



chapter five

keeping workers safe and secure

America's Workforce is Safe and Getting Safer

A dynamic economy and dynamic labor force require workplace rules that ensure the safety of American workers, and adapt to changing economic conditions. Protecting America's workers is of utmost concern to the Department of Labor. This chapter highlights recent Department successes in protecting workers' health, safety, employment rights, and benefit security.

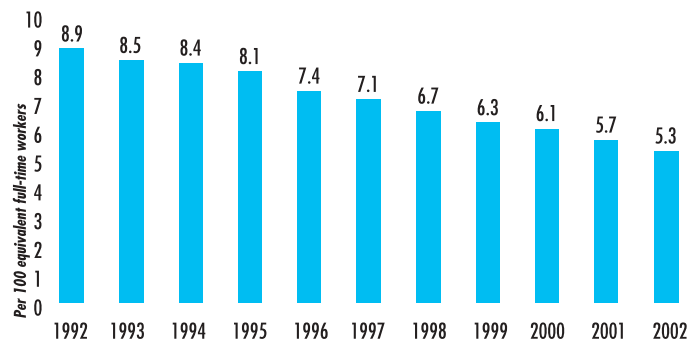
Four agencies provide examples of the Department's efforts. The Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) have contributed to reductions in workplace injuries, illnesses, and fatalities. The Employment Standards Administration (ESA) ensures that federal contractors and other employers comply with wage and nondiscrimination laws. The Employee Benefits Security Administration (EBSA) protects the integrity of pensions, health plans, and other employee benefits. Workplace

safety, standards for job conditions, and benefit security serve the interests of workers, businesses, and the U.S. economy as a whole.

Protecting Workers from Death and Injury

Workplace injury and illness rates have been declining. OSHA is proud that the overall workplace injury and illness rate in 2002 was only 5.3 cases per 100 workers—down from 8.9 in 1992. (See Chart 5.1.) This success is the result of hard work by federal and state OSHA offices and the employers and workers of the United States.

Chart 5.1 Workplace Injury and Illness Rate, 1992 - 2002



Note: 2002 data are consistent with prior years but not comparable
Data exclude fatal work-related injuries and illnesses

Source: Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses*, 2002

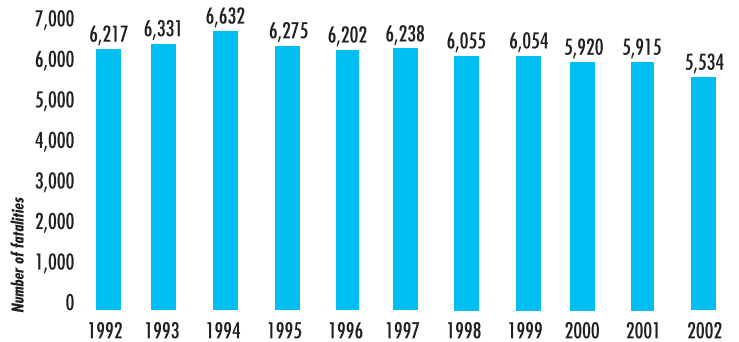
Safer, Healthier Workplaces

The number of workplace fatalities declined by 6.6 percent from 2001 to 2002 – to the lowest level ever recorded. There was an 8.6 percent reduction in fatalities in the construction industry alone in 2002.

- **More Safety Inspections:** Department of Labor (DOL) workplace safety inspections have increased 11 percent since 2001.
- **More Safety Partnerships with Unions:** DOL has formed more cooperative health and safety partnerships with labor unions than any other Administration.
- **Protecting Hispanic Workers:** Fatal injuries among Hispanic workers, which had been rising every year since 1995, fell by 6 percent in 2002, due in part to targeted programs designed to assist immigrant workers.
- **Best Mine Safety Record in History:** Mining fatalities dropped 22 percent between 2001 and 2003 to the lowest level since statistics were first compiled in 1910. The Mine Safety and Health Administration (MSHA) played a major role in the rescue of the miners at Quecreek Mine in Pennsylvania in July 2002.

However, there is still work to do. Although fatal injuries declined by 6.6 percent from 2001 to 2002—the single largest annual decline since records began in 1992—more than 5,500 workers died on the job. (See Chart 5.2.) OSHA's Strategic Management Plan, which sets forth aggressive goals for the

Chart 5.2 Fatal Work Injuries, 1992 - 2002



Note: Data from 2001 exclude fatalities resulting from September 11 terrorist attacks
Source: Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, 2002

agency, continues OSHA's efforts to reduce fatalities. The plan calls for OSHA to focus on the "Triple Bottom Line" of reducing workplace injuries, illnesses, and fatalities.

