. Which of the following alternatives to workplace drug testing, if any, have you investigated?

Yes

- |  |       |
|--|-------|
| Training supervisors to detect performance problems that may affect safety | _____ |
| Performance testing, e.g., mechanical aptitude tests                       | _____ |
| Employee Assistance Programs   | _____ |
| Health Promotion Programs  | _____ |
| Educational Programs aimed at preventing or reducing drug use              | _____ |
| Programs to reduce employee turnover                                       | _____ |
| Programs to reduce employee theft  | _____ |
| Programs to reduce employee stress   | _____ |

## II. QUESTIONS ABOUT THE ECONOMICS OF THE DRUG TESTING PROPOSAL

1. Will any state economic development monies, for example from the Iowa Industrial New Jobs Training Program, be used for paying for any part of the drug testing policy?  
If yes, please identify the program, the amount of funds and the mission of the program.
2. Has the company signed a contract with any entity, e.g. hospital, medical laboratory, to devise a substance abuse policy, conduct and/or evaluate drug tests?  
If yes, please provide a copy of the contract or agreement.
3. Has the company investigated any proposals from any entity, e.g. hospital, medical laboratory, medical supply outlet about drug testing in the workplace?
4. Has the company investigated any proposals from any entity, public or private, about educating employees of the bargaining unit about the use of drugs, signs of substance abuse, availability of substance abuse evaluation and treatment programs and/or drug testing in the workplace?  
If yes, please identify the entity and give a general description of the program and its costs.
5. Are the costs of the drug testing program going to be paid from existing budget allocated to health and safety issues or is additional money going to be budgeted for the drug testing program?
6. What plans, if any, exist to evaluate the cost benefit of the drug testing policy in twelve months, i.e. do the monetary benefits outweigh the monetary costs?

### III. QUESTIONS ABOUT THE RECORD KEEPING AND PRIVACY ASPECTS OF THE DRUG TESTING PROPOSAL.

1. Will information about the time, date and results of drug tests performed on bargaining unit employees be kept confidential?  
If yes, how do you plan to maintain confidentiality of this information?
2. When, if ever, are the results of the drug tests destroyed? If they are stored in a computer, please provide the protocol by which they will be erased from back up systems? How are paper records destroyed, e.g., shredded, sent to land fill?
3. Does the company plan to share with any individuals outside the company, e.g., police, other employers, the results of drug tests performed on employees of the bargaining unit or former members of the bargaining unit?
4. Please identify all the means by which the results of the drug tests might be communicated to the company, e.g., telephone, e-mail, mail, fax and what the company plans are to keep these communications confidential?
  - 4a. Will any results of drug tests on bargaining unit employees be stored in a computer?  
If yes, what computer security mechanisms will be employed to protect the confidentiality of the results so stored?
5. What penalties, if any, might a bargaining unit employee suffer if he/she disclose the results of a drug test, including their own?
6. As part of the company's drug testing policy, may searches of a bargaining unit employee's person, locker or car be undertaken?  
If yes, please identify the type of search and the entities who will conduct the search, e.g., company security, outside contractors, police, sheriff.
7. As part of the company's drug testing policy, may video surveillance of a bargaining unit employee's work area, home, automobile or public space use be undertaken? Please explain.
8. As part of the company's drug testing policy, may law enforcement or private security firms to work as undercover informers in the workplace?
9. As part of the company's drug testing policy, will any law enforcement personnel or equipment be used? e.g. a breathalyzer machine at the local jail, off-duty police working as security personnel at the workplace.



10. Under what circumstances, if any, will the company allow the direct observation of the act of urination during the collection phase of urinalysis under the drug testing policy?
11. Under what circumstances, if any, will the company allow the direct observation of the act of urination by a member of a sex different than the donor?
12. Under what circumstances, if any, will the company allow the video taping of the donor's act of urination?
13. Please identify to what groups or individuals, if any, the results of the drug tests will be reported or communicated, e.g., the Governor's Substance Abuse Policy Institute. If this type of communication is done, what means will be used to protect the general reputation of the employees of the bargaining unit from the stigma of being considered drug abusers?
14. What training, if any, will be done as part of the drug testing program to educate employees as to the law of defamation and invasion of privacy for the disclosure of information about employee alleged drug test results?
15. What provisions, if any, will be in place to assure the dignity of the worker, from collection through notification of the results, who submits to a drug test?
16. What individuals, trained in the issues of drug testing in the workplace, will have access to the results of any drug tests performed on bargaining unit **employees**?
17. Which individuals, untrained in the issues of drug testing in the workplace, will have access to the results of any drug tests performed on bargaining unit employees?

#### **IV. QUESTIONS ABOUT THE CIRCUMSTANCES WHICH PROMPT THE COMPANY TO ORDER AN INDIVIDUAL TO SUBMIT TO A DRUG TEST**

1. Please identify any federal law, rule or regulation or any state law, rule or regulation which requires you conduct drug testing of bargaining unit employees. Further, please identify what jobs in the workplace come under this requirement.
2. Will the company, under any circumstances, rely on information supplied by unidentified informants to ask a bargaining unit employee to take a drug test, e.g. a telephone report from an unidentified individual about someone's state of impairment.  
If yes, identify under what circumstances you would rely on unidentified informants and what procedures you would have in place to assure reliability of the information so received.
3. Will the company, under any circumstances, rely on information supplied by identifiable informants to ask a bargaining unit employee to take a drug test?  
If yes, under what circumstances would the company be prepared to reveal the identity of the informant, e.g., grievance investigation?
4. Will supervisors be trained to detect substance abuse in the workplace, e.g., distinguishing between substance abuse problems and other medical conditions?  
If yes, how many hours will the training involve, who will do the training and how often will it be done?
5. If an individual refuses to take a drug test because of religious reasons, is the test result reported as positive, negative or invalid? What disciplinary action, if any, might the individual expect?
6. If an individual refuses to take a drug test because of reasonable concerns about the accuracy and reliability of the drug tests, is the test result reported as positive, negative or invalid? What disciplinary action, if any, might the individual expect?
7. If an individual refuses to take a drug test because he/she believes he/she is being singled out because of union activity, is the test result reported as positive, negative or invalid? What disciplinary action, if any, might the individual expect?
8. If an individual refuses to take a drug test because he/she believes he/she is being singled out because of the personal animosity from a supervisor, is the test result reported as positive, negative or invalid? What disciplinary action, if any, might the individual expect?

9. What happens to an individual who refuses to take a drug test because he/she believes he/she is being singled out to take a drug test because of having exercised legal rights, e.g., filed a Workers' Compensation claim?
10. What happens to an individual who refuses to take a drug test because he/she has fears that the drug test will reveal their usage of legally prescribed medications, e.g. contraception pills?
11. Will a union representative be notified before any drug test is administered?
12. Will the donor have the right to have a union representative present at the collection sight of the drug test?
13. Under what circumstances, if any, might a bargaining unit employee be asked to take a drug test outside of his/her normally scheduled hours?
14. What accidents, if any, would prompt the company to order a bargaining unit employee to be drug tested?
15. Under what circumstances, if any, would a bargaining unit employee be asked to take a drug test if he/she were the victim of a workplace accident?
16. What records or documentation would a supervisor be required to create before he/she asks an employee to submit to a drug test?
17. What records or documentation would a supervisor be required to create after he/she asks an employee to submit to a drug test?
18. Under what circumstances, if any, could an employee require a supervisor to submit to a drug test?  
If the answer is never, please describe what employees are supposed to do if they have a reasonable belief that their supervisor is impaired due to substance abuse.
19. Before an employee is required to submit to a drug test, will he/she be allowed to fully consult with a union representative educated in workplace drug testing?
20. Before post-accident drug testing is done, will you require evidence that the employee caused the accident?
21. Do you plan to base your decisions about violations of the drug testing policy, at least on some occasions, on direct observation of observable phenomena while at work? If yes, what training, if any, will the observers have in detecting drug abuse or misuse? If no, how will the observers distinguish between symptoms which might be related to diabetes, eye disorders, stress or chronic fatigue syndrome and those related to drug use or abuse?

## V. QUESTIONS ABOUT THE TESTS TO BE USED AND THE THRESHOLD AMOUNTS OF DRUG METABOLITES TO BE USED AS DEFINING A POSITIVE TEST.

1. Please identify what drugs or drug metabolites will be tested for under the proposed drug testing policy.
2. For each drug identified in question 1 above, please indicate what screening and confirmatory test will be employed under the drug testing policy for each drug or its metabolite. Please identify whether the Food and Drug Administration has approved the identified testing mechanism, if you know.
3. For each drug identified in question 1 above, please indicate the cut off levels of drug or drug metabolite, the screening, confirmatory and reanalysis test will identify as a positive result.
4. For each of the drugs identified in question 1, please indicate what level of drug or its metabolite in the collected sample indicates drug use? Please provide evidence to support your opinion.
5. For each of the drugs identified in question 1, please indicate what level of drug in the collected sample indicates work impairment. Please provide evidence to support your opinion.
6. For each of the drugs identified in question 1, please indicate if you can make any assertion as to time of previous drug use. For example is the following a valid statement: 200 ng/ml of THC indicates marijuana use in the previous 8 hours.
7. If your policy is to treat as a positive test any evidence of drug in the collected specimen, i.e. a zero tolerance approach, will this be the same for illegal and legal drugs, e.g., marijuana and Tylenol with codeine?
8. The concentration of drug in a urine sample below which the assay (drug screening or confirmatory test) can no longer be considered reliable is the “sensitivity” limit. The “cutoff” point is the concentration limit that will actually be used to assay samples and below which tests will be considered negative. Please advise of the manufacturers cutoff and sensitivity limits of their assays for each drug or its metabolite identified in question 1.
9. What company policy, if any, will be used to eliminate false positives and false negatives in the screening and confirmatory tests?

10. What is the company understanding of the circumstances under which a false positive test result might occur?
11. Will the company provide brochures to all people required to take a drug test detailing the extent to which other drugs or substances cross react with the test under consideration?
12. Please detail the role, if any, of the Medical Review Officer (MRO), in the drug, testing program and include the identification and qualifications of the MRO, the physical location of his/her professional practice and the means, if any, by which a bargaining unit employee might have a face-to-face consultation with the MRO about the drug test to which he/she has been asked to submit.
13. Please indicate your understanding of the ethical obligation of the MRO to maintain confidentiality of information received from a bargaining unit employee in the course of a drug testing situation.
14. Does the company assert that the level of “intoxication” of an individual due to marijuana use be gauged by urinalysis? Can his/her “use pattern” be determined? If yes, please provide the documentation which is the basis for your belief.
15. Do you agree that the test systems used in the drug testing policy should be based on state-of-the-art methods and best-available-technology? If yes, what assurances can you make that such methods and technology will be used?
16. What procedure, in any, will be in place if the MRO does not speak the same language as the employee?
17. If an individual has drug or drug metabolite in their urine due to taking a prescription drug of a relative, e.g., mother or spouse, and the evidence supports this contention, will the test result be reported as positive, negative or invalid?
18. The 1998 Iowa Drug Testing Statute allows the Medical Review Officer (MRO) to be a chiropractor. Under what circumstances, if any, would you rely on a MRO who is not a licensed physician, as required by the federal DHHS Mandatory Drug Testing Guidelines?
19. What laboratory or laboratories or what company will set up the tests and who is the person we can contact to discuss the lab procedures and the quality assurance and performance testing programs?
20. Does the employee have to sign any forms as part of the testing procedure and is the signature of those forms a condition of employment? If any forms are used, please provide us with a copy.

- 21.** Is one of the requirements of your laboratory selection that the lab participate in a quality control plan/proficiency testing program from the American College of pathologists or the Joint Committee on the Accreditation of Hospitals? If no, indicate the methods which will be used to guarantee quality standards?
- 22.** Did the company consult with any experts or for-profit organizations in developing its policy? If yes, please give us their names and addresses and describe their qualifications.
- a.** How many drug tests, if any, has the company done in the last three years, and what have the results been, that is: the number of confirmed positives, and the number of negatives for each substance
  - b.** the action which triggered the testing
  - c.** action which was taken after the test results were known
  - d.** the rate of positive test results on the basis of sex and race
- 23.** Has the company contracted for or performed any internal research regarding drug levels in the body as those levels impair a person's ability to function on the job? If yes, please identify such firms and/or experts and provide the details of any contracts or working agreements with such firms and/or experts.
- 24.** If there is a written protocol/procedure manual or guidelines for the sample collection for drug test, please provide a copy to us.

## VI. QUESTIONS ABOUT RANDOM DRUG TESTING

1. Do you plan to conduct unannounced drug testing allowed under the 1998 Iowa drug testing statute? If yes, please describe the “neutral and objective selection process” which will be used to select employees to be tested.
2. Please identify the entity “independent from the employer” who shall select the employees to be tested.
3. Please identify the software program, manufacturer, distributor’s name, address and telephone number which shall generate random numbers for the selection process
4. What percent of the bargaining unit shall be targeted for unannounced drug testing? Please provide the decision making criteria for that decision, including economic implications of various testing options. Please identify all sources you used to fix that percent.
5. In how many cycles per year will random testing be done?
6. For the percent and the frequency of cycles you have selected, what is your understanding of how many employees are likely to be selected to be tested more than once a year?
7. What quality assurance mechanisms shall be in place to assure the accurate running of the computer generated random number selector?
8. What security means will you employ to maintain the confidentiality of the identity of those employees selected for random testing?
9. Please identify what pools of employees you will set up for random testing. Generally describe the pools and indicate what jobs will be in which pools, including whether management employees will be in pools with bargaining unit employees, will be in their own pool, or will not be tested.
10. Do you plan to conduct drug tests of employees during drug or alcohol rehabilitation? If so, under what criteria will the decision to test be made? If yes, will a substance abuse counselor or a similarly trained professional make the decision to test employees during rehabilitation? Will that person advise management as to the results of any tests during rehabilitation? If a substance abuse counselor or a similarly trained professional will not make the decision, please advise of the job title of the person who will be making the decision.
11. Do you plan to conduct drug tests of employees after completion of drug or alcohol rehabilitation? If yes, under what criteria will the decision to test be made? If yes,

will a substance abuse counselor or a similarly trained professional make the decision to test employees after completion of drug or alcohol rehabilitation?

- 12.** How will you identify employees who have completed drug or alcohol rehabilitation? Will you ask employees to self-report their rehabilitation history?
- 13.** What implications, if any, does a decision to test during or after drug rehabilitation have in light of the Americans with Disabilities Act?
- 14.** Will employees who want to enter drug rehabilitation be able to use the Family and Medical Leave Act?
- 15.** Will employees who want to enter drug rehabilitation be able to use sick leave, vacation, unused personal leave or a general leave of absence?
- 16.** If you have an estimate of the number of bargaining unit employees who will be absent due to rehabilitation, on a yearly basis, please provide.
- 17.** To evaluate the pool into which bargaining unit employees may be placed, please advise if the following employees, under the 1998 Iowa drug testing statute, are “actively involved in the day-to-day operations of the business”: all chief executive officers
  - a.** all vice-presidents
  - b.** all supervisors
  - c.** all managers
  - d.** any other officer of the employer
- 18.** If you have identified any of the persons in the previous questions as being actively involved in the day-to-day operations of the business, please advise of the reasons they will or will not be included in pools with bargaining unit workers.



## VII. QUESTIONS ABOUT COLLECTION SITE PROCEDURES

1. Will you follow the collection site procedures of the Department of Health and Human Services, “Mandatory guidelines for Federal Workplace Drug Testing Programs,” as amended?
2. If no, what training, if any, shall the collection site person be required to have?
3. Shall the collection site person be in a pool to be randomly tested?
4. If the collection site person does not speak the same language as the employee to be tested, what arrangements, if any will be made to have a translator present?
5. What chain of custody form do you intend to use, starting at the collection site?  
Please provide a sample of the form you intend to use.
6. How many collection sites will you have? Please give the address of each collection site you intend to use.
7. Please describe what materials, equipment and supervision you intend to have at each collection site?
8. For each collection site, please describe the temporary storage you will provide for collected samples, including time samples will be stored.
9. Please describe the procedure for packing and handling the collected samples for transportation to the drug testing laboratory.
10. What security procedures shall be in place for the collection site?
11. Will each collection site be dedicated solely to drug testing? If not, how will the portion of the facility dedicated to sample collection be secured?
12. Who will execute the chain of custody forms at the collection site?
13. Will handling and transportation of samples from one individual or place to another be accomplished through chain of custody procedures? If yes, please describe those procedures. If not, please explain why.
14. What effort, if any, will be made to minimize the number of persons handling specimens at the collection site?
15. Who will be permitted at the collection site when urine specimens are collected?

16. Will you allow direct observation of the sample urine collection if you have reason to believe that a particular donor may alter or substitute the specimen to be provided? If yes, what facts and evidence will you rely up to form a judgment that the specimen may be in danger of being altered or substituted?
17. What precautions shall be taken to ensure that specimen not be adulterated or diluted during the collection procedure?
18. What precautions shall be taken at the collection site to assure that the information on the collected specimen bottle or container can identify the donor from whom the specimen was collected.
19. The DHHS Mandatory Testing Guidelines sets out “minimum precautions” to assure that unadulterated specimens are obtained and correctly identified at the collection site. Will you follow these guidelines?
20. Shall the collection site be accessible to peoples with disabilities and meet the accessibility guidelines of the Americans with Disabilities Act?
21. How shall the collection site person handle the split specimen samples?
22. Will specimens be placed in containers designed to minimize the possibility of damage during shipment? If yes, please provide a sample.
23. Will the collection site person retain the chain of custody form or pack it in the package with the specimen going to the drug testing lab?

