
EDUCATION & LABOR COMMITTEE

Congressman George Miller, Chairman

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Chairwoman Woolsey Statement at Subcommittee Hearing on the “Protecting America’s Workers Act: Ensuring a Voice for Whistleblowers and Families of Victims”

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

Today is Workers Memorial Day, a day when Americans from all walks of life remember and honor workers who have been killed or seriously injured in the workplace.

Workers Memorial Day started on April 28, 1989, a day which is also the anniversary of the Occupational Safety and Health Act (OSH Act).

Unfortunately, over 20 years later, in the 21st century, workers continue to die on the job.

This past month has been a tragic one for the American worker.

Last week, on April 20, eleven workers were lost and seventeen injured following an explosion on the trans-ocean deepwater horizon drilling ship leased by British Petroleum in the Gulf of Mexico, fifty miles off the coast of Louisiana.

On April 5, twenty-nine miners were killed and two injured in a massive explosion which ripped through Massey energy’s Upper Big Branch mine in Montcoal, West Virginia.

Three days earlier on April 2, a blast at the Tesoro oil refinery in Anacortes, Washington caused the deaths of seven workers who were engulfed in a "firewall."

There are thousands of equally tragic deaths that occur in ones and twos, away from the limelight.

Last Friday another West Virginia miner was killed at the ICG Beckley Pocahontas mine after he was crushed between a continuous miner and the rib wall.

Last month the subcommittee held a hearing on the civil and criminal penalties in H.R. 2067, the Protecting America's Workers Act (PAWA), which makes long overdue reforms to the OSH Act.

Today's legislative hearing will examine the victims' rights and whistleblower provisions as they are contained in the March 9 discussion draft of the same bill that further improves PAWA.

When workers are killed on the job, family members need to be included in investigations, as they may be a rich source of knowledge.

Victims want investigations to get to the whole truth and ensure that the death of their loved one was not in vain.

And they want meaningful changes so that other workers do not meet the same fate. One of our witnesses today is Tonya Ford.

Her uncle fell 90 feet to his death from a continuous belt-operated manlift at an Archer Daniels Midland plant in Nebraska.

The company replaced this one manlift as part of its agreement with OSHA, but not the others located in the plant.

And Tonya's father, who still works at that plant, rides up and down on this inherently dangerous equipment on a daily basis.

Unfortunately, families have been marginalized by the Occupational Safety and Health Administration (OSHA) during investigations.

Families oftentimes don't get investigation results, and when they do, it too often arrives after OSHA has met privately with the employers and reached a closed door settlement.

Some employers will insist the deceased worker is responsible for the tragedy in closed door meeting with OSHA.

Yet, OSHA informally settles these cases without the benefit of input from families...those nearest the victim...who could have inside information shared by their loved one.

OSHA's current policy assumes communication with the next of kin.

This policy, however, is not consistently implemented and certainly does not meet the needs of families.

The discussion draft of PAWA strengthens existing policy by bringing family members into the process.

The OSH Act recognizes that providing healthy and safe workplaces depends on the willingness of workers to raise concerns with their employers, or, to 'blow the whistle' by reporting unsafe practices to government agencies, if or when, the concern is not addressed.

Too often, however, workers are fired, demoted or punished for raising concerns with OSHA, and OSHA fails to protect them by recovering their back pay or getting them their job back.

One of the main reasons for this is that section 11(c) in the OSH Act, as the oldest whistleblower statute, lacks due process and other essential protections.

As a result, few cases that are filed are found to have "merit," but when they are considered "merit" cases and OSHA cannot settle the case between the parties, its only option is to refer it to the Solicitor of Labor (SOL).

The Solicitor then has the sole discretion whether or not to pursue the case in court. Between October 1, 1995 and October 1, 2009, fewer than 7% of the merit cases sent to the Solicitor were ever litigated, because it appears that first, the Solicitor's office only takes those cases that have a very high chance of winning, and second, demands on that office far exceed its scarce resources.

And further, agency policies tend to discourage litigation where the amount to be recovered [for the worker] is small compared to the resources needed to litigate the claim. One of our witnesses, Neal Jorgensen from Preston, Idaho, will testify how he lost his job after filing a safety complaint with OSHA.

He filed a whistleblower claim, and while OSHA found his case had merit, the Solicitor declined to prosecute because it did not think either of the two federal judges in Idaho who would hear the case would be receptive to it.

Under current law, Mr. Jorgensen had no right to file a case in court.

PAWA modernizes the OSH Act to bring it in line with modern whistleblower laws, such as the consumer product safety improvement act.

A safe workplace depends on workers reporting unsafe conditions to their employers or the government without fear of retaliation, and with the knowledge that the government will be there to back them up, if the employer does retaliate.

The legislation before us today will achieve that goal.

I am pleased the administration supports the victims' rights and whistleblower provisions and look forward to the testimony from our witnesses.

I defer to ranking member, Cathy McMorris-Rodgers for her opening statement.

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