In addition to the crucial legal and moral imperatives to help save workers' lives, reducing injuries and illnesses is good for the U.S. economy. The National Institute for Occupational Safety and Health (NIOSH) estimates that the cost of fatal occupational injuries in the United States between 1992 and 2001 was \$48.7 billion.

OSHA has been very busy in the past year. Some highlights from the last 12 months are described in the following sections.

Strong, Fair and Effective Enforcement

Enforcement underpins all of OSHA's activities. Federal OSHA inspectors conducted 39,817 inspections in fiscal year (FY) 2003, an increase of about 2,000 inspections from FY 2002. OSHA's enforcement program is designed to produce change in the workplace.



As of January 2004, OSHA had 46 national alliances and 105 regional- and area-office alliances. A sample of the working alliances, which are with a wide range of organizations, include Dow Chemical Company, the Society of the Plastics Industry, the MacDonough School of Business at Georgetown University, the American Industrial Hygiene Association, the Washington Group International, and the American Meat Institute.

OSHA utilizes its resources most effectively by focusing on the most dangerous workplaces through national emphasis programs, local emphasis programs, and site-specific targeting.

Inspections focusing on facilities with high injury and illness rates increased by almost 10 percent between FY 2002 and FY 2003. The number of citations issued by federal OSHA increased by more than 10 percent; citations of willful violations rose by 22 percent. Also, from January 2002 through June 2004, OSHA conducted over 1,700 inspections focusing on ergonomics issues, and has followed up with citations and hazard-alert letters informing employers of ergonomic hazards in their workplaces.

In addition, in 21 states and Puerto Rico, OSHA enforcement is provided through OSHA-approved state plans. These states, along with four additional states that cover only public employees, conducted an additional 59,290 inspections last year, extended full protection to state and local government employees, and provided extensive compliance assistance through voluntary protection programs, outreach initiatives, training and education, partnerships, and alliances—all tailored to states' unique needs.

Through its Enhanced Enforcement Program, OSHA focuses on employers who defy safety and health regulations. This newly implemented program emphasizes follow-up visits, additional inspections, and tougher settlements for enhanced enforcement cases—both fatality cases where OSHA finds serious violations related to worker death, and cases with multiple willful or repeat violations. In these circumstances, OSHA will inspect other work-sites of an employer to determine whether compliance is a company-wide problem.

OSHA also works closely with the Solicitor of Labor to ensure that attorneys act quickly on all significant enforcement cases and to place special emphasis on cases involving discrimination or retaliation against workers who exercise their rights under the Occupational Safety and Health (OSH) Act.

OSHA is actively pursuing new and revised standards to improve workplace safety and health. The agency's new regulatory agenda moved from a "wish" list to a "to do" list by removing items that were either lower priority and would not be addressed in the upcoming

12-month period or that could be more effectively addressed by other means, such as guidance. The agenda now reflects what the agency is truly working on and identifies specific actions that can be accomplished in the next 12-month period.

Outreach, Education and Compliance Assistance

OSHA's efforts to reach out to employers and employees to improve workplace safety and health also continue to increase. In FY 2003, state consultation programs conducted more than 31,000 consultation visits, and assisted employers in recognizing and removing more



than 123,000 serious workplace hazards. These consultants provide additional assistance to small businesses by helping them develop safety and health management systems specifically for their workplaces.

In FY 2003, OSHA's training programs reached more than 300,000 employers and workers. The OSHA Training Institute (OTI) near Chicago and OTI Education Centers, located throughout the country, focus on training employers and employer representatives who work to ensure their worksites are in compliance with OSHA requirements and train their employees. Because many of the OSHA training programs use a Train-the-Trainer model, the programs create a multiplier effect, which allows a significantly larger number of students to be trained. Many programs are bilingual as well.

OSHA's web site, named one of the "Best of the Web" in 2003 by *Business Insurance* magazine for their usefulness and innovation, is one of the main avenues for communicating and providing compliance assistance to the public. Visits to OSHA's web pages increased 150 percent from 2002 to 2003. OSHA places information on its web pages immediately after a new hazard emerges to help employers protect their workers. For exam-

ple, as soon as the agency learned of possible ricin exposure in U.S. Senator Bill Frist's office, OSHA placed crucial information about the dangers of this substance on its web pages.