## VIII. QUESTIONS ABOUT REHABILITATION

1. Under what circumstances, if any, would an employee with a positive drug test result be allowed to undergo substance abuse evaluation and treatment?
2. If an employee successfully completes rehabilitation, after a positive drug test, what monitoring, if any, would occur of the employee's work performance which would be different than if the employee had not been in a rehabilitation program?
3. If an employee is to have some opportunity for rehabilitation after a positive drug test, will the employee be able to choose the rehabilitation program? If not, please identify the rehabilitation program(s) the employee shall be expected to use.
4. If an employee is in rehabilitation, what information shall be provided to the employer during that treatment about the employee's progress?



# The Steelworker Perspective on Behavioral Safety



Comprehensive Health and Safety  
vs.  
Behavior-Based Safety

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## What is behavior-based safety?

The term behavior-based safety is used to describe a variety of programs that focus on worker behavior as the cause for almost all workplace accidents. Simply stated, behavior-based safety proponents believe that between 80% to almost 100% of accidents are caused by *unsafe acts*. This belief is highlighted by the results of a 10-year DuPont study (summarized in the adjacent box) that found *unsafe acts* causing or contributing to nearly all injuries.<sup>1</sup> This type of data is used to explain that not only are *unsafe acts* the cause of almost all workplace accidents, but that for every accident that occurs, there are many more *unsafe behaviors* that aren't accounted for. This point is often relayed by showing an iceberg representing relatively few lost time accidents and fatalities at the top, more medical treatment cases and even more first aid cases just above the water, but many-many *unsafe acts* hidden under the surface of the water.<sup>2</sup>

Causes of Lost Workday and Restricted Workday Injuries Results of a 10-year DuPont Study	
<b>Unsafe Acts Associated with:</b>	
Personal protective equipment	12%
Positions of People	30%
Reactions of People (Actions of People)	14%
Tools and Equipment	28%
Procedures and Orderliness	<u>12%</u>
Total Injuries Caused by Unsafe Acts	96%
Total Injuries with Other Causes	<u>4%</u>
	100%

These programs are typically sold to employers by a consultant. The process is similar to what we have seen over the years with many total quality management programs. The ultimate objective of the relationship between the consultant and the client is to help achieve management goals such as cost savings and a reduction in accident rates. After this consultant-client relationship is established for behavior-based safety, union or worker buy-in is sometimes sought.

These programs identify key *unsafe behaviors* that are believed to contribute to the facility accidents. This often uses information from accident reports from the past few years. Then these programs typically enlist floor level supervision or workers as observers, behavioral inspectors, or *unsafe act cops*. The observer's role is to perform a subjective review of workers performing their job and identify *unsafe acts* performed by the worker. The functions of the observation are to obtain a regular sampling of the safety program, and provide feedback to workers.<sup>3</sup> Feedback typically occurs just after the observation. Workers and the observer discuss what the observer saw. Typically observers have been trained to use positive feedback to reinforce the *safe behaviors* observed, but the observer also draws the worker's attention to the *unsafe behaviors* observed. This is done in an attempt to achieve the main goal of behavior-based safety and change worker behavior from *unsafe* to *safe*. Data collected during the inspections is tabulated and utilized to determine priorities for additional worker training.

### Behavior-Based Safety Summary

- Almost all accidents result from *unsafe acts*
- For every accident, there are many *unsafe behaviors*
- Consultant - Employer relationship
  - Worker buy-in
- Identify key *unsafe behaviors*
- Train workers/management to observe workers
- Perform observations
- Provide feedback to move away from *unsafe behavior*
- Record and use data from observations



**Why are workers and unions concerned about behavior-based safety?**

The United Steelworkers (USW) represents over 800,000 members in the United States and Canada. Many members of our union work directly in the basic steel industry. But the union membership has changed over the years. Now the majority of our membership works in other industries such as rubber and plastics, chemicals, nonferrous metals, mining, transportation equipment, general manufacturing, health care and public service industries. Many kinds of occupational health and safety hazards come with the diversity of the workplaces that our members work. USW policies and positions regarding occupational safety and health matters are based on the experience of the USW Health, Safety and Environment Department Staff, which is based on the workplace experiences of our membership.

Because of worker exposure to health and safety hazards, a USW member is killed on the job every 10 days. The union and our membership take accident investigation very seriously. When we investigate accidents, we search for root causes. What we find is very different from the *unsafe acts* that behavior-based safety proponents say cause accidents. We do **not** find *unsafe acts* as a prevalent root cause of accidents. The USW has tracked data on fatality investigations for 20 years. What we almost always find when we investigate catastrophic accidents including fatalities is that multiple root causes that are related to hazards and unsafe conditions, not multiple *unsafe behaviors*, cause the accident. The table below provides a sample of root causes often cited in USW accident investigations.

ACCIDENT CAUSES COMMONLY IDENTIFIED BY USW LOCAL UNION ADVOCATES		
Equipment not Available	Contact Causing Burns	Faulty Equipment
Increased Production Quotas	Being Caught Between or Struck By	Increased Contracted Work
Known Hazards NOT Corrected	Safety & Health Management Failure	Inadequate Working Environment
Exposure to Energy	Lack of Training	Hazards Not Identified
Inadequate Training	Falls	Electrocution
Missing or Faulty Safety Devices	Process and Equipment Design	Chemical and/or Toxic Material Exposure
Lack of Maintenance	Human Factors	Out of Compliance

Behavior-based safety programs attempt to change *worker behavior*. What we have found is that the workplaces using these programs are much more likely not to address the hazards that are in fact the root causes of worker injury, illness and death. At a behavioral safety workplace hazards often do not get identified; and even when identified, do not get fixed. Workers receive feedback from observers that encourages them to work more safely around a hazard, but the hazard itself does not get eliminated or controlled. As long as the hazard remains, the potential for injury or illness remains.

Behavior-based safety programs continue to be prevalent in the industries that the USW represents. In a survey underway by the United Steelworkers, preliminary results indicate that 28% of unionized tire manufacturing facilities in the United States currently have a behavior-based safety program. Although often touted as “leading-edge technology”,<sup>4</sup> this type of program is not new to workers. Our members have seen these same ideas, packaged a little differently, for years. Other unions have also concluded that despite behavior-based safety’s current popularity, it is nothing new. A publication of the United Auto Workers (UAW) Health and Safety Department states, “Fifty years ago, H.W. Heinrich popularized the view that the vast majority of injuries and illnesses are the result of *unsafe acts* by workers. Heinrich was an Assistant Superintendent of the Engineering and Inspection Division of Travelers Insurance Company during the

## Steelworker Perspective on Behavioral Safety Comprehensive Health and Safety vs. Behavior-Based Safety

1930's and 1940's. He concluded that 88% of all industrial accidents were primarily caused by *unsafe acts*. But Heinrich's conclusion was based on poorly investigated supervisor accident reports, which then, as now, blamed injuries on workers."<sup>5</sup>

The USW, UAW and other unions have identified numerous concerns with behavior-based safety programs. The USW contends that behavior-based safety programs can't take the place of a comprehensive health and safety program. Comprehensive health and safety programs that involve workers and their unions, identify and correct workplace hazards and unsafe conditions, and utilize the hierarchy of controls to address hazards are essential to making workplaces safer. While many behavior-based safety proponents now claim to agree with this (according to one behavior-based safety company, "Behavior-Based Safety WILL NOT take the place of the hierarchy of controls because it CANNOT"<sup>6</sup>), it has been our experience that many facilities with behavior-based

### USW Comprehensive Health and Safety Program Components

- Union & Management Commitment
- Adequate resources
- Workers right to identify hazards without fear of retaliation
- Rapid process of identifying and correcting hazards
- Right to refuse unsafe work
- Union access to information
- Union involved with incident investigations
- Training for safety and health committee
- Collaboration in the design and oversight of all aspects of Safety and health programs
- OSHA standards are only a starting point

safety are **not** addressing health and safety hazards and unsafe conditions with a comprehensive health and safety program. Despite behavior-based safety company rhetoric, when behavioral safety programs come into workplaces, focus moves away from comprehensive safety and health programs. We have seen facility after facility with behavioral safety programs that have eliminated, restricted or greatly reduced the role of a joint health and safety committee. In other plants, resources are directed or focus mostly or solely on worker behaviors. Behavior-based safety programs do not provide observers with the training needed to properly identify unsafe conditions. And as already stated, we even see plants with behavior-based safety programs that teach workers how to work more safely while exposed to fixable but uncorrected hazardous conditions.

Another worker concern with behavioral safety is the *unsafe behaviors* that are listed, categorized and utilized to perform observations. Resources are dedicated to compiling a list of the primary *unsafe behaviors* from a workplace. This time is spent by a combination of workers, management and consultants reviewing piles of accident investigation reports. While good intentions can go into this process, the lists developed in diverse workplaces with diverse hazards end up being nearly identical, including:

- Use of personal protective equipment by the worker
- Body position or the position of the worker
- Actions of workers
- Workers following procedures
- Housekeeping or orderliness
- The use of tools and equipment

Unfortunately, the information contained in many of the reports used to generate the lists is not accurate to begin with. In many cases supervisors prepared the accident reports that are reviewed. Many supervisors have not been adequately trained on identifying root causes, don't believe that they have time to perform a proper accident investigation, and/or often list worker error or other blame the worker excuses as the cause of the accident.

Observing the *behaviors* on these lists does not result in a focus back on health and safety hazards and hazard elimination using the hierarchy of controls. In fact, our experience is that, despite the recent lip





## Steelworker Perspective on Behavioral Safety Comprehensive Health and Safety vs. Behavior-Based Safety

service given by behavior-based safety consultants to the importance of the hierarchy of controls, workplaces that concentrate on identifying *unsafe worker behaviors* move their overall health and safety program further from addressing unsafe working conditions and health and safety hazards. Essentially, behavior-based safety “turns the hierarchy of controls upside down, contradicting one of the most widely accepted concepts in injury and illness prevention.”<sup>7</sup>

### How does behavior-based safety fit with OSHA compliance?

The Occupational Safety and Health Administration (OSHA) has the authority to promulgate occupational safety and health standards. This authority is provided by Section 6 of the Occupational Safety and Health Act (OSHAct). The OSHAct also provides OSHA with the authority to inspect and investigate workplaces (Section 8 of the OSHAct) and issue citations to employers who fail to comply with OSHA standards (Section 9 of the OSHAct). This means that an employer that does not comply with an OSHA standard is not meeting **minimum requirements**. In other words, OSHA standards are minimum requirements that are legally required.

At one plant represented by the USW, behavior-based safety and OSHA compliance have been popular discussion topics. This plant has had a behavior-based safety program in place since 1995. The mission statement of the behavioral program at this plant is to provide a floor-driven process to reduce at-risk behaviors by collecting data through observation and providing feedback to achieve continuous safety improvement.

Since the program began, OSHA has been called to the plant through worker complaints and has also inspected the workplace because of the plant’s injury and illness rate. The worker concerns associated with these complaints have certainly been substantiated by the significant OSHA citations issued over the past few years. The OSHA citations issued and proposed penalties are summarized below.

	Willful	Repeat	Serious	Other	Unclassified	Penalty
1999			15	6		>\$15,000
1998	2	1	3			>\$150,000
1997			4	1	2	>\$75,000
<b>3-year total</b>	<b>2</b>	<b>1</b>	<b>22</b>	<b>7</b>	<b>2</b>	<b>&gt;\$240,000</b>

OSHA standards provide us with a guide to bare bone minimum acceptable requirements for a health and safety program. A program that just complies, or just tries to comply, with OSHA standards is certainly not a comprehensive health and safety program. Given the citation history of this plant for the past three years, it would be difficult to conclude that this plant has a working comprehensive program. At this same plant, thousands of observations have been performed. The goal at this plant is to perform more than 300 observations per week. Well more than 7,500 hours per year are dedicated to observation of worker behavior. However, the local union at this plant was only able to find a handful of observations that noted the numerous health and safety hazards found during the OSHA inspection process. One behavior-based program, the DuPont STOP (Safety Training and Observation Program) has a training manual that instructs observers that, “Both safe and at-risk behaviors – also called safe and unsafe acts – are always done by people, not machines. This is why skilled observers look at everything in the workplace but concentrate on *people and their actions* to see whether they are working safely.”<sup>8</sup> Our experience from this plant and others is that the behavioral safety programs train workers to be good observers, but fail at training observers to properly identify and understand health and safety hazards.

## Steelworker Perspective on Behavioral Safety Comprehensive Health and Safety vs. Behavior-Based Safety

Management at this plant provides much more time for union involvement in the plant's behavioral safety program than it does for union involvement in other pieces of a health and safety program. In fact, the local union at this plant has rejected a full-time behavioral safety facilitator until the company makes the position of union safety committee chairman a full-time position. Thus far the company has refused. At this plant, as in many facilities with a behavior-based safety program, other areas of health and safety don't receive the resources or the attention that they need to be properly run. The USW contends that the skewed weighting of resources is an almost inevitable result of the implementation of a behavior-based safety program.

### Where do we go from here?

Behavioral safety is based on the theory that almost all accidents result from an *unsafe act*. And for every accident, there are many *unsafe behaviors*. The USW knows from our experience dealing with health and safety in thousands of workplaces, that this is wrong. Hazards and unsafe conditions cause injuries and illnesses. When the hazards are properly identified and fixed, the injuries and illnesses decrease.

Establishing effective comprehensive health and safety programs is our union's goal. These programs enlist participation from workers and their unions to address hazards and conditions and get these problems fixed. Behavior-based safety is **not** a required piece of a comprehensive health and safety program. We do recognize the possibility of human error on the job. Our goal is to see that workplaces, jobs and equipment are designed in ways that recognize that possibility and assure that dire consequences will not result from inevitable human error. The emphasis on workplace and job design must be the same as the emphasis we seek for ergonomic hazards: fix the job, not the worker!

Behavior-based safety consultants establish a relationship with employers to meet the consultants goals (to sell their programs) and employers' goals to cut costs. Then workers are invited into the mix, with consultants and employers seeking their buy-in. Workers are needed to achieve management's goals; thus many behavior-based safety programs get referred to by consultants and management as "worker-" or "floor-driven." The company buys a vehicle to achieve their health and safety goals. Then they allow the workers to choose the floor mats and maybe pick out the color of the vehicle. Workers need to be involved much sooner in the decision making process to so that we can bring our expertise to the discussions to determine what is needed to improve workplace health and safety. It is important that workers and unions achieve the fundamental goals of the union – including safer, healthier and more hazard-free jobs. We maintain that workers are the solution to workplace health and safety concerns, not the problem.

And, as always we believe that the role of the International Union Health, Safety & Environment Department is to provide technical assistance, education, and access to resources to our members. We believe that workers and workplaces considering behavior-based safety or involved with behavior-based safety should hear all sides of this issue and make an informed decision. We also welcome the opportunity to discuss these concerns with our employer counterparts and the behavior-based consultants.

<sup>1</sup> DuPont, *Safety Training Observation Program for Supervision – Unit 1 Introduction: The STOP System*, page 1.11, 1995

<sup>2</sup> DuPont, *Managing Safety: Operations Managers' Safety Training Resource Manual*, 1991

<sup>3</sup> Thomas Krause, John Hidley, and Stanley Hodson, *The Behavior-Based Safety Process – Management Involvement for an Injury-Free Culture*, Van Nostrand Reinhold, New York, 1990, p. 165

<sup>4</sup> James B. Spigener and Stanley J. Hodson, "Are Labor Unions In Danger of Losing Their Leadership Position in Safety? – Their Resistance to Behavior-Based Safety Makes Us Wonder", *Professional Safety*, December 1997, p. 37

<sup>5</sup> Jim Howe, "Debunking Behavior Based Safety", *Occupational Health & Safety - Newsletter of the UAW Health & Safety Dept.*, No. 1, 1999, p. 5

<sup>6</sup> Thomas R. Krause, General Editor, *Current Issues In Behavior-Based Safety – How to Make Continuous Improvements a Reality*, 1999 (Jim Spigener, Chapter 4, "The Naysayers Have Had a Legitimate Gripe"), page 26

<sup>7</sup> Jim Howe, "Warning: Behavior-Based Safety Can Be Hazardous to Your Health & Safety Program", *Occupational Health & Safety - Newsletter of the UAW Health & Safety Department*, No. 4, 1998, p. 6

<sup>8</sup> DuPont, *Safety Training Observation Program for Supervision – Unit 1 Introduction: The STOP System*, page 1.10, 1995

# OSHA Regional News Release

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**U.S. Department of Labor  
Office of Public Affairs**

**Region 3**

Region 3 News Release: III-99-02-23-013-DE  
Tues., February 23, 1999  
Contact: Leni Uddyback  
OFFICE:(215) 596-1130

## **DUPONT COMPANY AGREES TO PAY \$70,000 OSHA PENALTY AND INITIATES SAFETY AND HEALTH IMPROVEMENTS AT SEAFORD PLANT**

**E.I. DuPont DeNemours & Company (DuPont Company)** will pay a \$70,000 penalty for safety and health recordkeeping violations at its Seaford, DE plant, and will implement a series of employee health and safety improvements under an agreement announced today by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA). The agreement settles recordkeeping citations issued against the company.

DuPont was issued one unclassified citation and two other-than-serious citations as a result of an OSHA inspection, initiated on August 24, 1998, in response to a complaint filed by an employee, whose cumulative trauma injury was not acknowledged by the company as work-related.

The unclassified citation was due to DuPont's failure to record 117 occupational injury and illness cases during 1997 and 1998 that should have been recorded. Additionally, two citations were issued because certain injury and illnesses cases were recorded incorrectly.

"We are pleased that DuPont has chosen to work cooperatively with us to improve the safety and health conditions for its workers," says Lacy J. Sutton, area director at the Wilmington OSHA office, "This agreement not only alleviates the need for a long and costly litigious process, it also ensures a safer environment for the 1200 employees who work at the DuPont Seaford plant."

