

# MERCATUS ON POLICY

## Evaluating OSHA's Effectiveness and Suggestions for Reform

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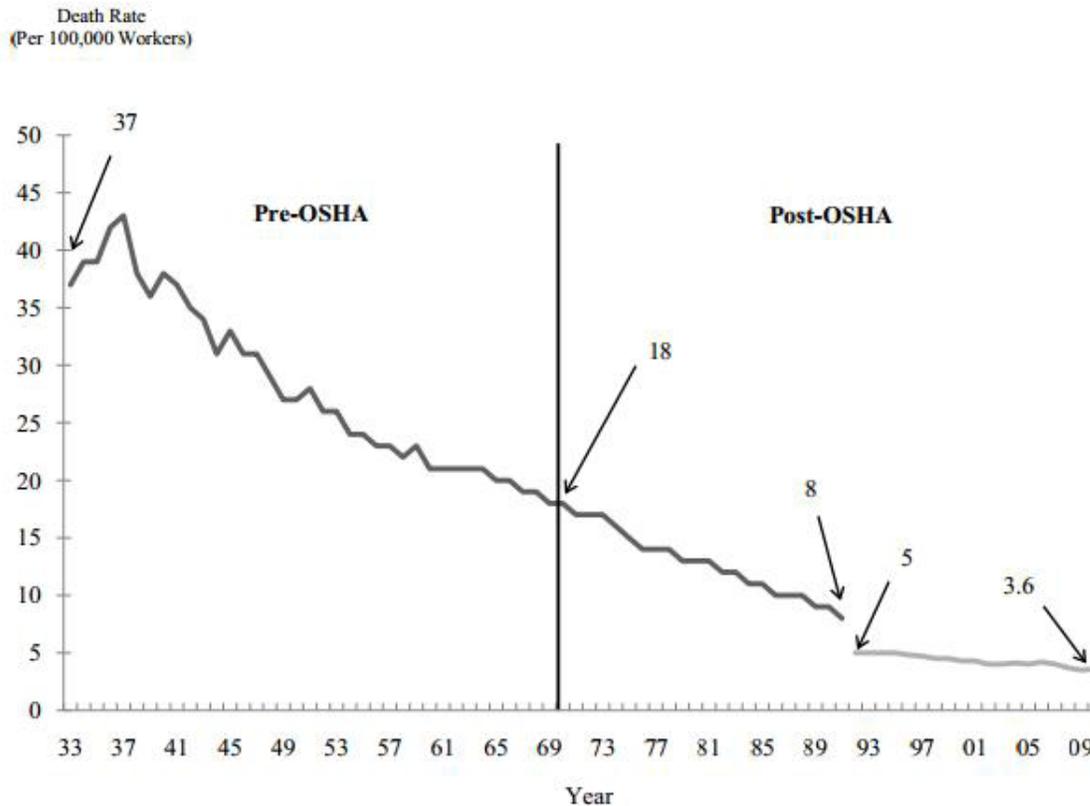
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**C**ONGRESS PASSED THE Occupational Safety and Health Act of 1970 (OSH Act) to create a safer working environment. The Act created two federal agencies: the Occupational Safety and Health Administration (OSHA), which establishes and enforces workplace safety and health standards, and the National Institute for Occupational Safety and Health (NIOSH), which researches the causes and remedies of occupational injuries and illnesses. OSHA is the fourth pillar of the US safety policy system, the others being the legal system, state workers' compensation insurance programs, and the labor market.

When OSHA was established, proponents believed it would dramatically improve the safety and health of American workers. During the 40 years of its existence, workplace fatalities and nonfatal injuries and illnesses have fallen, but OSHA is not the major cause of this decline. Since the OSH Act was passed, workplace fatalities have fallen substantially, as can be seen in Figure 1 on the next page, but this decrease is a continuation of a trend that began long before 1970. Empirical studies that control for the other influences causing worker safety to improve over time generally find OSHA having only a modest impact on worker safety. Changes in the industrial mix of workers and improvements in safety technology have combined with expanded employer incentives unrelated to OSHA to decrease worker injuries and illnesses.

This modest improvement does not mean OSHA has no role to play in protecting worker safety and health. OSHA can best complement the other three pillars of the US safety policy system by providing information to workers about possible hazards, particularly health-related hazards, and by gearing inspections toward worksites with hard-to-monitor dangers and firms employing less mobile and less knowledgeable workers. It should continue to offer consultation services to small

FIGURE 1: WORKPLACE FATALITIES, 1933–2010



Sources: National Safety Council (1994) and US Department of Labor, Bureau of Labor Statistics (2012)

and medium-sized firms and encourage firms to establish management systems addressing worker safety and health issues.

#### FOUR PILLARS OF WORKPLACE SAFETY

EACH OF THE four pillars of the US safety policy system creates incentives to increase worker safety. Workers' compensation insurance covers workers against losses caused by industrial accidents and some diseases. Regardless of who is at fault, employers must compensate employees for medical expenses and lost wages caused by work-related injuries. In return, employees forgo their rights to sue employers when injuries occur. The cost of insurance premiums provides employers the incentive to create a safer work environment. Large firms with many employees are able to decrease their insurance premium cost by improving their safety history. Workers' compensation insurance is estimated to reduce workplace fatalities by 22 percent.<sup>1</sup>

Even though workers' compensation insurance prevents employees from suing employers for negligence, the legal system still provides an incentive to improve

worker safety through product liability laws. The ability of employees to sue product manufacturers for work-related damages incentivizes manufacturers to create safe products and provide proper warnings of possible dangers. The legal system also provides criminal penalties as an incentive to minimize work hazards. An employer convicted of a willful violation of an OSHA standard resulting in the death of an employee faces up to six months in prison. State prosecutors can also pursue manslaughter charges against employers for acts of gross negligence resulting in worker deaths.