In 2003, 146,000 calls were made to OSHA's 1-800 number, which offers assistance in English as well as in Spanish, and the agency received nearly 12,000 emails. In response, the agency answers questions and directs the public to relevant sources of information.

OSHA has provided employers and workers numerous compliance assistance tools to enhance their awareness of workplace hazards.

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industry, a Safety and Health Injury Prevention sheet and a video of a fatality investigation by OSHA. Two new tools on the OSHA web pages are *MyOSHA*, which creates individually-tailored links to OSHA online resources and *Quick Start*, a step-by-step guide to identify major OSHA requirements and guidance materials.

An example of OSHA's approach to outreach comes from Buffalo, New York, where OSHA's staff conducted 66 seminars for small business-



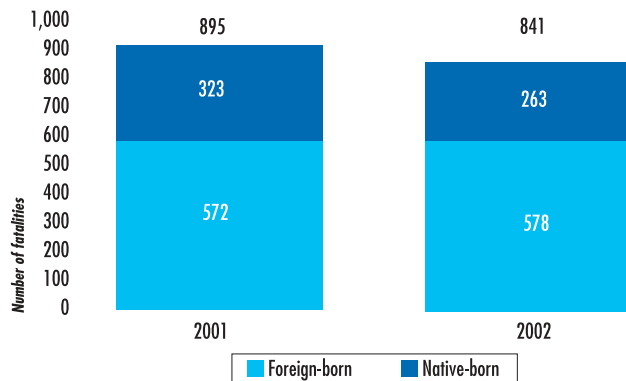
es in one year. Through the seminars, OSHA's local office assisted small-business owners in developing safety and health programs for their workplaces and made them aware of methods used by other firms to protect workers in their industries.

OSHA worked with the New York Consultation Program, local community colleges, Small Business Development Centers, local chapters of the National Safety Council, and various chambers of commerce in upstate New York to deliver the material. These organizations provided classroom space and publicity for the seminars. As employers learned of the seminars, participation grew and the feedback from the small-business owners who attended was very positive. Similar outreach efforts are being conducted in many other parts of the country, including many in Spanish to address Hispanic workers.

Partnerships and Cooperative Programs

Partnerships and cooperative programs expand OSHA's effect. Each of OSHA's alliances represents an opportunity for OSHA and trade organizations, professional societies, or unions to build a cooperative relationship, form networks with others committed to workplace safety and health, and leverage resources to produce products or services that maximize worker safety and health protection.

For instance, OSHA and 13 major airlines, including American Airlines, Delta Air Lines, Continental Airlines and JetBlue Airways, and the International Air Transport Section of the National Safety Council formed an alliance to address ergonomic issues associated with han-

Chart 5.3 Number of Fatal Work Injuries Involving Hispanics, 2001 and 2002

Note: Data from 2001 exclude fatalities resulting from September 11 terrorist attacks
Source: Bureau of Labor Statistics, *Census of Fatal Occupational Injuries, 2002*

dling passenger-checked baggage. The alliance is helping to develop an ergonomics training manual for their workers who handle checked baggage. The manual will be made available without charge to all airlines. In addition, through the alliance, the airlines and OSHA worked cooperatively to review and provide ways to improve OSHA's eTool for baggage handling. Using both groups' input, this tool was updated and it is now available

partnerships since the program began in 1998. In the past three years, OSHA has increased the number of partnerships by an average of 54 new participants annually. Partnerships have measurable results, both in reducing injuries and illnesses and in saving direct and indirect costs.

A partnership between OSHA and the Idaho General Contractors reduced the fatality rate among members by 57 percent in six years. The number of workers' compensation claims among these firms in Idaho dropped by 30 percent during that period. Another partnership, with the Division of Marine Operations, Pension Horizon Lines of Puerto Rico, Inc. resulted in a drop in the total case rate during the first year of the partnership from 8.6 to 5.1, a 41 percent decrease.