Under the settlement agreement, DuPont will pay the \$70,000 penalty, as well as initiate the following safety and health improvements:

1. DuPont will conduct a corporate-wide review of its injury/illness records for the past five years and correct any deficiencies found;
2. DuPont will review all unrecorded cases for compensability and affected employees will be compensated for any previous expenses incurred due to the work-related injuries;
3. DuPont will provide training on OSHA injury/illness recordkeeping requirements to employees at the plant with recordkeeping responsibilities;
4. All DuPont Seaford employees will receive ergonomic training related to the ergonomic hazards in their jobs;
5. All DuPont Seaford employees will receive information on Workers' Compensation regulations and procedures; and
6. The DuPont Seaford plant will evaluate additional steps to address on-going ergonomic hazards at the plant.

DuPont is required to report to OSHA its progress in complying with this agreement as well as federal recordkeeping requirements.

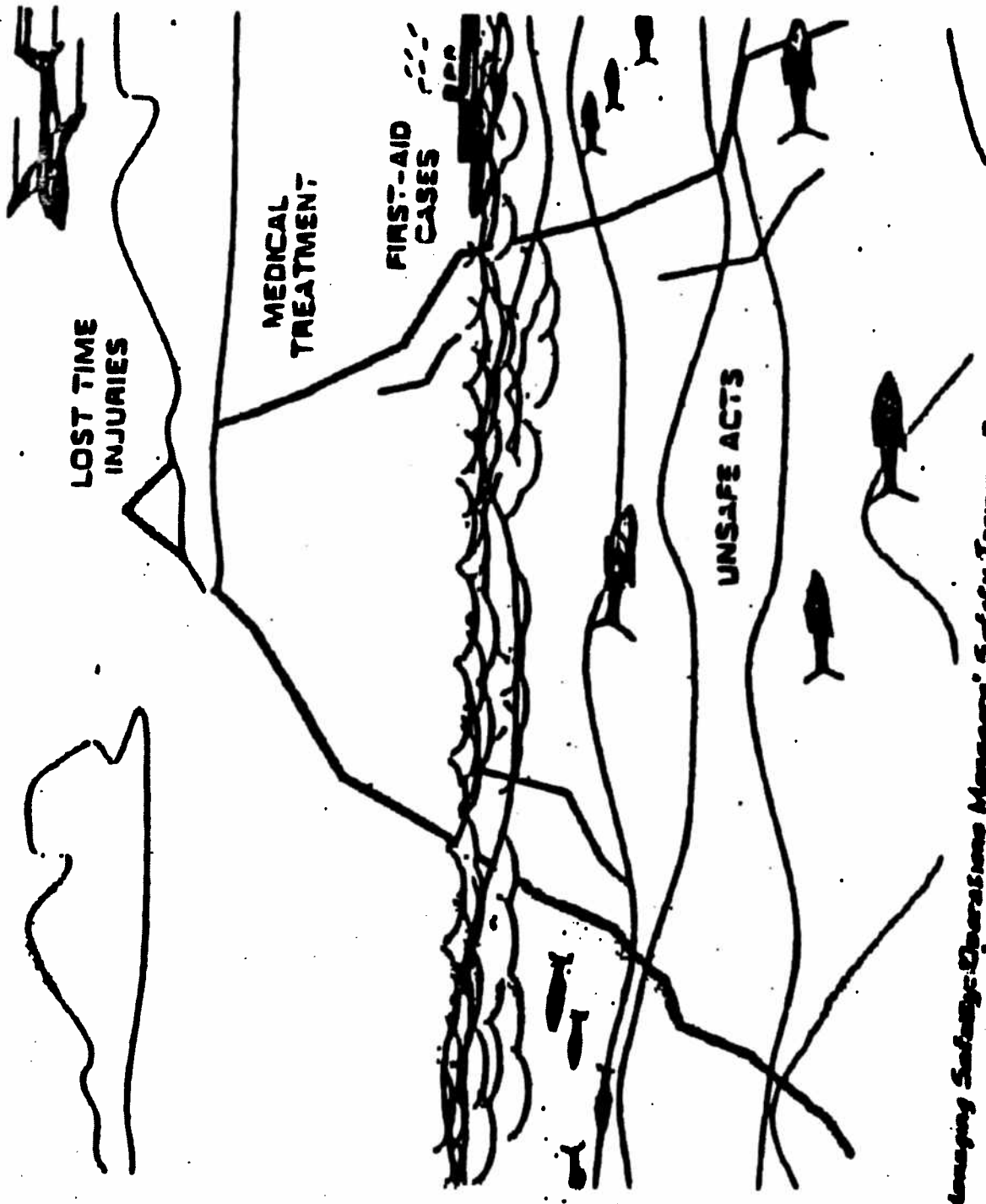
The inspection was conducted by the Wilmington, DE Area Office, 1 Rodney Square, Suite 402, 920 King St., Wilmington, DE, (302) 573-6115.

# Dupont STOP Program

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- 96% of all accidents are caused by unsafe acts
- Observe worker behavior
- Heavy on discipline
- Often advocate the use of incentive programs

DuPont's "Blame the Worker" iceberg concept demonstrates the false theory that unsafe acts cause most workplace injuries. Put to practice, this theory casts a chill over effective health and safety programs.



From "Managing Safety: Operations Managers' Safety Training Resource Manual, DuPont 1991"

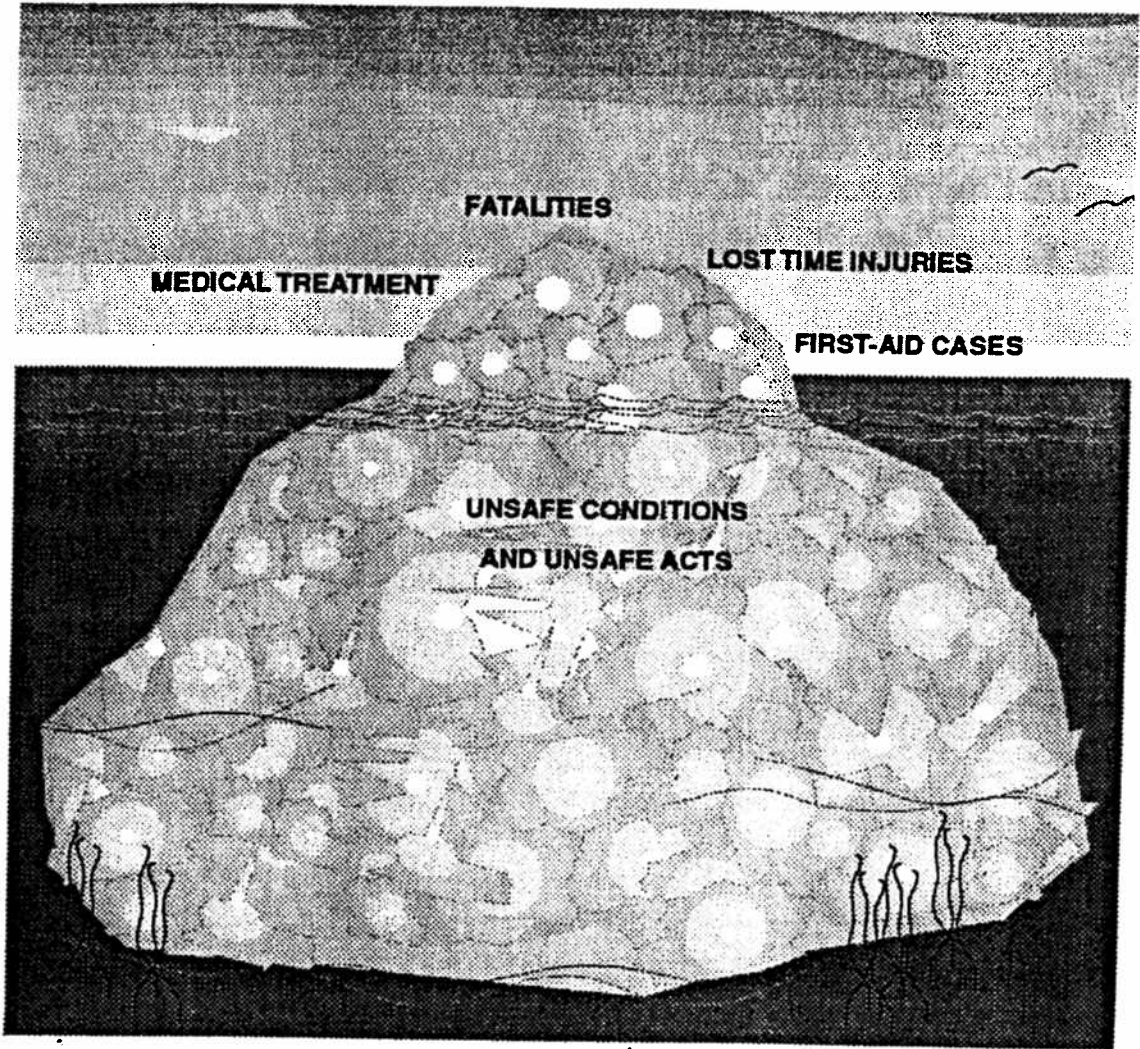


Chart 4

## CAUSES OF INCIDENTS AND INJURIES

- ❑ Unsafe acts cause over 90 percent.
- ❑ Unsafe conditions cause less than 10 percent.

Chart 5

# DISCIPLINE

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To be effective, discipline must be

- ❑ Clear, consistent, fair.
- ❑ Impartial.
- ❑ Used as an educative tool.
- ❑ Consistent with company policy.
- ❑ Backed by management (for more serious steps).
- ❑ Administered with good judgment.

**DISCIPLINE FOR SAFETY INFRACTIONS;  
DO NOT WAIT FOR THE INJURY.**

Chart 10



We suggest the following areas in which you can encourage employees to play an active part in your safety activities.

1. Safety meetings.
2. Audits.
3. Job safety analyses (which require supervisor/worker cooperation).
4. Accident investigations.
5. Informal daily weekly safety contacts.
6. The development of posters and safety messages for bulletin boards.
7. The site newsletter.

Write below any further suggestions you have

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## Challenge

One way to increase the challenge in safety is to set up competitions in safety performance. Competition can increase the spirit of cooperation within your group, and the friendly rivalry you generate between groups should also increase employees' interest in observing safe work practices.

You should acknowledge group achievements as you do individual ones.

The competition can be with the calendar as well as with other work groups. For example:

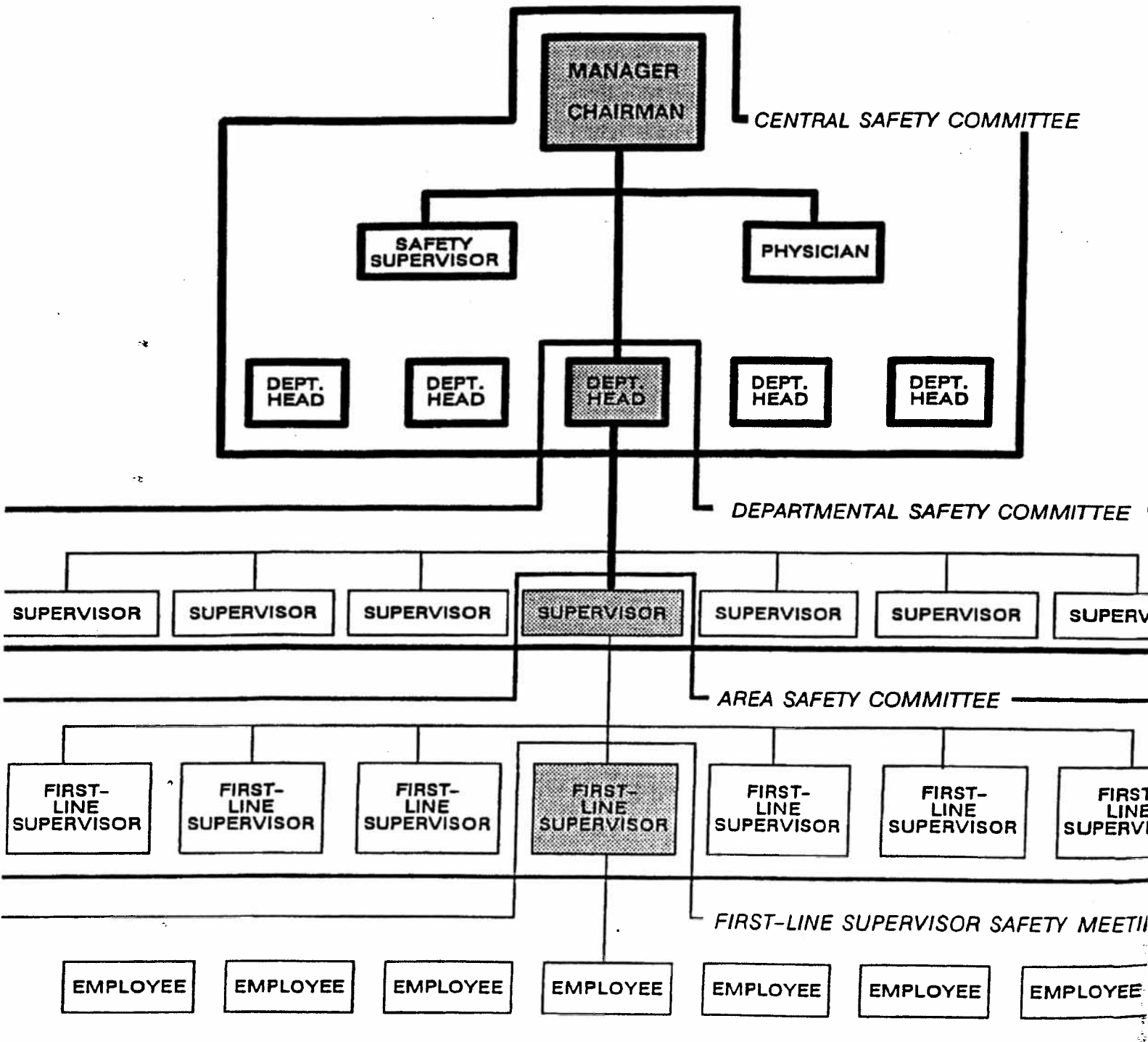
### *Calendar Competition*

Set a goal of working without a lost-time injury for 1,000,000 exposure hours.

### *Group Competition*

You can set up a mock game, such as football, between two groups and base the scoring on accumulated injury-free days. Any safety achievement

# SAFETY COMMITTEE ORGANIZATION CHART



## **The Du Pont That We Don't Hear About**

1989

Six employees of the DuPont have successfully sued their employers for fraudulently concealing medical records that indicated the employees were suffering from asbestos-related disabilities. In May, 1989 the New Jersey Supreme Court upheld a 1987 jury verdict that awarded the plaintiffs \$1.4 million in damages.

The employees, pipefitters and pipe coverers at two New Jersey Du Pont plants, worked with and around asbestos-containing material between 1965 and 1979. They received annual or semiannual physical examinations from company doctors and were told they were in good health, in spite of the fact their X-rays identified illness resulting from prolonged inhalation of asbestos. They were not informed of their conditions until 1978 or 1979, after OSHA had investigated plant conditions.

The law firm representing the employees revealed that they have about 250 asbestos-injury cases against Du Pont waiting for the outcome of this case. About half of them involve concealed medical information.  
Ohio Monitor December 1989

## DuPont 1986

A \$44,000 penalty was proposed against DuPont in connection with citations for 12 recordkeeping violations, 11 which were classified as willful by OSHA.

The citations were for improper or inadequate recordkeeping pertaining to injuries during the calendar years 1982 through 1986. OSHA Area Director Richard Bradley said the agency “cannot accept complacency by employers on this issue”.

## DuPont 1997

DuPont paid \$38.5 million to settle a lawsuit charging that pollution near a now-closed munitions plant killed five residents and sickened others with illnesses that included lead poisoning. Lawyers for 427 residents of “DuPont Village” in Pompton Lakes, NJ announced the settlement this month.



## **Resource Handout**

### **WHY DO WORKPLACE INJURIES AND ILLNESSES HAPPEN?**

#### **Are Most Injuries Caused By Workers' Unsafe Acts Or By Hazardous Conditions On The Job?**

Employers often identify “worker error” as the cause of workplace injuries and accidents – a worker failed to follow a safety rule, committed an unsafe act, acted carelessly or otherwise did something he or she should not have done. Unfortunately, the idea that worker mistakes are the main cause of job injuries and accidents is promoted by many employers and consultants.

However, every workplace injury, accident or incident has “root causes” which do not have to do with worker behavior. Some of these root causes may not be readily apparent. They often involve elements of management safety systems that were non-existent or that failed. The following case is an example of why we have to look for root causes.

#### **The Acid Burn**

A worker was burned when sulfuric acid splashed on him while he was drawing a routine sample from piping in a chemical plant. Management blamed the worker for failing to wear a face-shield, acid suit and other personal protective equipment (PPE). Management then issued a bulletin threatening to discipline anyone not wearing proper PPE.

In this case, the union requested that the joint labor-management health and safety committee do further investigation of the accident. The committee found that there was more going on than a failure on the part of a worker to wear PPE.

The procedure for collecting sulfuric acid samples was to hold an open cup under a bleed valve on a pressured line in the acid pumps. The acid sometimes splashed out of the cup, which made wearing PPE necessary. The committee realized that the “root cause” of the incident was the procedure for taking acid samples. The committee recommended that acid sampling points be redesigned to eliminate the potential for splashing altogether. A simple way to do this was to sit the sample container in an enclosed sample box with a glass door, where the valves could be operated from outside of the box. This eliminated the hazardous exposure and the need for workers to wear the most cumbersome PPE.