The labor market requires employers to compensate employees for riskier work. All things being equal, no employee will choose a riskier job over a less risky job. Some firms will be able to provide safety equipment or institute other practices to reduce injuries, but others will have to entice workers away from safer jobs by offering higher wages. The wage premium acts as a tax on workplace injuries and provides employers the financial incentive to eliminate hazards.

OSHA attempts to promote worker well-being through safety and health standards and consultation services. The threat of fines may deter firms from violating safety

and health standards in the first place, and an actual inspection may cause inspected firms to abate existing hazards. The consultation services are offered to small and medium-sized companies wishing to improve worker safety and health.

## OSHA'S MINIMAL IMPACT

OSHA'S INSPECTION EFFORTS have reduced worker injuries by a modest four percent.<sup>2</sup> Expanding OSHA's enforcement power will not generate substantial improvements in worker safety. The Mine Safety and Health Administration, for example, performs more frequent inspections of mines and gives more substantial penalties than OSHA, yet the impact on miner safety from these additional efforts is minimal.<sup>3</sup> Excessive regulation can reduce compliance and can reduce firms' incentive to improve safety.<sup>4</sup> Quebec's equivalent of OSHA, the Commission de la Santé et de la Sécurité du Travail, spends four times more per worker in prevention activities than OSHA but has been no more successful in improving worker safety and health.<sup>5</sup>

The financial incentives faced by firms partly explain the reason for OSHA's minimal impact on worker safety. In 2010, initial proposed OSHA penalties for safety and health violations totaled less than \$150 million.<sup>6</sup> Employers' cost for providing workers' compensation insurance totaled nearly \$72 billion,<sup>7</sup> and compensating wage differentials for workplace risk totaled around \$100 billion.<sup>8</sup> Estimating legal liability in a given year is difficult, but the amount is likely to be high. The eventual cost of asbestos litigation alone is estimated to be between \$200–\$265 billion.<sup>9</sup> The financial incentives to improve safety created by the other three pillars of the US safety policy system dwarf the financial incentives created by OSHA.

The nature and causes of contemporary workplace injuries also diminish the effectiveness of OSHA. Workplace fatalities and injuries are generally a combination of rare events. It is debatable whether a regulatory approach can effectively identify and control the largely random hazards that result in workplace fatalities and injuries, especially considering the causes of workplace fatalities. The two leading causes of workplace deaths in recent years, transportation incidents and assaults and other violent acts, are unlikely to be reduced much by OSHA inspections. Less than half of the fatalities occurred from events generally covered by OSHA standards.<sup>10</sup>

## WHAT SHOULD OSHA DO?

OSHA SHOULD DIRECT its resources to supplying information to workers about possible hazards. Because workers will not receive wage premiums for hazards they do not know exist, OSHA can help workers through educational efforts alerting them to possible dangers and through employer requirements to provide hazard warnings.

OSHA should target disadvantaged groups that tend to receive smaller compensating wage differentials. The compensating wage differential varies considerably across industries and demographic groups. Compensating wage differentials appear to be smaller for disadvantaged groups, such as non-English-speaking Mexican immigrants, making these groups prime candidates for expanded attention by OSHA.<sup>11</sup>

OSHA should also target health hazards and small firms. The latency period of many industrial diseases makes it difficult to determine who is responsible for the payment of workers' compensation benefits. Many small firms do not have their workers' compensation insurance premiums experience-rated, so they do not see their premiums fall with fewer accidents. To counter the failings of workers' compensation insurance, OSHA should direct its resources toward protecting workers in firms of all sizes from health hazards and workers in small firms from safety hazards.

Many studies find that firm compliance with OSHA standards rises considerably after the first inspection and then quickly levels off, meaning OSHA can get more compliance by inspecting extensively rather than intensively.<sup>12</sup> OSHA should inspect more worksites for the first time and inspect fewer worksites for the second and third times.

OSHA can also improve worker safety by providing consultation services to firms, particularly small and medium-sized firms, wishing to eliminate possible hazards in their workplaces. Due to the pricing of workers' compensation insurance and lack of specialized staff, small firms face fewer incentives and have fewer resources to eliminate hazards in the workplace compared to large firms.

## CONCLUSION

SINCE THE OSH Act was passed, workplace injuries have decreased, but most of the credit can be given to the

other three pillars of the US safety policy system. OSHA still has a role in promoting workplace safety by expanding educational outreach to workers, targeting disadvantaged groups, targeting health-related hazards and small firms, performing more first time inspections, and providing consultation services to small and medium-sized employers. It is not realistic, however, to look to OSHA for future improvements in worker safety and health because the meager incentives created by OSHA are outweighed by financial incentives for employers to expand expenditures on worker safety and health created by the labor market, states' workers' compensation insurance programs, and the legal system.

## ENDNOTES

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