OSHA realizes that death and injury among Hispanic workers is a significant problem. The results of OSHA's initial enforcement, outreach and compliance assistance efforts targeted to this worker population have been positive as fatalities among Hispanic workers fell by 6 percent from 2001 to 2002. (See Chart 5.3.) OSHA has over 180 bilingual staff and continues to make major improvements

The most effective way to reduce injuries and illnesses is to use all the tools available through the OSH Act.

on OSHA's web pages. OSHA currently maintains 212 strategic partnerships with employers, associations, and labor unions, and has participated in a total of 300

for Hispanic workers. The most effective way to reduce injuries and illnesses is to use all the tools available through the OSH Act. An example of the way

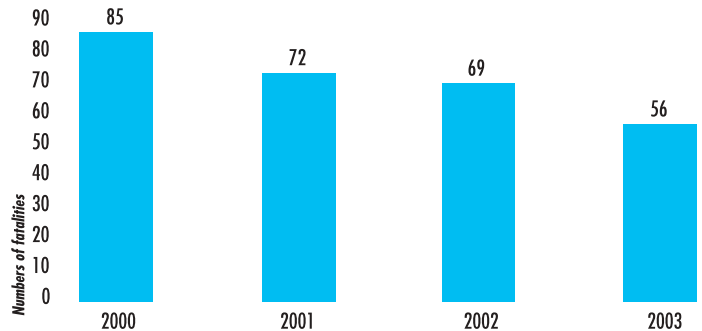
this can be accomplished occurred in the Atlanta Region last year. When regional officials learned that there were large numbers of workers electrocuted while working around power lines, they instructed OSHA's compliance officers to stop at worksites if they saw a crew working near a line. Compliance officers provided packets of information about power-line hazards to employers that described proper safety procedures. A training CD was produced for employers that included ready-made safety presentations and photos from OSHA's inspections.

OSHA also formed a regional alliance with the International Brotherhood of Electrical Workers, the Southeastern Line Constructors Chapter of the National Electrical Contractors Association, and the Southeastern Line Constructors Apprenticeship and Training Council to improve workers' ability to recognize and maintain a safe working distance from power sources, to use proper grounding techniques, and to wear proper protective equipment.

Protecting Miners

The Mine Safety and Health Administration (MSHA) is a single-focus worker protection agency, dedicated to protecting the health and safety of workers in and around the nation's mines. Since 1978, MSHA has worked steadily and successfully to reduce the number of injuries, illnesses, and fatalities suffered by mine workers. American miners are safer than ever before. In 2003, the agency reached a milestone: the number of fatalities in the industry fell to the lowest level recorded since the United States began collecting this data in 1910. MSHA continues to use every tool at its disposal to reduce

Chart 5.4 Mining Fatalities, 2000 - 2003



Source: MSHA, *MSHA Fatality Statistics, 2004*

the number of injuries, illnesses and fatalities to zero, to ensure that more workers return home to their families safe, whole and healthy at the end of every shift.

The safety milestone reached in 2003 continues a dramatic record of improvement that has seen the number of fatalities fall from 85 in 2000 to 56 in 2003, a 34 percent drop. (See Chart 5.4.) Of course, fatalities are not the only benchmark. Total injuries at all mines have fallen by 26 percent since 2000. *These are not just numbers, but lives saved and tragedies averted.*

These record-setting improvements in health and safety have been achieved through an innovative and effective approach to reducing accidents—an approach that focuses on several priorities:

- Increasing the effectiveness of enforcement by targeting those with poor health and safety performance records;

- Investing in compliance assistance tools and programs to help employers protect workers; and
- Entering into new partnerships with businesses, unions, trade associations, and professional organizations that recognize that safety and health add value.

Overall, MSHA increased the number of enforcement site events by 7 percent between 2000 and 2003. At the same time, MSHA expanded its compliance assistance program so that mine operators can get answers to their questions and guidance on how to make mines safer.

The records set from 2001 to 2003 are clear evidence that MSHA is on the right track. But further reducing injuries and fatalities requires a renewed emphasis on hazards that have not yet been fully addressed, and on the behavioral aspects of accident prevention. For example, small mines (those employing five or fewer workers) historically have experienced a fatal incidence rate significantly higher than that of larger mines.

Five of the 56 fatalities in 2003 occurred at small mines. Although this is an improvement over previous years, MSHA will continue its efforts to reach zero fatalities. During 2003, MSHA's small mine office helped the operators of nearly 1,700 small mines by providing training, education and compliance assistance. In the coming years, MSHA will continue its efforts to help small mines develop and manage safety and health programs to better protect their miners.



MSHA is also moving forward with an abandoned mine mapping program. The rescue of nine miners in Quecreek, Pennsylvania, who were trapped when they breached the wall of an abandoned mine filled with water, was cause for celebration. Yet it highlighted a real danger to workers, and was an accident that must not be repeated. In 2003, MSHA awarded nearly \$4 million to the states to create digitized underground maps for abandoned mines, with another \$6 million devoted to developing new technologies to advance the process further.