The health and safety committee expanded their investigation to look at all of the sample points in this plant. They discovered that the sampling points for dozens of different hazardous materials were unsafely designed and were unnecessarily exposing workers. The committee started a new program to have sample points throughout the plant redesigned to eliminate or minimize exposures. This also eliminated the need for workers to wear much of the formerly required PPE.

## **What Is The Most Effective Way To Protect Workers From Hazards?**

As can be seen from the above example, the redesign of jobs can protect workers from hazards much more effectively than personal protective equipment, which is often hot, cumbersome and does not fully protect against hazards.

Changing worker behavior is one of the **least** effective methods for accident prevention. Workers make occasional errors because they are human. There is a natural error rate for even the most highly trained and skilled workforce.

Employers, however, often focus their safety efforts on changing worker behavior. Many employers find that blaming workers for injuries and accidents is easier and less costly than evaluating and changing management systems. But effective prevention of accidents, incidents, and near misses requires redesign of jobs and processes so that they will be safe even when a worker makes a mistake. The ability and responsibility to design jobs safely in the first place, or redesign them when a problem is detected **lies with management**.

Good occupational safety and health practice involves identifying and controlling hazards. Proper methods for hazard control follow what is known as the “hierarchy of controls.” According to this hierarchy of controls, the best way to control a hazard is to eliminate it. If a hazard cannot be eliminated all together, there are several other ways to limit worker exposure to the hazard, including: substitution of something non-hazardous or less hazardous; engineering controls which keep the hazard from reaching the worker; and administrative controls which involve changes in certain workplace policies and procedures. The least effective control method is personal protective equipment.

## **“Blame The Worker” Or Fix The Workplace?**

Despite all we now know about workplace safety, a “blame the worker” approach to workplace safety – blaming workers who are involved in injuries, accidents and “near misses” – is becoming increasingly popular with many employers. So-called “behavior-based safety” programs claim that 80-96% of worker injuries are caused by workers’ unsafe acts. Elaborate mechanisms are established to check, inspect, coach, reward and discipline workers for complying with or ignoring “safe behaviors.” While workers and/or supervisors are kept busy policing worker behavior, management avoids being scrutinized and held accountable for **their** actions, which have a much greater impact on workplace and worker health and safety.

A blame-the-worker approach to accidents provides little opportunity for effective accident **prevention**. Employers who take a “blame the worker” approach ignore the



“hierarchy of controls” and the need to change management systems. In many instances, they do not eliminate hazards or address them by designing engineering controls. When workers are blamed for workplace injuries, accident prevention focuses on the least effective methods of hazard control. Workers are blamed for not wearing personal protective equipment or for not following safety procedures.

Behavior-based safety programs undermine health and safety by excusing management’s past and current shortcomings. These programs focus attention on workers, who in most cases had little or nothing to do with the selection of machinery, equipment, work processes, work organization, materials or methods of safeguarding.

When workers believe they will be blamed for an accident or injury, and may face some type of inquisition or discipline, accidents and injuries go unreported. Problems that go unreported will not get addressed, and will certainly result in future injuries and even tragedies.

Regarding “accident-proneness,” every one of us is “Accident-Prone Andy” at various times in our lives. We are distracted by family issues and relationship problems. We may not have gotten a good night’s sleep. We may be having medical problems. Or sometimes we just have a bad day. All these conditions are absolutely normal. Safe design of machinery, equipment, work processes and work organization assumes that workers will have occasional bad days and will make mistakes. When a workplace is designed and maintained safely, workers do not need to be blamed, fixed or fired. It is the workplace that gets fixed, not the workers.

### **Questions To Ask When An Injury, Incident, Accident Or Near-Miss Occurs**

To get to the root cause of a problem, and get past efforts to pin the blame on “worker carelessness” or “accident-proneness,” make sure that questions get asked about why a worker did or did not do a certain thing.

“But Why?”

An effective method for getting to the root cause of injuries, incidents and accidents in the workplace is to ask the question “but why?” as follows:

Carol got something in her eye at work.

But why?

Because a metal chip went flying through the air and landed in her eye.

But why?

Because there was no enclosure around the machine to contain the metal chips.

But why?

Because the company didn't want to spend the money on this kind of engineering control.

But why?

Because the company knows it costs less to have workers wear PPE than to fix the problem machine by enclosing it.

In any investigation of an injury, incident, accident or near-miss, asking "but why?" (often repeatedly) will help get to the root cause of the problem.

### "The Utility Lineman"

For example, there was a tragedy that involved a utility lineman in a northeastern state. Around noon he climbed a 30-foot pole, hooked on his safety straps and reached for a 7,200-volt cable without first putting on his insulating gloves. There was a flash, and the worker hung motionless from his safety straps. He was dead.

The employer blamed the worker. According to the company, this worker knew the importance of the insulating gloves, he was not a new worker, and he had been adequately trained. Therefore, his failure to put on gloves was his fault. The employer never asked, "But why didn't the worker put on insulating gloves?" Had that question been asked, a whole new picture would have emerged.

In this particular case, the utility worker had five hours of sleep in the last two and one-half days. The rest of the time he was working. It had been a stormy weekend. The utility worker worked two back-to-back shifts on Friday, went to bed at 10:30 p.m., and was called back to work at 1 a.m. Saturday. He took a quick nap at dawn and went back to his job climbing up and down utility poles for almost 24 more hours. When he took a breakfast break Sunday morning he was called back to work. It was noon on Sunday when he made that final climb up the pole.

Extended work hours – being on the job for 55 out of 60 hours -- was definitely one of the root causes of this tragedy. **But why** was this worker working so many hours? The utility company had laid off 37 linemen in the past several years, and was in the process of timing the performance of those who remained. Another root cause was downsizing/short staffing, and yet another was production pressure. In order to assure that this type of accident did not occur again, attention had to be paid to creating reasonable work schedules with reasonable work hours, adequate staffing levels, and an absence of production pressures that caused workers to take short cuts.

### Specific Questions to Ask

Specific questions that should be considered in any accident/incident investigation include:

- Was there a way the job could have been re-designed that would have prevented

that accident?

- Was the correct equipment available and accessible?
- Was there adequate training and/or supervision?
- Were there time pressures or a “push for production” that encouraged workers to take short-cuts?
- Had the worker’s job been changed in ways that intensified their work (speed-up, added work load or work duties, increased work pace, etc.)?
- Was the worker on a 12-hour shift or working large amounts of overtime such that fatigue was a factor?
- Was there adequate staffing?

### **Conclusion: Hazards Cause Injuries -- And Work Organization Matters**

All work-related injuries and illnesses are the result of exposure to hazards – there are no exceptions. If there were no hazards, there would be no job injuries or illnesses. The goal of workplace safety and health efforts must be to identify and eliminate or reduce hazards.

Given that for the foreseeable future, many workers will still be exposed to some level of hazard in their work environments, the way in which jobs are designed and work is organized has serious implications for workers’ ability to work safely and be healthy. How work is organized influences workers’ exposure to psychological stress and to physical hazards, and affects the rate and severity of work-related injuries and illnesses.

Finding and fixing hazards, and paying attention to work organization factors such as work load, work pace, staffing levels, hours of work and production pressures, are essential ingredients in creating work environments that minimize the possibility of job-related injuries, illness and stress.



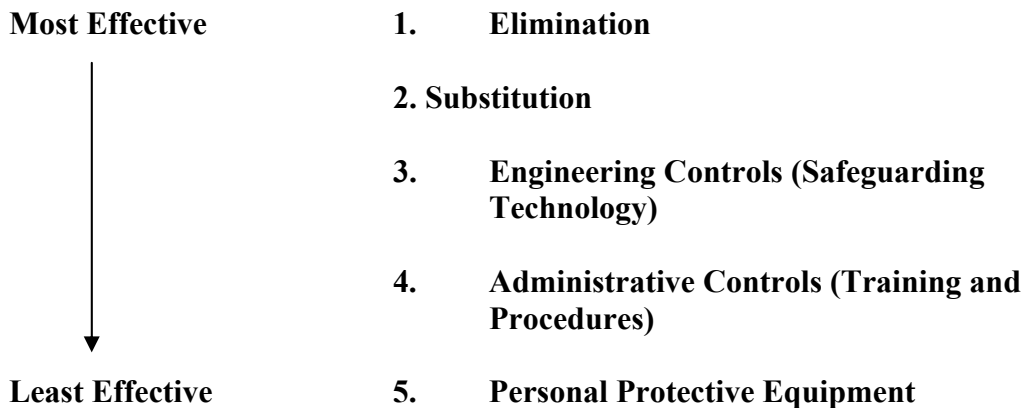
**Resource Handout**  
**CONTROLLING HAZARDS**

Once hazards have been identified, the next step is to control the hazards. Hazard controls are methods used to eliminate or limit workers' exposure to a hazard. While there are many different types of hazards (such as toxic chemicals, unguarded machinery and equipment, working in high places), there are certain principles guiding hazard control that apply to all hazards.

**The Hierarchy of Hazard Controls**

The best way to control a hazard is to eliminate it. If a hazard can not be eliminated all together, there are several other ways to limit worker exposure to the hazard. Some of these ways are more effective than others. When all of these different hazard control methods are put in a chart, going from the most effective to the least effective way to control the hazard, the chart portrays the "hierarchy of hazard controls." It is considered good occupational safety and health practice to follow the hierarchy of controls.

**HIERARCHY OF HAZARD CONTROLS**



**Examples of Each Step in the Hierarchy of Hazard Controls**

**1. Elimination**

The best way to control a hazard is to eliminate it and remove the danger. This can be done by changing a work process in a way that will get rid of a hazard; substituting a non-toxic chemical for a toxic substance; having workers perform tasks at ground level rather than working at heights; implementing needle-less IV systems in health care facilities to eliminate needles; and other methods that remove the hazard all together.

## 2. Substitution

The second best way to control a hazard is to substitute something else in its place that would be non-hazardous or less hazardous to workers. For example, a non-toxic (or less toxic) chemical could be substituted for a hazardous one.

## 3. Engineering Controls (Safeguarding Technology)

If a hazard cannot be eliminated or a safer substitute cannot be found, the next best approach is to use engineering controls to keep the hazard from reaching the worker. This could include methods such as using noise dampening technology to reduce noise levels; enclosing a chemical process in a Plexiglas "glove box"; using needles that retract after use; using mechanical lifting devices; or using local exhaust ventilation that captures and carries away the contaminants before they can get in the breathing zone of workers.

## 4. Administrative Controls (Training and Procedures)

If engineering controls cannot be implemented, or cannot be implemented right away, administrative controls should be considered. Administrative controls involve changes in workplace policies and procedures. They can include such things as:

- Warning alarms,
- Labeling systems,
- Reducing the time workers are exposed to a hazard, and
- Training.

For example, workers could be rotated in and out of a hot area rather than having to spend eight hours per day in the heat. Back-up alarms on trucks that are backing up are an example of effective warning systems. However, warning signs used *instead* of correcting a hazard that can and should be corrected are *not* acceptable forms of hazard control. For example, it is neither effective nor acceptable to post warning signs by an unguarded machine cautioning workers to work carefully.

## 5. Personal Protective Equipment

The use of personal protective equipment (PPE) is a way of controlling hazards by placing protective equipment directly on workers' bodies. Examples of personal protective equipment include: respirators, gloves, protective clothing, hard hats, goggles, and ear plugs.

Personal protective equipment is the *least* effective method for protecting workers from hazards. PPE should be used only while other more effective controls are being developed or installed, or if there are no other more effective ways to control the hazard. This is because:

- The hazard is not eliminated or changed.
- If the equipment is inadequate or fails, the worker is not protected.
- No personal protective equipment is fool-proof (for example, respirators leak).
- Personal protective equipment is often uncomfortable and can place an additional physical burden on a worker.
- Personal protective equipment can actually create hazards. For example, the use of respirators for long periods of time can put a strain on the heart and lungs.

While there are some jobs, such as removing asbestos, where wearing adequate personal protective equipment is absolutely essential, there are many jobs where employers hand out personal protective equipment when in fact they should be using more effective hazard control methods.

### **A Word of Caution**

When planning for hazard controls, remember that the control selected must not eliminate one hazard while creating another. For example, it is not acceptable to remove air contaminants from one area by venting them to another area where another group of workers will be exposed. Hazard control measures should eliminate or reduce hazards for all who are potentially exposed to them.

### **Hazard Control: Whose Responsibility?**

The ability and responsibility to design jobs safely in the first place, or redesign them when a hazard is detected, lies with management. It is the role of workers and unions to promote the use of the "Hierarchy of Controls," making sure that employers are providing the most effective methods for hazard control possible. Remember: fix the workplace, not the worker!





# WORK RE-ORGANIZATION

## A Hazard To Workers' Health And Safety

Workers and union health and safety representatives are increasingly listing issues such as downsizing/understaffing, mandatory overtime, push for production, cross-training/multi-tasking, and work overload as key factors causing or contributing to injuries, illness and stress in their workplaces. All of these issues are related to how work is organized and being restructured.

Work organization is about the control of work and the division of labor. It includes the tasks performed, who performs them and how they are performed in the process of making a product or providing a service. Many workplaces are undergoing massive changes in the ways in which work is organized, often made possible by innovations in information and communications technologies. New forms of work organization, such as combined jobs, multi-tasking, teams, telecommuting, electronic performance monitoring, use of temporary workers, contract workers and alternative work schedules, are being introduced with very little attention to their potential to hurt workers. However, we do know that these forms of work restructuring can increase workers' risk of injuries, illnesses and stress.

### Forms Of Work Organization

The organization of work includes many aspects, such as pace of work (speed of an assembly line, quotas), work load, number of people performing a job (staffing levels), hours and days on the job, length and number of rest breaks and days away from work, layout of the work, skill mix of those workers on the job, assignment of tasks and responsibilities, and training for the tasks being performed. When work is restructured, these aspects of work organization can be changed dramatically. Work is restructured by management to achieve the goals of standardization of the work, which in turn is used by management to increase their control over work.

Some common terms for work organization/reorganization include:

- Lean Production: An overall approach to work organization that focuses on elimination of any "waste" in the production/service delivery process. It often includes the following elements: "continuous improvement", "just-in-time production", and work teams.
- Continuous Improvement: A process for continually increasing productivity and efficiency, often relying on information provided by employee

involvement groups or teams. Generally involves standardizing the work process and eliminating micro-breaks or any “wasted” time spent not producing/serving.

- *Just-in-Time Production:* Limiting or eliminating inventories, including work-in-progress inventories, using single piece production techniques often linked with efforts to eliminate “waste” in the production process, including any activity that does not add value to the product.
- *Work Teams:* Work teams operate within a production or service delivery process, taking responsibility for completing whole segments of work product. Another type of team meets separately from the production process to “harvest” the knowledge of the workforce and generate, develop and implement ideas on how to improve quality, production, and efficiency.
- *Total Productive Maintenance:* Designed to eliminate all nonstandard, non-planned maintenance with the goal of eliminating unscheduled disruptions, simplifying (de-skilling) maintenance procedures, and reducing the need for “just-in-case” maintenance employees.
- *Outsourcing/Contracting Out:* Transfer of work formerly done by employees to outside organizations.

In many workplaces undergoing restructuring, worker knowledge about the production/service process is gathered through “employee involvement” and then used by management to “lean out” and standardize the work process, thereby reducing reliance on worker skill and creativity. This restructuring has resulted in job loss for some workers, while increasing the work load and work pace for those who remain on the job. The result of these changes in work organization is that it is no longer just machines that are wearing out – it is the workers themselves.

### **Occurrence Of Restructured Workplaces**

The vast majority of workplaces in the U.S. have gone through formal or informal restructuring of work. The introduction of computers in every sector of the economy has created changes in work processes that can negatively impact workers’ health and safety. One measure of change is in the number of hours that workers spend on their jobs. In the United States the number of hours worked annually has been steadily increasing over the past couple of decades to the point where American workers work more hours than workers in any other major industrialized country. Overtime hours, including mandatory overtime, have also risen in the United States.

## **Hazards Of Work Organization/Work Re-structuring**

Recent research on the impact of new forms of work organization documents negative impacts on health and safety, and is cause for concern. The organization of work itself can influence the level of psychological stress that workers experience and can increase exposure to physical hazards, both which can lead to injuries or illnesses. New forms of work organization can result in the intensification of work, leading to working faster and harder. This work intensification may be increasing stress on the job, with low worker control over the work, often coupled with higher job demands.

Changes in work organization systems have been linked to the development of musculoskeletal disorders (MSDs) in health care, automobile manufacturing, meatpacking, telecommunications, and contingent work. Work-related MSDs associated with work organization changes have been linked to exposure to physical hazards and psychologically stressful conditions resulting from machine-paced work, inadequate work-rest cycles, wage incentives, time pressure, low job control, low social support, electronic performance monitoring, and repetitive work.

In the health care industry, organizational changes associated with understaffing among nurses and high patient-to-nurse staffing ratios have been linked to increases in needlestick injuries, nurse burnout, and greater surgical patient mortality.

Studies have shown that work stress can have serious impact on workers' cardiovascular system. High job strain (jobs with low job control and high work demands) is associated with increases in blood pressure and increased risk of dying from heart attacks.

Long hours of work also appear to be hazardous to the cardiovascular system. Overtime work has been shown to increase blood pressure and increase the risk of experiencing a heart attack. Long work hours increase the risk of having a workplace injury, with the risk going up significantly beyond the ninth hour of work. Increased levels of fatigue and greater exposure to physical hazards are thought to play a major role in the increased injury rates in workers who work long hours.

## **Protecting Workers From Work Organization Hazards**

Workers are experiencing increased injuries, illness and stress from downsizing/understaffing, mandatory overtime, 12-hour shifts, outsourcing, lack of training for added job duties, increased work load, and increased work pace. To hide this increase in work-related injuries and illnesses, many employers are implementing "blame-the-worker" approaches to safety and health which

discourage workers from reporting injuries, illnesses and hazards. These programs, policies and practices blame workers who have (or report) an injury for committing “unsafe acts” and engaging in “unsafe behaviors”. “Blame-the-worker” or behavioral safety approaches include such practices as “safety incentive” programs that offer rewards to workers who don’t report injuries; injury discipline policies that threaten and deliver discipline to workers who do report injuries; and behavioral observation programs that take the focus away from hazardous conditions, including work organization hazards such as production pressures, lack of staff, work overload, and long work hours – and blame workers for being inattentive or working carelessly if they suffer injuries. Workers and unions need to eliminate these blame-the-worker schemes and instead focus on identifying and eliminating the real hazards that are causing injuries and illnesses.

Addressing work organization hazards would include, for example, increasing staffing levels, providing job security, prohibitions or limits on mandatory overtime, shorter work shifts, job training, and reasonable workloads and pace of work. Solutions to these problems come from workers and unions having a greater say in how work is organized and restructured, how technology is used, and the policies and practices employers want to impose on the workforce.

Approaches that unions can use include:

#### Collective bargaining

Unions have successfully negotiated language in contracts to require minimum staffing levels, limited or prohibited mandatory overtime, reduced production quotas, put limits on the pace of work, mandated rest breaks, and developed safety and health programs that are focused on finding and fixing hazards rather than blaming workers.

The AFL-CIO has a fact sheet on its web site with examples of contract language that put some limits on the employer’s use of mandatory overtime:

<http://www.aflcio.org/issues/safety/issues/otexamples.cfm>

#### Mid-term bargaining campaigns

For unions with bargaining rights, the right to bargain is continuous (not just granted at contract expiration time). Employers are prohibited from making unilateral changes in wages, hours, or conditions of work (including health and safety) without notifying the union about the changes and giving the union an opportunity to bargain over those changes. Employers must also bargain over the impacts of changes they make if the changes impact working conditions.

Check the fact sheet linked below from the AFL-CIO web site that provides some additional information on mid-term bargaining:

[http://www.aflcio.org/issues/safety/issues/upload/injury\\_policies.pdf](http://www.aflcio.org/issues/safety/issues/upload/injury_policies.pdf)

### Training and education

Training and education of workers is critically important in building successful campaigns to address the hazards associated with work organization and workplace restructuring. An important first step is educating workers that the way in which work is organized and being restructured can be hazardous to their health and safety. The use of surveys, body mapping, and hazard mapping can then be used to help identify injuries, illnesses, and stresses suffered by workers in a particular department or workplace where work restructuring has caused or contributed to those problems. Once the work organization hazards have been found, the union can take steps to control exposure to those hazards.

### Legislative campaigns

Labor unions, particularly in the health care industry, have been successful in several states in passing legislation or regulations that places limits on mandatory overtime for nurses and health care workers – California, Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Washington, and West Virginia. California also sets minimum nurse staffing levels in hospitals.

## **Further Reading And Resources**

The web sites listed below can provide additional health and safety information on work organization, long work hours, and workplace stress:

*AFL-CIO:*

[www.aflcio.org/issues/safety/issues/](http://www.aflcio.org/issues/safety/issues/)

*Job Stress Network:*

[www.workhealth.org](http://www.workhealth.org)

*NIOSH:*

[www.cdc.gov/niosh/topics/workschedules](http://www.cdc.gov/niosh/topics/workschedules) (work schedules)

[www.cdc.gov/niosh/topics/stress](http://www.cdc.gov/niosh/topics/stress) (stress)

*Hazards Magazine:*

[www.hazards.org/bs](http://www.hazards.org/bs) (blame the worker programs)

[www.hazards.org/workedtodeath/index.htm](http://www.hazards.org/workedtodeath/index.htm) (overwork)

[www.hazards.org/getalife/index.htm](http://www.hazards.org/getalife/index.htm) (work-life balance)

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# **OVERTIME AND EXTENDED WORK SHIFTS**

## **The Hazards To Workers' Health and Safety**

Over the past couple of decades in the United States, hours worked annually have been steadily increasing. Workers in the US now work more hours in a year than workers in most of Western Europe and Japan. In some industries, such as mining, manufacturing, and wholesale trade, more than a quarter of the workforce work more than 40 hours per week. Many workers are finding that overtime hours are mandatory hours they are forced to work under the threat of reprisal if they refuse.

### **Hazards Associated With Long Hours Of Work**

Evidence that long hours of work can cause injuries and illnesses in workers is growing. NIOSH recently reviewed and summarized the latest scientific reports of the impact of long work hours on workers in a new publication, *Overtime And Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors* (April 2004, Publication No. 2004-143). The report concluded overall that: "Overtime was associated with poorer perceived general health, increased injury rates, more illnesses, or increased mortality in 16 of 22 studies."

Some specific findings reported in the NIOSH review are highlighted below:

#### Injuries

- Overtime (working more than 40 hours per week) was associated with an increase in work-related injuries in health care workers and construction workers.
- The risk of experiencing a workplace injury increases dramatically after the 8<sup>th</sup> or 9<sup>th</sup> hour at work. The risk of having an injury appears to be higher for the evening and night shifts compared to the day shift.
- The risk of developing back disorders increases for nurses working 12 or more hours per shift compared to an 8-hour shift.

#### Illnesses

- Overtime can increase the risk of workers developing heart attacks. The risk was increased for workers working more than 11 hours per day or more than 60 hours per week in the month before the attack.

- High levels of monthly overtime (84 to 96 hours of overtime per month) are linked to increases in blood pressure and heart rate.
- Workers working 12-hour shifts and 40 or more hours per week had increased risk for neck, shoulder and back disorders compared to working five 8-hour shifts per week.
- Overtime and extended work shifts (shifts longer than 8 hours) have been associated with unhealthy weight gain, increased alcohol and smoking use, decreased alertness, increased fatigue, and deterioration in performance.
- Jobs with high pressure to work overtime and low rewards are associated with health complaints, burnout, and negative work-home interference.

## **Responding To Long Work Hours And Mandatory Overtime**

The hazards that are associated with long work hours can be addressed most effectively by reducing exposure and eliminating mandatory overtime.

Approaches that unions can use include:

### Training and education

Training workers about the potential hazards of long work hours and then using surveys and workplace hazard mapping to identify worker injuries and illnesses caused by long hours is a critical step in addressing the problem.

### Collective bargaining

Unions have negotiated language that have limited or prohibited mandatory overtime. The AFL-CIO has a factsheet on its web site with examples of contract language that put some limits on the employer's use of mandatory overtime (<http://www.aflcio.org/issues/safety/issues/otexamples.cfm?RenderForPrint=1> ).

Unions have also negotiated language to reduce excessive hours of work by creating minimum staffing limits, mandating rest breaks, and placing limits on the pace of work.

### Legislative campaigns

Labor unions, particularly in the health care industry, have been successful at the state level in passing legislation that places limits on mandatory overtime for nurses and health care workers and sets minimum nurse staffing levels in hospitals.

## Accident risk as a function of hour at work and time of day as determined from accident data and exposure models for the German working population

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Hänecke K, Tiedemann S, Nachreiner F, Grzech-Šukalo H. Accident risk as a function of hour at work and time of day as determined from accident data and exposure models for the German working population. *Scand J Work Environ Health* 1998;24 suppl 3:43-48.

**Objectives** Recent studies indicate that accident risk may be a function of hour at work and time of day. Further evidence was sought for these assumptions, along with the answer to the question of whether the risk of accident can be conceived as an interaction between hours at work and time of day.

**Methods** Data on more than 1.2 million accidents for the year 1994 were provided, all listed according to the time of day and hour at work. Since information about how long each day and at what time of day people work is not available in Germany, different exposure models had to be estimated. For estimating the risk of having an accident relative accident risks were calculated from the ratio of accident frequencies to the exposure data.

**Results** An exponentially increasing accident risk was observed beyond the 9th hour at work. The relative accident risks differed considerably according to the respective exposure model with regard to time of day. A highly significant interaction effect was found for hour at work by time of day, the percentage of accidents at different hours at work varying according to the particular time of day when work is started. For the 3 "traditional" shiftwork starting times, it was shown that, with later starting times, the relative accident risk increased dramatically beyond the 8th hour at work.

**Conclusions** Since the results clearly indicate that there are time-related effects on occupational accident risk, more detailed analyses are called for. More elaborated exposure models should be used to assess the efficiency of work schedules with extended workhours, especially under shiftwork conditions. The results also indicate the necessity of recording and providing adequate data bases for such analyses.

**Key terms** extended workhours, safety, shift work, work time.

Recent results in accident research indicate that the risk of accidents at work is a function of hour at work. Folkard (1) and Åkerstedt (2) both reported an exponentially increasing accident risk beyond the 9th hour at work. Åkerstedt (2) used data of the Swedish Occupational Injury Information System as a basis for his report. He found that accident risk is nearly the same for the first 8 to 9 hours at work. Beyond the 9th hour at work, however, the risk increases considerably. Folkard (1) calculated the relative accident risk from 5 published studies and found it to be doubled after the 12th hour and trebled after the 14th hour. He concluded that the safest system would be based on 6- to 9-hour shifts. But he also claimed that these findings have to be supported by further research, especially to identify the underlying causes.

Although, on one hand, an 8-hour workday is legally widely established (eg, in German law on work time), reality is often quite different. Extended work times and overtime are still widespread. On the other hand, in the United States, Australia, and some other countries, there is a marked tendency to expand work time beyond 8 hours. Twelve-hour shifts are increasingly popular for different reasons. Employers appreciate the economic advantages and employees like the long periods of time-off resulting from the longer hours on fewer shifts. Therefore, the development of accident risk over hours at work is an urgent question, and the efficiency of such work schedules needs to be assessed (3).

At the same time it is also likely that the risk of accidents may depend on the time of day. Åkerstedt (2) found

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a clear indication for a nearly doubled accident risk during night hours, and Smith et al (4) found evidence for an increased risk of injuries during the night shift in comparison with morning and afternoon shifts.

Another question which has not yet been addressed thus far is whether there is an interaction between hours at work and time of day with regard to accident risk. It can be hypothesized that working a 12th hour on a job may differ according to the starting time of the shift (eg, when the 12th hour is at 1800 at the end of a day shift or at 0600 at the end of a complete night shift).

In order to shed more light on these problems, a study was conducted to determine whether accident risk can be conceived as a function of hours at work, time of day, or an interaction of the two.

### Materials and methods

One of the main problems of answering questions related to associations between hours at work, time of day, and accident risk is the availability of adequate data bases, especially with regard to exposure towards the risk of having an accident. For this reason, accident frequencies must be analyzed together with adequate exposure data on the relevant population.

There have been no difficulties in obtaining data on the frequencies of registered accidents (leading to an absence of >3 days) from the confederation of workers' compensation boards [Hauptverband der Gewerblichen Berufsgenossenschaften (HVBG), public services and agriculture not included] in Germany. More than 1.2 million such accidents were registered for 1994, all listed according to time of day (24 hours) and hour at work (1st to 12th hour, >12th hour).

Unfortunately, information about *how long each day* people work and *at what time of day* they work is not available in Germany because such data are not registered and no complete or workable national statistics have been collected on these work characteristics. Therefore, suitable exposure models, based on the best available evidence, had to be developed for the comparison with accident rates.

For this purpose different exposure models that could be (cross-) checked for consistency were constructed and calculated from the results of 2 independent surveys on problems of workhours in Germany (5, 6).

The first study (5), conducted in 1992, included data from approximately 5000 employed and self-employed respondents from the Federal Republic of Germany (including the former German Democratic Republic). The second study (6), conducted in 1993, was based on data from 2577 respondents from the employed population (aged 18–65 years) from the area comprising the former West Germany, including West Berlin. [A subsequently

published survey (7) from 1995, including the former German Democratic Republic showed that there was essentially no difference with regard to the number of overtime hours worked between former West and East Germany; therefore the data can be regarded as representative for the whole of Germany with regard to this point.] The samples of both studies proved to be representative. The calculated exposure models based on the data of these studies, although relying on slightly different samples collected roughly 1 year apart, were in good agreement (and moreover proved to be in good agreement with some later published microcensus results for Germany). Therefore, the exposure models can be assumed to be both representative and valid. A detailed description of the rationale and the calculations performed to arrive at the exposure models are included in an unpublished report by Tiedemann.

For an index for comparing the risk of having an accident according to hour at work and time of day, the relative accident risk was calculated as the ratio of the accident frequencies (from the data of the workers' compensation board) to the calculated exposure data of the German working population by the following formula: relative accident risk = (accidents [in %] × 100) / (working population [in %]), percentages being based on the relevant distribution (ie, hour at work or time of day).

### Results

#### Accident distribution

In figure 1 the distribution of registered accidents provided by the HVBG is shown for 1994. It can be seen that the absolute number of accidents is extremely high for people starting their job at 0600, 0700 or 0800, which is the majority of the work force, including day workers, part-time workers, and shift workers, eg, working 12-hour shifts and starting their work at 0600. There is also another small peak for people starting work at 1400, and another very small peak for people starting their work at 2200 to 2400, probably shift workers starting their afternoon or night shifts.

A decrease in accident frequencies at common times for work breaks can be observed (eg, around 0900 and 1200–1300) in other words after different numbers of hours at work, depending on the starting time (eg, for those starting their work around 0700 during the 2nd or 3rd hour and again during the 5th to the 7th hour at work). The same seems to hold for other starting times (eg, for the 5th hour at work for those starting at 1400).

#### Hour at work

Figure 2 shows an exposure model of the German working population, accident frequencies, and accident risk

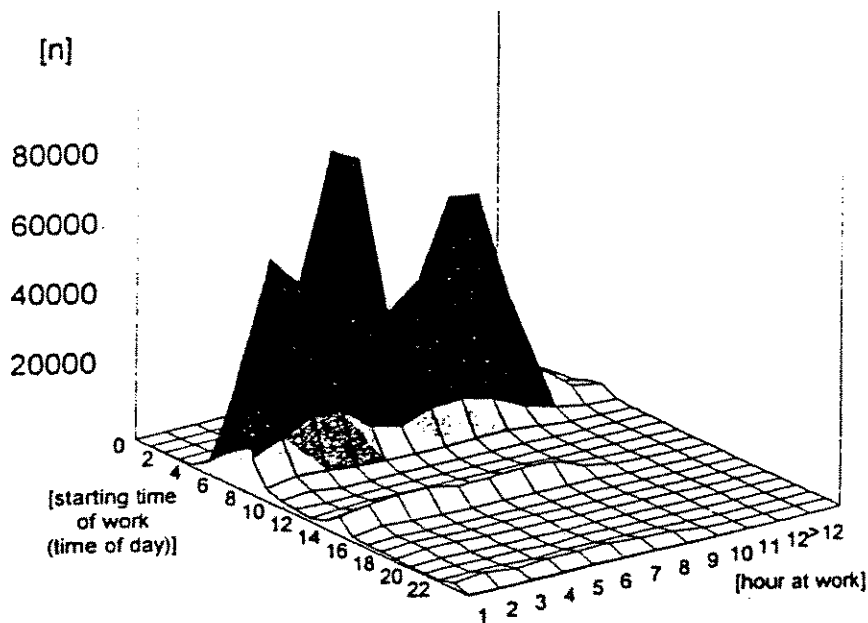


Figure 1. Distribution of registered accidents in 1994 by hour at work and time of day of starting work.

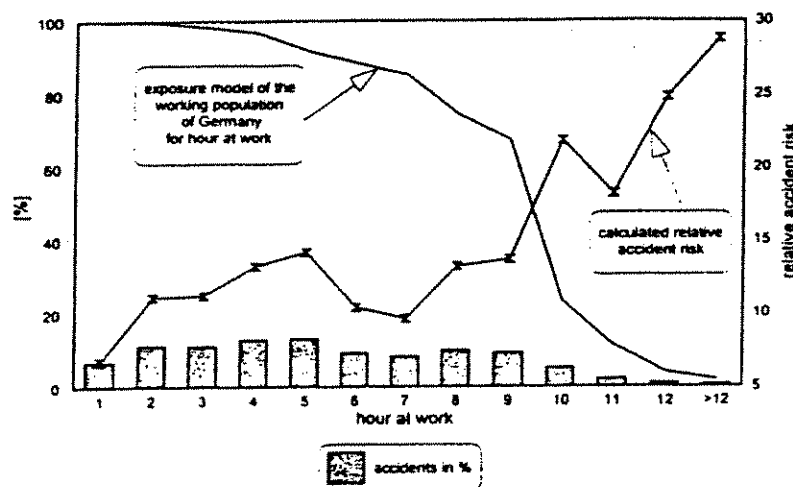


Figure 2. Exposure model of the working population, accident frequencies, and accident risk by hour at work.

by hour at work. According to this model 100% of the employed population works up to 2 hours per day. Thereafter a slight decrease can be seen. Nearly 70% of the population works up to 9 hours per day (including breaks). Beyond the 9th hour the percentage decreases considerably.

The bars at the bottom of figure 2 represent the distribution of accidents from the 1st to the 12th hour at work and for >12 hours at work. The increase in the first 5 hours, a rather even distribution until the 9th hour, and the decrease from the 10th hour are typical for the frequencies of accidents. This distribution has already been reported earlier (8); therefore it can be assumed that the distribution is reliable.

The calculated relative accident risk for hour at work (based on the exposure model and the accident distribution) is also shown in figure 2. It increases exponentially beyond the 9th hour at work.

#### Time of day

The basis for developing a valid exposure model of the working population over time of day from the available data bases was limited and rather uncertain. A variety of possible exposure models could be constructed. Two were calculated on the basis of the survey data in combination with the distribution of the starting times from the accident data, one as a maximum estimate and the other as a minimum estimate. The effect of a break around noon was taken into account in both models. In figure 3 the 2 different exposure models of the working population and accident frequencies are shown by time of day. It can be seen that, at night and around noon, the 2 graphs are similar. A difference in the estimates can be observed, however, for the hours between 0600 and 1100 and again between 1400 and 1900.