MSHA's overall success can be traced to its new emphasis on communication. Toward this end, MSHA has developed a number of special initiatives, including:

- *National Coal Mine Safety Awareness Day.* MSHA sent more than 600 enforcement, training and technical support personnel to 1,500 active coal mines over a two-week period to speak directly with mining companies and workers.
- *Spring Thaw Workshops.* For metal and nonmetal mines, these workshops are specially designed to increase awareness of mine safety hazards before the start of the high-production season.
- *National Webcasts.* With hundreds of mine operators online, MSHA analyzes fatalities for causation and methods of prevention, and discusses best practices.

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- **Hispanic Outreach.** Portions of MSHA's web pages and a number of its publications are available in Spanish. MSHA also has bilingual employees and offers mine-site sessions in Spanish.
- **Holiday Safety Initiative.** The Assistant Secretary of Labor for MSHA wrote to every mine operator weekly during December 2003 to emphasize winter hazards and the need to stay alert and focused. The results were historic—not one fatal injury in the coal mining industry for that month.

MSHA has been strengthening its relationships with miners beyond on-site visits and webcasts. MSHA has also developed a number of special alliance agreements in order to foster closer coordination. Trade associations, labor unions, and others are recognizing the advantage of working directly with MSHA to reach health and safety goals. They are demonstrating their commitment by signing alliance agreements, which go further than simply putting pen to paper. Three examples follow:

- The CEOs of the member companies of the *National Stone, Sand and Gravel Association (NSSGA)* have formally pledged to adopt MSHA's safety and health performance goals as their own. This is a first for the industry.

The Department of Labor protects workers' hours, wages, and other job conditions.

- *The National Safety Council*, not traditionally associated with the mining industry, has mobilized its diverse membership to protect children from the hazards associated with abandoned mine sites through the "Stay Out—Stay Alive" partnership.
- The leadership of the *International Union of Operating Engineers* took the bold step of joining MSHA and undertaking joint emergency response training and exercises in order to bolster U.S. homeland security.

These partnerships, initiatives and outreach programs are part of MSHA's overall strategy to reduce injuries and illnesses in mines. The agency's "**Triangle of Success**" is a balanced approach to mine safety and

health. The three points of the triangle signify (1) **technical assistance** (e.g., exploration of new technologies for scaling highwalls, designing haul roads to help control runaway vehicles), (2) **education and training** (e.g., foreman certification, mine rescue training, annual refresher courses at the National Mine Health and Safety Academy in West Virginia), and (3) **enforcement**. Compliance assistance underpins all of MSHA's initiatives and programs.

MSHA understands that the vast majority of mine operators are concerned about their workers, so the agency seeks to assist them in keeping workplaces safe. MSHA believes that assisting employers in complying with the law

is every bit as important as enforcement. All mine visits are now “inspections with a purpose.” Inspectors are there to help identify and determine the root causes of hazards that lead to both violations and incidents, but will continue to hold the mining industry to stringent standards.

Mining is an inherently dangerous occupation, and it is MSHA’s responsibility to help mine operators eliminate the hazards that miners face on the job. Even with the remarkable improvements in mine safety, MSHA recognizes that one death, one injury, one occupational illness is still one too many. While MSHA takes pride in its recent accomplishments, it will not be satisfied until every miner returns home safe and

healthy at the end of every shift.

Protecting Workers’ Job Conditions

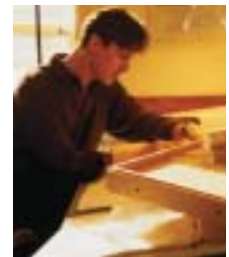
The Department of Labor protects workers’ hours, wages, pensions, and other job conditions. One of the DOL organizations dedicated to achieving this goal is the Employment Standards Administration (ESA). In furthering the economic security and welfare of workers and families, the Department uses compliance assistance, education, private/public partnerships and, should these approaches fail, a balanced, consistent enforcement program.

The Department involves all segments of business and industry—contractors, manufacturers, retailers, consumers, worker advocacy

Strengthening Overtime Protection

DOL finalized reforms to overtime regulations that will provide more overtime to more workers, reduce litigation, and free up resources for job creation. Workers receiving overtime through a collective bargaining agreement will continue to get overtime under the new rule.