The bars at the bottom of figure 3 represent the distribution of accidents over time of day, according to the

Accident risk as a function of hour at work and time of day

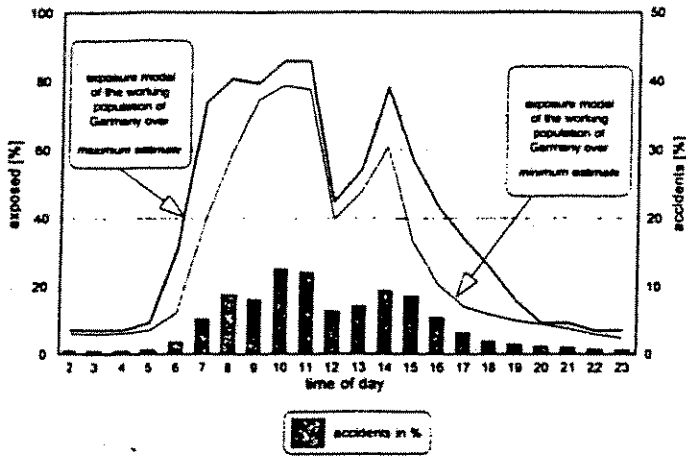


Figure 3. Two exposure models of the working population and accident frequencies by time of day.

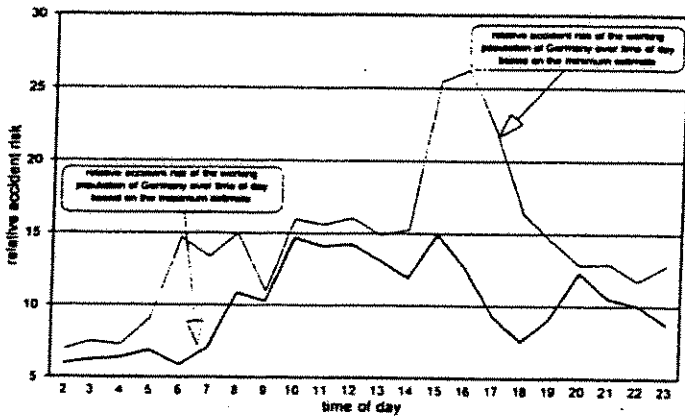


Figure 4. Accident risks for 2 different exposure models by time of day.

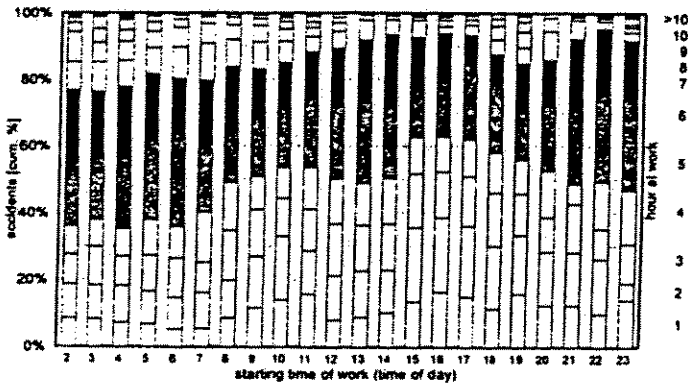


Figure 5. Accident frequencies by hour at work and starting time of work (time of day).

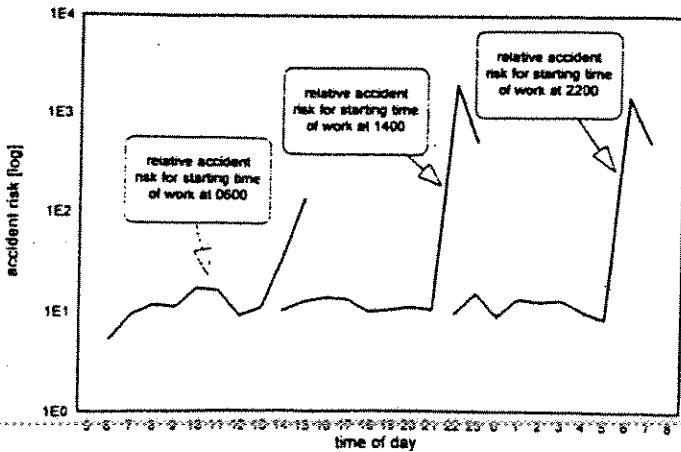


Figure 6. Accident risks on shifts starting at 0600, 1400, and 2200.

data of the workers' compensation board.<sup>3</sup> The data show a peak at 1000 and 1100, a drop between 1200 and 1300, and a second peak at 1400 and 1500.

Figure 4 shows the accident risks for the 2 exposure models by time of day. As shown in this figure, the relative accident risks for both estimates, minimum and maximum, differs considerably in the early morning hours and in the afternoon. It should be emphasized that the relatively small differences in the exposure models yielded relatively big differences in the estimated accident risk.

#### *Time of day by hour at work*

An analysis for the effect of time of day by hour at work for the absolute accident frequencies shows a clear and statistically highly significant ( $\chi^2 = 71\,484.9$ ;  $df = 264$ ;  $P < 0.0001$ ) interaction for hour at work with time of day.

Figure 5 shows the accident frequencies by hour at work and starting time of work (time of day) in cumulative percentages. Each column shows the distribution of accidents across the 1st to the 12th and >12th hour at work for the subsamples of people starting their work at a given time of day (eg, the first column shows the subsample starting work at 0200 and their distribution of accidents for the consecutive hours at work).<sup>4</sup> The darkly shaded parts of the column represent, for example, the relative frequencies of accidents in the 7th and 8th hour at work, which means the time of day between 0800 and 1000 for the first column, where work starts at 0200.

With work starting in the evening (1800 to 2000) or at night or in the early morning (2000 to 0700), the percentage of accidents beyond the 8th hour at work is increased, whereas, for people starting their work in the afternoon, the proportion of accidents beyond the 8th hour is rather small. With work starting at 1400 to 1800, on the other hand, the percentage of accidents in the first 4 hours is increased, whereas the accident rate is relatively low for the first 4 hours when work starts at night and in the early morning (0200 to 0700). These results thus suggest that, in fact, there seems to be a difference in the risk of having an accident at the xth hour at work, depending on the starting time of work. This hypothesis would, however, only be testable with an adequate data base for estimating valid exposure models for every hour of starting time of work, which is not yet available.

Although the available data base used for estimating the exposure models according to the starting time of work was rather vague, different models for the

exposure with regard to selected starting times were constructed. As an example, the available data for the 3 "traditional" shiftwork starting times at 0600, 1400, and 2200 were used to calculate exposure models (proportions of people at work). The model (and the accident data) for the starting time 0600 was, of course, confounded by the subsample of people not working shifts (but starting early) or by part-time workers. Therefore, 100% of the working population was not present for the whole 8 hours of the shift. The models for starting times 1400 and 2200 represent, however, 100% of the working population for the first 8 hours, because these starting times are typical for shift workers on 8-hour shifts.

In figure 6 the calculated relative accident risks are shown for shifts starting at 0600, 1400, and 2200, representing the 3 "traditional" shiftwork starting times. Since the risk increases exponentially beyond the 8th hour at work, a logarithmic representation and labeling has been chosen for the y-axis. The results seem to suggest that the exponential increase in the risk of accidents with hour at work is especially distinct with "abnormal" starting times for shifts during the day (eg, those deviating from the "normal" workday).

Figure 6 also shows very clearly another feature of the hypothesized (and for the absolute accident frequencies statistically significant) interaction between hour at work and time of day. There was a marked difference in the risk of having an accident at a certain time of the day, depending on the hour at work (eg, at 1500 when this time was the second hour at work on an afternoon shift, as compared with the 10th hour at work on a morning shift) and the same seems to be true for other combinations of hour at work and time of day as well.

#### *Discussion*

The results show that there is clear support for the conclusion already drawn by Folkard (1) and Åkerstedt (2) that accident risk increases exponentially beyond the 8th or 9th hour at work. In addition, this seems to be a rather conservative estimate, as shown by the results of some sensitivity analyses (not presented).

It should also be kept in mind that these results include a wide variety of occupations with different accident risks (eg, from office work to the mining or steel industries). The reported increase in accident risk with

<sup>3</sup> Since the data basis for the hours 0000 and 0100 showed inconsistently high values — probably due to the method of assessment — the reliability and validity of these data could not be assumed for these hours. These data were thus excluded from the analyses.

<sup>4</sup> The labeling on the y-axis as 1 to 10 and >10 hour at work (while the data are grouped into 1st to 12th and >12th hour at work) has only been chosen for the reason of appropriate and readable labeling, because the proportion of accidents, and thus the size of the segments, was very small beyond the 10th hour at work.

hour at work in this case might thus, as well, be regarded as a conservative estimate from such a different perspective, at least for certain industries. It would therefore seem especially interesting to perform similar analyses for certain professional groups or different branches of industry to obtain differentiated estimates of the time-related risk for different occupational conditions. The accident data would be available for such analyses, but there are no exposure data available nor can they be constructed from available data bases. Therefore, such calculations would be impossible at the moment — at least in Germany.

Another weakness of our approach is that many confounding variables cannot be controlled for in these analyses. This lack of control may obscure some distinct effects that would be revealed if one were able to control for such confounding effects as type and amount of work to be done, and presence of supervisory personnel. Smith et al (4) have raised this issue and shown that there are different risks associated with such factors in conjunction with the effects of worktime. In fact, it could be assumed that one of the reasons why no increased risk could be found for night hours in our analyses was the lack of control for such confounding factors.

On the other hand, the results clearly indicate that, in general, the extension of daily workhours to up to 10 hours (and more under certain conditions, *excluding* breaks), as provided by the directive of the European Union and the German law on workhours, cannot be regarded as not increasing the risk of accidents. In fact the opposite applies, as the available evidence clearly demonstrates.

The effects of time of day on accident risk remain unclear. Our results show no increased risk for night hours, neither with the maximum nor with the minimum exposure model. This may be due to the different conditions of work during the day and the night, an observation that is not uncommon (4, 9), and which may be especially true for this heterogeneous population. Such possibilities can, however, only be hypothesized since reliable data are again missing. Once again, a more-detailed analysis with reliable data for specific subgroups would seem urgently required.

Regarding the interaction of time of day and hour at work, our results suggest that it would be worthwhile to expend more effort on such analyses, trying to develop more adequate exposure models (with possibilities of cross-validation) to arrive at more reliable estimates. But again, more adequate data bases for the exposure, at least for being able to estimate the exposure, would be urgently required. Such a data base could be achieved by registering workhours according to their starting time and duration, and, if such a procedure is too expensive, at

least representative samples should be surveyed with questions that deliver the information required from an ergonomic point of view.

To summarize, the results obtained thus far clearly indicate time-related effects on occupational accident risks, which deserve further scientific attention and efforts. However, adequate data bases for estimating the exposure should be provided, even if the results might not be in agreement with the popular requests for more flexibility in the regulation of workhours. From a health and safety perspective, limiting the acceptable amount of hours of work might still make sense, especially for shift workers, as our results indicate. Such a limitation might even be an economically sound approach when the costs of accidents are considered against the benefits of saving personnel or even undermanning, not to mention the question of solving the resulting problems by less efficient (and sometimes even illegal) overtime work.

### Acknowledgments

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## **Fifteen Things Every Union Leader Should Know About Safety and Health**

- 1) The twin goals of a union safety and health program are to improve working conditions and to build the union. They are equally important. In fact, you can't do either one well unless you do both.
- 2) Management has different goals for health and safety than the union does, even enlightened management. They may care about safety in its own right, but are probably more concerned about things like workers comp costs. And building the union is never one of management's goals.
- 3) What you do regularly with your employer on safety and health is a form of bargaining – called “continuous bargaining.” Management comes in to joint labor-management health and safety committee meetings prepared to meet their goals; we need to come in just as prepared to meet our goals.
- 4) Safety and health isn't a technical issue. Technical knowledge helps. But there are plenty of places to get technical information. Strategy and organization are much more important in winning the improvements we need.
- 5) Every local union needs a union safety and health committee. You should set one up even if you don't have a joint safety and health committee. You don't need an employer's permission to establish a union committee.
- 6) It's also good to have a joint safety and health committee, with representatives from the union and from management. The joint committee can be important in resolving health and safety problems.
- 7) Even if you have a joint committee, you still need a union committee. The union committee can be the union reps on the joint committee or a larger group.

- 8) The union members of the joint committee should meet by themselves at least as often as they meet with management. You need separate meetings to set union priorities and plan strategy. Can you imagine what would happen if your bargaining committee met only with the employer at contract time, and never by itself?
- 9) You should never, ever allow the employer to appoint your safety and health reps, to veto the union's choices, or dismiss your reps from their union positions. Never. Ever.
- 10) Union safety and health reps should think of themselves as organizers, promoting health and safety in a way that builds the involvement – and the loyalty and commitment -- of your membership. That means involving the membership whenever you can in the union's health and safety activities. And it means good communication with your membership, both written and by word of mouth such as "one-on-one's".
- 11) Workers' injuries and illnesses are caused by exposure to hazards on the job. The hazards can be unsafe equipment or toxic chemicals. Hazards also include things like lack of training, fatigue from extended working hours and shifts, downsizing/understaffing, work overload (too few people, too much work, job combinations, etc.), and production pressures.
- 12) A good safety and health program focuses on finding and correcting hazards. Employers' safety programs that focus on "worker behavior," workers' "unsafe acts" and blaming workers are hazards in and of themselves. They focus attention away from the real hazards that put our members' health and lives at risk.
- 13) "Blame-the-worker" safety programs tell our members that they are the problem. In fact, our members and their union are the solution.
- 14) The best way to find hazards is for union health and safety reps to talk to every worker about his or her job, and how to make it safer, healthier and easier. It's even better to enlist that member in pushing for improvements. That helps build involvement of members in safety and health, and build the union!
- 15) You're not alone. You have lots of resources though the USW. Every district has a safety and health coordinator, and USW safety and health advisors. Our International's Health, Safety and Environment Department is available for help via phone (412-562-2581), fax (412-562-2584), email ([safety@usw.org](mailto:safety@usw.org)) or mail (USW Health, Safety and Environment Dept., United Steelworkers, 5 Gateway Center, Pittsburgh, PA 15222)



## **The Role of the Union in Joint Labor- Management Health and Safety Programs, Efforts and Committees: What Unions Need to Know, Understand and Be Able To Do**

### **The On-going Battle to Protect the Health and Safety of USW Members**

Hazardous workplace conditions regularly threaten the health and safety of United Steelworkers' members in workplaces across North America. While USW local unions have successfully achieved the elimination and/or reduction of certain hazards in their workplaces, many hazards remain, including those that the union has identified, but management has not addressed. Many hazards in today's workplaces have been created or made worse by workplace changes such as work restructuring, new technologies and new management policies. Downsizing/understaffing, excessive working hours and shifts, speed-up/push for production, work overload, job combinations, and monitoring can all impact health and safety conditions on the job. The presence of older, unaddressed hazards as well as newly recognized or introduced hazards continue to threaten the health and safety of our members. In some cases the health and safety of communities and the environment are threatened as well.

Unions have important mechanisms such as joint labor-management health and safety committees that provide forums for ongoing communication on health, safety and environmental issues between the union and management. In a document produced in 1989 in the United States by the U.S. Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs entitled "The Role of Labor-Management Committees in Safeguarding Worker Safety and Health", it states, *"It is easy to have a labor-management committee for occupational safety and health. It is extremely difficult to have one that can make major inroads into solving tough, long-standing dangers to worker safety and health."* This is true today across North America, and it is true for all labor-management efforts to improve health and safety in the workplace, not just joint committees.

### **A Union Approach and A Management Approach to Health and Safety: What's the Difference?**

While on one level labor's and management's health and safety goals may seem similar (e.g. management wants fewer reported injuries; the union seeks a safe workplace); the reality is that union and management approaches to *achieving* those goals can be very different (e.g. management's implementation of policies and practices that discourage workers from reporting injuries vs. the union's emphasis on eliminating hazards that cause injuries and

illnesses). In fact, there can also be a great difference between the way the union and management view what the problems are when it comes to health and safety. Unions view hazardous conditions as the key problems that need to be addressed; too often management views the problem as “careless or inattentive workers” who are not working safely enough and allow accidents to happen. Unions seek comprehensive worksite health and safety programs that focus on identifying and eliminating hazards (including hazards associated with how work is organized and being restructured); too often management seeks programs aimed at adjusting workers’ behavior – getting workers to work “more safely” around hazards that really should be eliminated or reduced, and discouraging them from reporting symptoms, injuries, illnesses and problems.

Union goals for our health, safety and environment efforts include protecting our members by eliminating/reducing hazards and creating safe and healthful workplaces. Too often, management is more concerned with their bottom line, and their health and safety efforts focus on reducing workers compensation claims by discouraging members from filing them or contesting them once filed; promoting a “good and safe” public image by discouraging workers from reporting symptoms, injuries and illnesses; keeping production up while skimping on health and safety protections/precautions (and then blaming workers when they get injured); and keeping control at all costs.

### **A Union and “Continuous Bargaining” Approach to Health and Safety**

Without a union being well-organized and well-versed in a *union* approach to health and safety, it is easy for management to take control (overtly or covertly) of a safety program.

Think about how a union prepares for and goes into another type of “joint labor-management” activity – collective bargaining. A union works to achieve its goals during negotiations for a new collective bargaining agreement by engaging in a number of union activities including:

- Research and information gathering
- Communicating with/involving members
- Developing Proposals/Demands
- Identifying and Exercising Leverage

It is clear that when labor and management sit down at the bargaining table, they have different goals. The activities that a union engages in prior to (and during) bargaining helps the union to build the power it needs to be successful in negotiations.

Unions also need power when it comes to health and safety, especially in getting tough, on-going health and safety problems addressed. The same kinds of activities that unions engage in to prepare for bargaining their contracts are needed to prepare for dealing with management regarding health and safety issues. Research and information gathering; communicating with/involving members; developing proposals and demands; and identifying and exercising leverage are all part of a “*continuous bargaining*” approach to health and safety.

In order for there to be a real and meaningful role for the union in dealings with management in a joint labor-management health and safety committee or program, there are a number of specific and essential activities the union must engage and be well-versed in, as part of this *union* and “*continuous bargaining*” approach to health and safety:

- 1) Having a union-only health and safety committee that meets regularly, separately from management, to:
  - discuss health and safety concerns and problems,
  - identify and prioritize issues to be brought to management and/or to joint labor-management health and safety committee meetings,
  - identify solutions (short- and long-term) to address these hazards and hazardous conditions
  - discuss follow-up actions to take if management does not address these concerns
- 2) Having union-only health and safety training, including training focused on a union approach to health and safety, for union members who serve on this committee (which in most cases would include all those who serve on the union side of the joint labor-management health and safety committee), and others (e.g. the union’s Executive Board, stewards, grievors, etc.)
- 3) Regularly communicating with members about their health and safety issues and concerns (including regular use of union surveys, one-on-one information gathering, special meetings, etc.);
- 4) Organizing and activating members to be part of the union's efforts to get health and safety problems corrected;
- 5) Preparing proposals and positions as a union committee, and approaching management as a united, organized and collective voice;
- 6) Developing a “*continuous bargaining*” strategy for getting health and safety problems addressed, especially in situations where management has --or is likely to -- deny, ignore or minimize these concerns (a “*continuous bargaining*” strategy would involve strategies and tactics – including member-involving strategies and escalating tactics – that would put pressure on management to address health and safety problems they may otherwise chose to ignore or “solve” in ways that are problematic for the union and its members);
- 7) Caucusing regularly during joint labor-management health and safety committee meetings, to maintain unity, develop a common strategy and formulate responses to management proposals;
- 8) Having regular and frequent discussions and communication between union members on the health and safety committee and the Union’s leadership, to discuss all of the above issues and activities.

Union-only preparation for joint labor-management health and safety committee meetings is just as important as preparing for negotiating sessions during contract bargaining. The union should be as well-organized, strategic and just as inclusive of members' concerns as preparation for contract bargaining.

A key difference between contract bargaining and many joint labor-management processes is the role that union-only meeting time plays in setting the union's agenda, developing priorities and goals and planning strategies for obtaining those goals. While contract bargaining involves regular union-only meeting time before and during negotiations; many unions involved in joint labor-management health and safety committees often meet only with management and rarely or never as a union-only committee. Using a union and continuous bargaining approach to health and safety, it is essential for the union side of joint labor-management committees to meet independently, regularly, to prepare for joint meetings, evaluate progress, and engage in strategic planning.

In the course of continuous bargaining on health, safety and environmental issues, it is crucial to build involvement and unity within the union.

Union health and safety committee members and representatives can support a continuous bargaining approach to health, safety and environmental issues by engaging in activities such as:

- surveying members regarding their health and safety concerns;
- developing fact sheets and newsletter articles on particular issues to keep members informed;
- making presentations at membership and/or special meetings;
- having one-on-one conversations with members;
- analyzing data such as the employer's injury and illness logs to identify injury/illness trends, hazards and priorities;
- obtaining and reviewing materials on particular hazards from sources such as the USW Health, Safety and Environment Department ([www.usw.org](http://www.usw.org); [www.usw.ca](http://www.usw.ca)); the AFL-CIO; the Canadian Labour Congress; the Canadian Centre for Occupational Health and Safety; the Ontario Workers Health and Safety Centre; websites such as [www.workhealth.org](http://www.workhealth.org); [www.hazards.org/bs](http://www.hazards.org/bs); the Occupational Safety and Health Administration (OSHA); the Mine Safety and Health Administration (MSHA); the National Institute for Occupational Safety and Health (NIOSH); and other sources;
- identifying and documenting health, safety and environmental impacts resulting from workplace changes (e.g. increased symptoms, injuries and/or illnesses from downsizing, speed-up, 12+hour shifts, mandatory overtime, job combinations, new technologies, work restructuring, etc.) Unions may be able to formally bargain over these and other changes that can impact health and safety.
- identifying strengths and weaknesses of current health and safety training programs; developing union priorities for the type and content of training, and determining training providers; and
- developing and undertaking strategies that involve local union members, build the union and get health, safety and environmental conditions improved.

To be successful in getting health and safety problems addressed, including tough, long-standing dangers that threaten the health and safety of members, it is essential that the union have a functioning union-only mechanism in place, with the elements and characteristics described above. Successful joint labor-management efforts and programs require a strong

union-only program to be in place and functioning. These elements and characteristics of a union-only program and continuous bargaining approach are pre-requisites for an effective joint labor-management health and safety program.







## **Resource Handout**

### **EFFECTIVE SAFETY AND HEALTH COMMITTEES**

Today's workers and unions are confronted daily with many health and safety issues and hazards. These range from exposure to toxic chemicals, poor indoor air quality, and unguarded machinery, to problems associated with work organization and work restructuring: understaffing, mandatory overtime, overwork, stress and fatigue. In addition, workplaces often lack comprehensive worksite health and safety programs aimed at identifying and eliminating hazards.

Many unions have formed **health and safety committees** to help the local union deal with health and safety issues in an on-going and effective way. There are two basic types of health and safety committees:

- **Local union health and safety committees**, composed exclusively of union members, and
- **Joint labor-management health and safety committees**, composed of representatives from union and management.

These are two different kinds of health and safety committees. Both can be very important in efforts to improve workplace health and safety committees.

### **LOCAL UNION HEALTH AND SAFETY COMMITTEES**

A local union Local union health and safety committees primarily investigate health and safety conditions and issues on behalf of the union. They also communicate with the union membership and leadership on health and safety matters, and recommend strategies and actions to improve conditions. A local union does not need contract language to establish a union-only health and safety committee.

## **Who Serves on Local Union Health and Safety Committees?**

Members of the local union health and safety committee are generally appointed by local union officers or elected by the membership. Committee members often represent different departments and/or shifts in a workplace. Some unions have a representative from the local's negotiating committee and/or a local union officer serve on this committee as well. Local unions that have negotiated joint labor-management health and safety committees frequently have their members who serve on the joint committee also serve on the local union's health and safety committee.

## **Functions of a Local Union Health and Safety Committee:**

The local union committee should be involved in several main activities:

1. Identifying current and potential health and safety hazards and problems,
2. Identifying appropriate measures to eliminate or control hazards and problems,
3. Identifying effective union strategies for improving conditions,
4. Assisting the union representatives on a joint labor-management health and safety committee (if such a committee exists) in identifying union concerns for discussion and resolution by the joint committee,
5. Evaluating the effectiveness of control measures put in place,
6. Communicating with and educating union leadership and membership, and building member involvement in the union's health and safety efforts.

With this in mind, some of the specific activities that local union committees can undertake to accomplish these functions include:

- Surveying the membership regarding their health and safety concerns as well as work-related symptoms, injuries, illnesses and stresses.
- Conducting body mapping, hazards mapping and other activities with members to identify and track workplace hazards and their impacts on the membership.
- Conducting investigations of incidents, accidents, illnesses and near-misses. (Note: Contract language may be needed to give the union

notification of events, time to investigate and access to the workplace in order to carry out on-site investigations.)

- Reviewing health and safety-related grievances
- Developing health and safety contract proposals
- Identifying opportunities for mid-term bargaining over safety and health. (Note: Unions have rights to bargain during the life of the contract over certain changes management wants to implement, if these changes involve or impact “conditions of work” – including health and safety.)
- Participation in any monitoring of workplace conditions performed by the employer, a consultant or an OSHA inspector. (Note: Again, contract language may be needed. Regarding an OSHA inspection, union representatives have the legal right to accompany an OSHA inspector, but contract language may be needed to assure that employer-paid time is provided.)
- Accessing and regularly reviewing information on hazards, monitoring data, incident reports, OSHA 300 logs of injuries and illnesses, workers’ compensation records, health and safety complaints, and summary data from workers’ medical examinations (such as hearing test results).
- Accessing and reviewing information on contemplated workplace changes for the presence of hazards. This would include reviewing plans for new equipment, new work processes, new technologies, work restructuring (changes in how work is organized), etc., to see if changes need to be made to protect workers’ health and safety.
- Engaging in regular two-way communication with union leadership and membership on health and safety issues.
- Educating union membership and leadership about particular health or safety issues and concerns.
- Selecting priority health and safety issues and recommended solutions to raise with management.

- Assisting with the development of strategies for getting priority health and safety issues addressed.
- Identifying and communicating with community-based and other allies who may be able to support specific campaigns the union undertakes to improve workplace health and safety conditions.
- Filing and following up on OSHA complaints. (Note: Some unions, when filing OSHA complaints, involve their members by asking those who are exposed to the hazards specified in the complaint to sign the complaint. Local union health and safety committee members can help collect those signatures.)
- Participating in informal conferences with OSHA and management following a citation for an OSHA violation.
- Following up on any citation formally contested by management. (Note: The union should file for “party status” with the Occupational Safety and Health Review Commission to give the union rights to be involved in the proceedings. For more information, contact your staff representative and the USW Health, Safety and Environment Department at [safety@usw.org](mailto:safety@usw.org) or 412-562-2581.)
- Tracking members’ experiences with workers’ compensation and return-to-work, and assisting as needed. (Note: Some locals have workers compensation committees that do this. If this is the case, there should be regular communication between the union’s health and safety committee and their workers’ compensation committee. This is important to assure that the hazards that caused members’ injuries and illnesses in the first place are adequately controlled and do not go on to re-injure the worker or injure others.)
- Preparing for joint labor-management committee meetings.

### **Resources Needed by a Local Union Health and Safety Committee**

To be effective in their roles on local union health and safety committees, committee members need several things: time, access to the workplace, resources and training.

Time: Union health and safety committee members need time to engage in the activities listed above. Some unions provide lost-time to committee members in order to complete these duties; other unions have negotiated contract language providing time to union health and safety committee representatives to engage in these functions. Unions that are just starting a union-only committee may begin by encouraging committee members to meet at lunch or break time to discuss ideas and begin a planning process for investigating and solving problems.

Access To The Workplace: Ideally, union health and safety committee representatives should have regular access to the workplace (on all shifts) to speak with members about health and safety issues and concerns, investigate problems, and conduct incident and accident investigations. Some unions have secured such access via contract language.

Access to Resources: In order to stay on top of legal, technical and strategic information regarding workplace health and safety, local union health and safety committee members should have a basic library of health and safety texts and materials, access to the internet and to a list of resource individuals and organizations to help understand problems, solutions and strategies. Some union halls have set aside a space with a library and computer for use by the union's health and safety representatives. (Note: the USW Health, Safety and Environment Department can help identify specific resources for the library, internet resources and other information.)

Access to Training: Union health and safety committee members need access to health and safety training, including union-only training and education. Local unions can arrange this training through their District and the USW Health, Safety and Environment Department. The training should cover issues related to "traditional" hazards (for example, toxic chemicals, unsafe equipment); hazards associated with how work is organized or being restructured (like hours of work, staffing levels, work load, work pace); and strategies for building leverage and winning improvements.

## **JOINT LABOR-MANAGEMENT HEALTH AND SAFETY COMMITTEES**

Joint labor-management health and safety committees are most often established by contract language. They provide a forum for unions and

management to interact on health and safety issues and problems and to work on improving safety and health conditions at the workplace. These committees include representatives from both labor and management, and usually meet on a regular basis (such as monthly).

Some joint labor-management committees have been very effective in identifying and addressing certain health and safety problems on an on-going basis. Other joint committees are less effective in solving health and safety problems.

The next section includes a list of questions regarding joint labor-management health and safety committees. The more “yes” answers, the more likely a committee is to be effective in addressing health and safety problems in a workplace.

### **Questions to Ask About Joint Labor-Management Committees:**

1. Does the union have at least as many members serving on the joint committee as management?
2. Does the union have the sole right to select the union members of the joint committee?
3. Are there union and management co-chairs of the committee?
4. Are the management members of the committee senior enough to make real decisions that cost money?
5. Can the committee make decisions and put them into effect?
6. Does the union have an equal say in establishing the joint committee’s agenda and priorities?
7. Can the committee make inspections of the workplace?
8. Can the committee shut down unsafe jobs?
9. Does the local union regularly monitor the effectiveness of the committee in dealing with the issues raised by the union?

10. Does the committee have regular access to information on safety and health kept by the employer (such as OSHA 300 Injury and Illness Logs; records of medical testing and exposure monitoring; material safety data sheets; proposed or planned changes in technologies, work processes or work organization that could impact job safety and health)?
11. Do committee members have the right to take samples in the workplace and carry out simple monitoring?
12. Do union members of the committee receive lost-time pay for carrying out their functions and for receiving union-selected training?
13. Do the union representatives serving on the joint committee meet prior to each joint meeting to review and prioritize concerns, plan for the joint meeting and identify leverage (including member-involving strategies) that will encourage management to address particular issues they may be reluctant to address? (In other words, do the union representatives have regular union-only meetings to prepare for “continuous bargaining” with management over health and safety?)
14. Has the union been able to negotiate contract language that mandates the employer to pay lost-time for these regular, union-only meetings?
15. Do joint committee agendas regularly include time to identify current (or continuing) problems, appropriate solutions, who will be responsible for implementing the solution, and deadlines for action to be taken on each problem?
16. Are union members serving on the joint committee involved in planning and/or presenting in-service health and safety education for workers, including health and safety orientation of new workers?

Again, for a number of issues raised above, specific contract language can be developed and negotiated to ensure that the answers to these questions are “yes”.

Some joint labor-management health and safety committees have established sub-committees to deal with specific issues such as ergonomics or implementing safer needle devices in health care settings. It is important

that the union view these sub-committees in the same way they view the larger joint labor-management health and safety committee and apply the same guidelines for ensuring these sub-committees' effectiveness.

To increase the effectiveness of a joint labor-management health and safety committee, it is important for the local union's own health and safety committee (which in most cases will include the union's representatives to the joint labor-management committee) to:

- meet regularly to plan for the joint meetings,
- be in regular contact with the local union leadership and membership,
- involve members in strategies to improve workplace health and safety.

### **Functions of a Joint Labor-Management Health and Safety Committee**

A joint labor-management health and safety committee should have the following responsibilities:

- Identifying current and potential health and safety hazards and problems,
- Identifying appropriate measures to eliminate or control hazards and problems,
- Getting recommendations acted upon, and
- Evaluating the effectiveness of control measures put in place.

Some of the specific activities that joint labor-management health and safety committees can undertake to accomplish these functions include:

- Reviewing all information and data (like OSHA 300 logs, incident reports, complaints, workers compensation data, monitoring results, inspection and walk-through reports, etc.) to identify problems, hazards and trends;
- Investigating incidents, illnesses and near-misses;
- Reviewing information related to contemplated workplace changes for the presence of hazards, and
- Tracking the effectiveness of hazard control efforts.

Union members serving on joint labor-management health and safety committee members will also need time, access to the workplace, access to



resources, and access to training (including union-only health and safety training) to effectively carry out their functions.

## **HEALTH AND SAFETY AS A UNION ISSUE**

Health and safety issues should not be seen as the sole concern of the union members who serve on either the union's safety and health committee and/or the joint labor-management health and safety committee. These issues are also the concern of the local union's leadership, stewards and members.

### **Bargaining Health and Safety Language in the Contract**

Many of the decisions made by the union's negotiating committee will impact safety and health issues, and union health and safety committees will be regularly identifying issues that can best be dealt with by securing contract language in the collective bargaining agreement. It is important that there is effective communication between union representatives serving on the health and safety committees and the union's bargaining committee regarding health and safety issues, to assure a coordinated effort.

### **Effective Communication with the Union's Leaders and Members**

Regular, two-way communication between members who serve on health and safety committees and the union's leadership and membership is essential. One of the major tasks of any union safety and health committee is to keep leaders and members fully informed and educated. Regular newsletters, meetings, published minutes and personal contact are necessary to assure that this is done. In addition, there should always be ways for the membership to communicate their concerns and ideas to the union's health and safety representatives.

### **Building Union Strength**

Health and safety is a good vehicle for involving members in the union. Involving members in health and safety increases the union's power in winning workplace improvements. It also helps build the general strength of the union. The stronger the union, the better it can take on and win safer workplace conditions. The more that unions take up health and safety issues in member-involving ways, using union-building approaches, the stronger the union will be.



## **Treat It As Continuous Bargaining: Representing Members on Workplace Health, Safety and Environmental Issues**

While most Steelworker local unions have contract language on health and safety, and seek better and stronger language each contract; no contract language can be relied on to solve all the union's health, safety and environmental problems. New information on old hazards, recognition of additional hazards and perhaps most importantly, new hazards created by workplace changes (such as work restructuring and new technologies), constantly challenge a union's ability to represent its members on health, safety and environmental issues.

The contract usually creates important mechanisms such as joint labor-management health and safety committees that allow for ongoing communication on health, safety and environmental issues. In some cases management would like the union to treat the safety committee meetings as pleasant discussions amongst friends. Often management tries to limit the involvement of the union in health and safety only to the monthly joint committee meeting. In actuality every time union and management representatives come together to discuss health, safety and environmental issues, a form of bargaining is taking place. Continuous bargaining is a powerful tool for the union to make needed improvements in health and safety conditions in the workplace.