- **More Overtime for More Workers:** The Department nearly tripled the salary level under which workers are guaranteed overtime, from \$8,060 to \$23,660, guaranteeing overtime protection to an additional 1.3 million workers. The rule also strengthens overtime protection for 5.4 million workers whose right to overtime protection was ambiguous.
- **Overtime Guaranteed:** For the first time ever, the regulations explicitly guarantee overtime protection to blue collar workers, police, firefighters, EMTs, factory workers, construction workers, and licensed practical nurses, among others.
- **Reforms Long Overdue:** Sections of the overtime regulations had not been updated since 1949, and these reforms had been on the DOL’s regulatory agenda since the Carter Administration.
- **Reduced Litigation:** Overtime lawsuits are among the fastest growing areas of employment litigation today. The current regulations have invited wasteful class action lawsuits that cost the economy millions of dollars and require workers to wait years to be paid the overtime they deserve. The new overtime rules will reduce this needless burden on workers and the economy by clarifying the tests under which workers qualify for overtime.



groups, financial and health care communities, and unions—in advancing the economic well-being of the Nation’s workers. ESA has developed programs that assist businesses and other organizations subject to DOL’s regulations to comply with their provisions through public education and outreach, in support of traditional enforcement techniques that detect violations after workers have suffered harm.

ESA’s Wage and Hour Division administers and enforces a number of federal statutes that establish minimum standards for wages and working conditions, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Family and Medical Leave Act (FMLA), certain provisions under the Immigration and Nationality Act, and various government contract laws. ESA is trying to decrease the number of employers that fail to compensate workers according to the law, especially those that commit multiple violations. For example, ESA will offer a revised comprehensive education program, including technology-based compliance assistance.

ESA also provides compliance assistance on all applicable laws during the conduct of an investigation; secures commitments for future compliance following an intervention; and obtains commitments for corporate-wide compliance by multi-establishment employers following a history of interventions. ESA assesses penalties, pursues litigation and prosecution, and publicizes the consequences of non-compliant behavior for willful and repeat violators.

Through its administration and enforcement of the Labor-Management Reporting and Disclosure Act (LMRDA), ESA’s Office of

DOL finalized regulations that will provide union members with better information on how their dues money is spent.

- **Union Financial Disclosures:** Last year, DOL finalized a rule that made changes to union financial disclosure forms. The new forms will offer union members more information about how their dues money is spent.
- **Notification of Employee Rights:** On February 17, 2001, President Bush issued an Executive Order to require Federal contractors to post a notice explaining that employees can be reimbursed for the portion of their dues not used for collective bargaining, contract negotiations, or grievances.

Labor-Management Standards safeguards union democracy and the financial integrity and transparency of union operations. The LMRDA requires reporting by unions and other covered entities for the purpose of public disclosure; establishes certain standards for union officer elections; and provides certain union financial integrity protections, including criminal provisions for the embezzlement of union funds.

In carrying out its responsibilities under the LMRDA, ESA performs four types of activities: civil and criminal investigations and enforcement actions; union compliance audits; reports/public disclosure administration; and compliance assistance.

The Department is committed to fostering fair

workplaces. To meet this objective, it is dedicated to increasing the representation, advancement, and promotion of women, people of color, veterans, and people with disabilities in the workplace. President Bush has said, "I will constantly speak for the values that unite our country: personal responsibility, equal justice, and equal opportunity for everybody. These are important common values."

ESA, through its Office of Federal Contract Compliance Programs (OFCCP), enforces laws and regulations protecting workers and applicants from discrimination regardless of their sex, race, national origin, color, religion, or status as a qualified individual with disabilities or protected veteran. The requirement that government contractors refrain from discriminating in employment has been an established part of federal contracting policy since 1941, when President Roosevelt signed Executive Order 8802, and it continues

today. ESA has the responsibility of ensuring that employers doing business with the federal government comply with the equal employment opportunity and affirmative action provisions of their contracts.

Procedures and policies for assuring equal opportunity workplaces must be adaptable, so they can reflect and accommodate change in federal contractor industries now and in the future. The Department must also pursue avenues of cooperation — through partnerships with employers, associations, and other federal agencies, as well as compliance assistance — to expand equal opportunity for workers and job applicants in those companies that have a contractual relationship with the federal government.

Finally, the Department is committed to minimizing the human, social, and financial effect of work-related injuries for workers and their

When, for example, workers are wrongfully denied pay (often overtime) or terminated because of a request for family or medical leave, DOL intervenes to help those workers collect back wages. In 2003, DOL recovered more than \$212 million in back wages – an 11-year high and a 21 percent increase over 2002. The number of workers receiving back wages increased 30 percent, to more than 342,000 workers.