While on one level labor and management's health and safety goals may seem similar (e.g. management wants fewer accidents; the union seeks a safe workplace); the reality is that union and management approaches to *achieving* those goals can be very different (e.g. management's implementation of policies and practices that discourage workers from reporting injuries vs. the union's emphasis on eliminating hazards that cause injuries and illnesses).

In general, neither party thinks of these labor-management discussions as "bargaining." But some local unions are beginning to see improved results from their joint labor-management interactions on safety and health and other issues when they think of these discussions as ongoing or continuous bargaining, and prepare for them as bargaining sessions.

When unions prepare for contract bargaining, they engage in certain essential activities including:

- 1) Selecting the Union's bargaining representatives and training them (in union-only sessions) for their roles;
- 2) Understanding the members' issues and concerns using surveys, planning meetings, one-on-one information gathering, etc.;
- 3) Organizing and activating the members to defend their interests and the union's strength in the bargaining process;

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# United Steelworkers

## Health, Safety & Environment Department

### Fact Sheet

- 4) Analyzing the union's (and management's) strengths and weakness given the current bargaining environment;
- 5) Preparing proposals and positions as a committee and approaching management as a united and organized voice;
- 6) Developing a bargaining strategy;
- 7) Caucusing regularly to maintain unity, developing a common strategy and formulating responses to management proposals;
- 8) Demanding that any agreements reached are written, clear and enforceable.

Preparation for a joint labor-management health and safety meeting is just as important as preparing for contract bargaining. The union should be as well-organized and just as inclusive of members' concerns as preparation for contract bargaining.

A key difference between contract bargaining and many joint labor-management processes is the role that union-only meeting time plays in setting the union's agenda, developing priorities and goals and planning strategies for obtaining those goals. While contract bargaining involves regular union-only meeting time before and during negotiations; many unions involved in joint labor-management health and safety committees or teams often meet only with management and rarely or never as a union-only committee. Local unions should find ways for the union side of joint labor-management health and safety committees to meet independently, regularly, to prepare for joint meetings.

In the course of continuous bargaining on health, safety and environmental issues, it is crucial to:

- build involvement and unity within the union;
- build the identity of the union;
- pay attention to your instincts; and
- Caucus with your union sisters and brothers before, during and after joint meetings.

Union health and safety committee members or representatives can support continuous bargaining on health, safety and environmental issues by:

- surveying members regarding their health and safety concerns;
- developing fact sheets and newsletter articles on particular issues to keep members informed;
- making presentations at membership meetings;
- having one-on-one conversations with members;
- analyzing data like the company's injury and illness logs to identify injury/illness trends, hazards and priorities;
- obtaining and reviewing materials on particular hazards from sources such as the USW Health, Safety and Environment Department, the AFL-CIO, the Canadian Labour

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# United Steelworkers

## Health, Safety & Environment Department

### Fact Sheet

Congress, the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH), the Canadian Centre for Occupational Health and Safety, the Ontario Workers Health and Safety Centre ([www.whsc.on.ca](http://www.whsc.on.ca)), and the Environmental Protection Agency (EPA);

- identifying and documenting health, safety and environmental impacts resulting from workplace changes (e.g. increased injuries or illnesses from downsizing, speed-up, 12+hour shifts, mandatory overtime, job combinations, new technologies, work restructuring, etc.) Unions may be able to formally bargain over these changes and/or their impacts.
- identifying strengths and weaknesses of current health and safety training programs; developing union priorities for type and content of training and determining who should provide the training;and
- developing and undertaking strategies that involve our local union members, build the union and make health, safety and environmental improvements.

Of course there is much more information about this issue than can fit onto a few page fact sheet. If your Local Union needs assistance or would like additional information about continuous bargaining or other health and safety issues there are several ways to get help. First, the USW can provide assistance to your local union through your Staff Representative, District Health and Safety Coordinator, District Director, and the Health, Safety and Environment Department. Your Local Union President should contact the Staff Representative with your concerns. You can also obtain additional information from the USW website at [www.usw.org](http://www.usw.org) and [www.usw.ca](http://www.usw.ca); the AFL-CIO's website at [www.aflcio.org/safety](http://www.aflcio.org/safety) and the Canadian Labour Congress website. These websites have links to a number of other useful internet websites including the websites of the organizations referenced in this fact sheet.

This material was adapted from a fact sheet developed by the Massachusetts AFL-CIO and materials developed by the Technology and Work Project, University of Massachusetts, Lowell, MA. For further information, contact the USW Health, Safety and Environment Department.

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**Draft Code of Conduct for Union Members Involved in Joint Labor-  
Management Health and Safety Committees**

Many local unions have had years of experience with joint labor-management health and safety committees. Gains in workplace health and safety have resulted from having such a committee where the union can raise and discuss its concerns. In some cases, however, management has used these committees to stall, redirect attention away from union concerns, and limit progress in addressing union issues. Every local union member participating on a joint labor-management health and safety committee should be aware of the pitfalls of these committees, and what he or she can do to best represent and pursue the interest of the union and its members.

This is a draft code of conduct for union members who are involved in joint labor-management health and safety committees and activities. Note that this code is not much different from what we would expect of a union member in other settings – especially when union members are engaged in any type of discussion with management.

Many consultants in the labor-management field have tried to convince unions that we are in a new era – a new period of history – and that the code of conduct for us as union members therefore has to be different. They focus on “trust,” “listening,” “respect in meetings,” and “looking out for the needs of everyone.” But despite all the rhetoric, there are certain basic union values, and a code of conduct that goes with them, that cannot be abandoned.

The following are ideas for that code of conduct as it relates to union members serving on joint labor-management health and safety committees.

**1) Always remember that a union approach to health and safety that is different from a management approach to health and safety**

Union approaches to health and safety recognize that workplace injuries and illnesses are caused by exposure to hazards, and that the goal of all health, safety and environmental efforts must be to identify and eliminate or reduce hazards. Management approaches often blame those who are exposed to hazards – the workers – for job injuries.

A union approach views health and safety hazards as anything in the workplace that can damage a worker’s physical or emotional health – including toxic chemicals, unsafe equipment, poor ergonomic job design as well as understaffing, long work hours, speed-up, heavy work load, rapid work pace and other work organization issues. Management generally seeks to limit the definition of health and safety and often resists, for example, dealing with the health and safety impacts of how work is being organized or restructured.

Union approaches support the “hierarchy of controls” in hazard control and prevention, which promotes hazard elimination or engineering controls over the use of personal

protective equipment. Management approaches often promote the use of personal protective equipment as the preferred way of addressing workplace hazards.

These differences are reflected in everything from how health and safety problems are defined, to the solutions that get promoted. Union representatives on joint committees must pursue union-advocated solutions to the problems that the union has identified and defined.

- 2) **When in joint meetings, stick to the union agenda. If you are not sure what the union agenda is or how to respond to something that management is saying, call a caucus or wait until the next break.**

It is important for the union representatives on joint committees to act together when dealing with management. This means that significant disagreements should be saved for caucus rather than being aired in front of management. All union representatives should aggressively pursue the union agenda. If the discussion moves to something that the union is not prepared for, a caucus should be called or the issue should be tabled.

*Remember that the only way to adequately prepare our agendas and strategies for the joint meeting is to hold union-only health and safety committee meetings at least as frequently as joint meetings. This means that all local unions should have functioning local union health and safety committees.*

- 3) **When in caucus, talk about all your hesitations, concerns, etc.**

While it is important to work together when in meetings with management, it is equally important that any disagreements be aired in caucus. People should feel free to raise issues and concerns in caucus; in fact, they should see this as their responsibility. This is the only way to build unity of action.

- 4) **Evaluate all proposals and ideas for their impact on the members and the union, and do not endorse “solutions” that can hurt members and the union**

It is critical that ideas, proposals and activities be evaluated for their impact on the members and the union in both the short and long term. This takes more time than simply looking at “how it affects us today.” There are ways to fix one problem that can create other problems for the members or for the union.

- 5) **Report to the union on all joint labor-management safety and health committee meetings and activities, and don’t keep secrets with management**

The union cannot act in a unified manner if it doesn’t know what is going on. It is therefore important for union participants on joint committees to regularly communicate with the union leadership about what is going on in their workplace-wide or department-wide joint labor-management health and safety committee meetings. Don’t keep secrets with management. Frequent, full and open two-way communication and discussion with union leadership and membership is the only way to keep things on a union track, and build the support needed to take on and win health and safety improvements that management may be resisting.



**6) No involvement, direct or indirect, in disciplining other members**

There are many ways, besides the formal discipline procedure, for members to be involved in disciplining other members. Management may ask for union buy-in into policies that involve disciplining, drug testing or counseling workers when they report an injury or accident. These policies do nothing to make workplaces safer – they drive down injury reporting and punish workers rather than identify and correct hazardous workplace conditions.

Behavior-based safety programs can result in members being identified for engaging in “unsafe acts,” sometimes resulting in discipline. In addition to promoting the disciplining of our members, these types of programs can also create divisions within the union. Union representatives should oppose “blame-the-worker” safety programs and advocate for a comprehensive worksite safety and health program that emphasizes finding and fixing hazards.

**7) UNITY**

This cannot be said too many times or in too many ways. Building unity with union members (within and outside of the health and safety committees) must always be on the minds of any union representatives serving on joint labor-management health and safety committees.

**8) Take good notes**

As part of keeping an overall record, and to serve the strategic process, it is important that there is accurate reporting of committee meetings and activities. Never rely on management to keep the only minutes of a meeting.

**9) Never go into any discussion alone**

You can't be a union if you are by yourself. We should always try to make sure that when we are in discussions with management, there is at least one other union member present. This helps build the presence of the union, it allows us to demonstrate unity and it gives more than one union “head” to generate ideas and evaluate actions.

**10) Ask for help when you need it**

No one union health and safety committee member knows everything about the health and safety concerns in their workplace. However, when we communicate with each other, involve the members, local union leadership, and international union staff, solutions can be developed that will address health and safety hazards while involving membership and building the union.

This list is a draft that can be added to or changed. But when your local has done that, let us know about your suggestions as well as print up the finished product, post it around the union hall and make sure that all our members who are involved in joint labor-management health and safety committees have a copy and know what is expected of them.

**Activity Worksheet:  
“I Chose To Look The Other Way”**

**Purpose:** To explore the messages of the film, “I Chose To Look The Other Way”

**Task:** As individuals, think about your answers to the questions below. After a few minutes, come together as a group and go through the questions one at a time. Try to reach agreement, as a group, on an answer to each of the questions. Select a reporter to report back your group’s answers. If you are not able to reach consensus, your reporter will give a “divided house” report.

---

- 1. What do you see as the overall message of this film?**
  
  
  
  
  
  
  
  
  
  
- 2. What does the film say management has to do to protect workers’ health and safety and reduce workplace injuries and illnesses?**
  
  
  
  
  
  
  
  
  
  
- 3. What (if anything) do you see is missing from the film regarding the role that management should play regarding workplace health and safety and reducing work-related injuries and illnesses?**

(over)

- 4. What does the film say about what workers have to do to reduce workplace injuries and illnesses?**
  
  
  
  
  
  
  
- 5. What (if anything) do you see is missing from the film regarding the role that workers should play regarding workplace health and safety and reducing injuries and illnesses?**
  
  
  
  
  
  
  
- 6. What does the film say about the role of unions in workplace health and safety and reducing work-related injuries and illnesses?**
  
  
  
  
  
  
  
- 7. What (if anything) is missing from the film's portrayal of the role unions play/should play to help reduce workplace injuries and illnesses?**
  
  
  
  
  
  
  
- 8. Why do employers want to show this film to our members? What is their goal?**

**Specifically Observe Bosses Form (SOB)**

**USE OF THIS FORM IS VOLUNTARY**

Use this form to observe bosses. This does not have to be your immediate boss. Make your observation, record it, and pass the results on to your LOCAL UNION SAFETY REPRESENTATIVE.

Name of Boss Observed : \_\_\_\_\_ Date: \_\_\_\_\_

Time of observation: \_\_\_\_\_ Witnesses: \_\_\_\_\_

Check all the following that apply: 1) Short Staffing \_\_\_\_\_ 2) Forced overtime \_\_\_\_\_ 3) No SJP / SOP \_\_\_\_\_ 4) Unsafe condition \_\_\_\_\_  
5) Environmental Issues \_\_\_\_\_ 6) No training \_\_\_\_\_ 7) Placed in an unsafe situation \_\_\_\_\_ 8) Allowing contractors to work unsafe \_\_\_\_\_  
9) Boss urged or forced shortcuts to "speed-up" 10) Other \_\_\_\_\_

Please give a brief explanation of the checked items: \_\_\_\_\_  
\_\_\_\_\_

Boss performing bargaining unit work. Explain the work being performed: \_\_\_\_\_  
\_\_\_\_\_

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9) Boss urged or forced shortcuts to "speed-up" 10) Other \_\_\_\_\_

Please give a brief explanation of the checked items: \_\_\_\_\_  
\_\_\_\_\_

Boss performing bargaining unit work. Explain the work being performed: \_\_\_\_\_  
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9) Boss urged or forced shortcuts to "speed-up" 10) Other \_\_\_\_\_

Please give a brief explanation of the checked items: \_\_\_\_\_  
\_\_\_\_\_

Boss performing bargaining unit work. Explain the work being performed: \_\_\_\_\_  
\_\_\_\_\_

DO NOT fill in this form on company time – breaks and lunches or before and after work is OK. When you have completed the other side of this form you should submit it to any union officer, grievor, or safety representative. If you sign and date it - the union can respond to you with action taken.

Your name and other information will be confidential – NO ONE in supervision will be allowed to see this form nor will they be told who submitted it. It is also suggested that you note any other bargaining unit members who witnesses the condition or incident so that they can be contacted by the union also.

NAME \_\_\_\_\_ CLOCK # \_\_\_\_\_

LOCATION \_\_\_\_\_

OCCUPATION \_\_\_\_\_

TASK BEING PERFORMED AT THE TIME \_\_\_\_\_

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LOCATION \_\_\_\_\_

OCCUPATION \_\_\_\_\_

TASK BEING PERFORMED AT THE TIME \_\_\_\_\_

Another BBS Scam uncovered.

The Truth About,

“I Could Have Saved a Life That Day”

They could have saved a life that day  
But they chose to look the other way  
It wasn't that they didn't care  
They never fixed the hazards that were there

Management didn't want to look like fools  
By not knowing their own safety rules  
They knew all the jobs that were done before  
Reducing the risks meant spending more

The planning on paper didn't look that bad  
Continuing to see injured workers was so sad  
But they looked away and walked on by  
They knew the risks as well as I

They made him take a short cut, they turned a blind eye  
And with that act they let him die  
They could have saved a life that day  
But they chose to look the other way

Every time they see his family and wife  
They know they could have saved his life  
The guilt is something they refuse to bear  
On the day of mourning, April 28th we all share

They see all the risks and order the workers to take  
We all constantly put our health and life at stake  
The questions are asked and what we say  
Eliminate all the risks so we can live another day

Every time we see a hazard we speak loud and say  
Spend your money and make the risk go away  
They view our safety concerns as labour noise and funny  
Not fixing safety hazards so they can save their money

They could have saved a life that day  
But they ignored the hazards and looked the other way

USW 7552  
President  
OH&S Co-Chair  
Kelly Reynolds

## **Activity Worksheet:**

### **Strategy Exercise for Preventing or Ending Employers' "Blame-the-Worker" Behavior-based Safety Programs, Policies or Practices**

**Purpose:** To prepare for a "continuous bargaining" campaign to prevent or end a "blame-the-worker" safety program or policy that an employer is implementing or has implemented.

**Task:** Your group is the health and safety committee of a local union where the employer is planning to implement, or has implemented, a "blame-the-worker" behavior-based safety program, policy or practice. As a group, discuss and answer the following questions. Select a reporter to present your group's responses to the large group.

- 1. Briefly describe the "blame-the-worker" behavior-based safety program, policy or practice your group will be taking on:**
- 2. What are/will be the impacts of this "blame-the-worker" safety program, policy or practice on your members?**
- 3. What are/will be the impacts of this "blame-the-worker" safety program, policy or practice on the union?**
- 4. What do you want management to do -- and therefore, what should the union's demands be?**
- 5. What would management say if you asked them to comply with these union demands?**

**STOP HERE**



**6. Information Gathering:**

**a. What other information would you like to have about this “blame-the-worker” behavior-based safety program, policy or practice?**

**b. Where and how could you get this information?**

**7. Communicating With Members:**

**a. What are two or three key points that members should know about this “blame-the-worker” behavior-based safety policy, program or practice, and the union’s activities challenging it?**

**b. How would you communicate this with your members?**

**8. Surveying Members:**

**a. If you were going to do a survey of the members about this “blame-the-worker” behavior-based safety policy, program or practice, what are two or three key questions that you might ask?**

**b. How could this survey of your members be conducted?**

**9. Communicating with Local Union Leadership:**

**a. What support/action do you need from your union’s Executive Board to go forward with a union campaign challenging this “blame-the-worker” behavior-based safety program, policy or practice?**

**b. What are some key points you would make to convince your Executive to take on this campaign?**

**STOP HERE**

## 10. Building Leverage

- a. **Create a slogan for your campaign challenging this “blame-the-worker” behavior-based safety program, policy or practice:**
  
- b. **Developing allies:**
  - (1) **Identify one potential ally that could help the local union and support this campaign.**
  
  - (2) **What could this ally do?**
  
  - (3) **Describe a plan for involving this ally.**
  
- c. **If it turns out that management is not doing what the local union wants it to do regarding this “blame-the-worker” behavior-based safety program, policy or practice, what are some things the union could do to put pressure on them? (Think in terms of member-involving strategies and escalating tactics.)**