- **Increase in Back Wage Recovery:** Back wages collected for violations of the Fair Labor Standards Act – which governs minimum wage and overtime protections –increased by 27 percent from 2002 to 2003.
- **Special Emphasis on Low-Wage Workers:** Since 2001, the collection of back wages is up 7.8 percent for garment workers and up 52 percent for agricultural workers, and DOL concluded an historic \$10 million settlement for poultry workers.
- **Quicker Results for Workers:** DOL has worked aggressively to resolve worker complaints more quickly. Since 2002, the average number of days needed to resolve wage and hour complaints has declined to a record low of 108 days.

families. ESA'S Office of Worker Compensation Programs administers four disability compensation programs that provide benefits to certain workers who experience work-related injury or disease, and survivors of workers who die from job-related injury or disease.

- The Federal Employees' Compensation Act (FECA) program affords income and medical cost protection to civilian employees of the federal government and to certain other groups.
- The Longshore and Harbor Workers' Compensation Act program provides similar protection to private sector workers engaged in certain maritime and related employment.
- The Black Lung Benefits program provides protection to the nation's coal miners who are totally disabled by pneumoconiosis.
- The Energy Employees' Occupational Illness Compensation Program Act of 2000 (EEOICPA) provides compensation and medical benefits to workers or survivors of workers of the Department of Energy (DOE) and of private companies under contract with DOE who suffer from a radiation-related cancer, beryllium-related disease, or chronic silicosis as a result of their work in producing or testing nuclear weapons.

Protecting Employee Benefits

We have seen that the Department of Labor protects workers from injury and abuse. In addition, the Employee Benefits Security Administration (EBSA) protects the integrity of pensions, health plans, and other employee benefits for more than 150 million people. These include approximately 7 million health and other welfare benefit plans and 738,000 pension plans



holding approximately \$4.2 trillion in assets.

Enforcement of ERISA

EBSA enforces the Employee Retirement Income Security Act of 1974 (ERISA), which protects the pension, health and other employee benefits of workers and their families in private sector employee pension and welfare benefit plans. EBSA enforces those sections of the statute that prescribe minimum standards of fiduciary conduct as well as the reporting and disclosure requirements.

The law covers most private sector employee benefit plans that are voluntarily established and maintained by an employer, an employee

organization, or by some combination of these. Pension plans provide retirement income or defer income until the employee stops working or sometime later. Other employee benefit plans, which provide health, disability, and other similar benefits, are called welfare plans.

EBSA enforces standards and rules governing the conduct of plan fiduciaries. In general, people who exercise discretionary authority, manage a plan or have the authority to dispose of its assets are “fiduciaries” under Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties both prudently and solely in the interest of plan participants



and beneficiaries. ERISA prohibits certain transactions between an employee benefit plan and “parties in interest.” Parties in interest include the employer and others who may be in a position to exercise improper influence over the plan.

EBSA also conducts investigations of criminal violations regarding employee benefit plans such as embezzlement, kickbacks, and false statements under Title 18 of the U.S. Code. U.S. Attorneys’ offices handle prosecutions of these criminal violations.

Targeted Enforcement

EBSA enforces ERISA by conducting investigations through its ten regional offices and five district offices located in major cities around the country. EBSA seeks to identify situations and apply its enforcement resources to protect those employee benefit plan participants and beneficiaries who are in the greatest danger of being harmed as a result of ERISA violations. Such methods focus on those situations where workers are most susceptible to losing their benefits, or where they are exposed to the greatest risk of falling victim to unlawful conduct.

The Department of Labor works hard to ensure that statutes and regulations protecting workers are both followed and enforced. As a result, America’s workers enjoy a more secure workplace.

Targeting is the process by which EBSA identifies investigative subjects who may have broken the law. Because there are nearly 7 million private employee benefit plans under EBSA’s jurisdiction, targeting is essential. EBSA strives to use its resources in areas that are most likely to uncover abuses.

Once the type of conduct and the individual or firm is identified, the field office decides whether to open an investigation. EBSA’s field offices coordinate civil investigations and case referrals with their local Regional Solicitors’ Offices or with the Plan Benefits Security Division of the Solicitor’s Office in Washington, D.C., which are responsible for bringing civil lawsuits on behalf of the agency. Criminal investigations are conducted

under the direction of the United States Attorney in that jurisdiction.

Enforcement Actions

If an investigation reveals a violation of the civil provisions of ERISA, EBSA takes action to obtain correction of the violation. It is EBSA’s policy to promote voluntary compliance with ERISA whenever possible. Making corrections



includes paying amounts to restore losses, reversing prohibited transactions and paying penalty amounts (when applicable).

Labor Department attorneys work with field offices to provide every opportunity for fiduciaries to comply with ERISA. If the persons involved take the proper corrective action, the Department will not bring a civil lawsuit with regard to the issues under discussion. When voluntary compliance is not achieved, EBSA may refer a case to Labor Department attorneys for litigation. Criminal prosecutions are conducted by the Department of Justice. Employee Benefit plan related crimes are punishable by significant prison terms and fines.

Protecting Retirement and Health Security for Working Americans

The Bush Administration has proposed several significant reforms to enhance the retirement and health security of working Americans and their families.

For workers in defined contribution retirement plans, such as 401(k) plans, the President recommended five reforms to improve retirement security. The President has signed two of these into law as part of the Sarbanes/Oxley legislation. These laws would require plans to give 30 days notice to participants prior to a plan blackout, a period of time during which participants cannot make transactions in their plans, and would also prohibit corporate executives from trading stock in the company they hold outside of the plan during the plan blackout.

The House of Representatives has passed the three remaining Presidential recommendations, and they are pending in the Senate. These would allow employees to diversify their investments by selling matching company stock held in their plans after three years, require

Strengthening and Protecting Pension and Health Plans

- **Strengthened Union Pension Plans:** As part of the President's 2001 economic growth and tax relief bill, workers' pension payments are now calculated on the basis of their best three years of earnings rather than their last three years. This is especially beneficial for construction workers because their earnings often decline with age.

- **Prosecuted Abuse of Pension and Health Plans:** Criminal prosecutions against employers and plan trustees abusing pension and health plans have increased by more than 50 percent since 2001.



Since 2001, DOL secured \$3 billion through court judgments, settlements, and fines covering 150 million workers and their dependents by holding those who manage benefit plans accountable to their legal obligations to protect pension and health benefit plans.

plans to provide participants with quarterly benefit statements, and allow greater access by participants to professional investment advice.

For workers in traditional retirement plans, called defined benefit plans, the Administration has proposed a set of reforms designed to improve accuracy in measuring and reporting the funding status of pension plans. The Administration is also working on a comprehensive pension funding reform proposal that will ensure companies and labor unions provide the funds to keep the pension promises they make.

For workers and employers who are having difficulty finding affordable health insurance, President Bush proposed several key initiatives, including Association Health Plans (AHPs), which will be discussed further in Chapter 6. AHPs will allow small businesses and other employers to join together through their bona fide trade and professional associations to purchase health coverage across state lines. Doing so will allow these workers to benefit from the same economies of scale, administrative efficiencies and uniform regulation enjoyed by large employers and labor unions. According to the Congressional Budget Office, AHPs will allow as many as 2 million Americans who do not currently have health coverage through their employer to gain coverage, reducing premiums by as much as 25 percent. AHP legislation passed the House on a strong bipartisan basis and is pending in the Senate.

American workers and their families rely on the retirement and health plans provided by their employers, and the Employee Benefits Security Administration works hard to ensure

that those plans are managed properly and in the best interests of workers and their families.

Conclusions

The Department has made substantial gains in protecting workers' health, safety, employment rights, and benefit security. By making sure that workers have safe and healthy workplaces, OSHA has contributed to an overall workplace injury and illness rate of only 5.3 cases per 100 workers in 2002.

Working with mine operators to have the lowest injury and fatality rates possible, MSHA has made significant progress in protecting miners. During 2003, mine fatalities fell to the lowest level since the United States began collecting data in 1910, falling from 85 in 2000 to 56 in 2003 — a 34 percent decline. Additionally, total injuries in mines fell by 26 percent in the same period.

ESA works hard to make sure that workers are paid according to congressionally-mandated levels and that employees and applicants are protected from discrimination.

DOL has been successful in protecting employees' benefits such as pensions and health plans. In FY 2003, EBSA reported a record \$1.4 billion in monetary results, and 137 criminal indictments resulting from EBSA investigations. These results have dramatically increased from the \$637 million and 90 criminal indictments reported by EBSA in FY 2000.

The Department of Labor works hard to ensure that statutes and regulations protecting workers are both followed and enforced. As a result, America's workers enjoy a more secure workplace.

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