

GAO issues report critical of OSHA's assessment of effectiveness of both Federal and State-run plans

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In January 2013, the federal government's General Accounting Office issued a report titled, "Workplace Safety and Health: Further Steps by OSHA Would Enhance Monitoring of Enforcement and Effectiveness."

The report was requested by John Kline (R-MN), Chair of the House Education and Workforce Development Committee, and Rep. Tim Walberg (R-MI), Chair of the Workforce Protections Subcommittee, after a March 2011 report by the Department of Labor's Inspector General found that OSHA was unable to evaluate the impact of its own enforcement policies and therefore unable to determine the effectiveness of state safety plans, such as Kentucky's, which by law must be at least as effective as federal OSHA.

Following a hearing on the Inspector General's findings, Chairman Kline and Rep. Walberg requested that GAO conduct a comprehensive review of OSHA's enforcement programs.

The GAO report found that federal OSHA provides more frequent monitoring and more consistent guidance for its federal enforcement activities than for state enforcement activities.

More specifically, OSHA regional officials review performance reports on federal activities at least every other week but review reports on state-run program activities quarterly.

In addition, OSHA's guidance for audits of its regional and area offices is more consistent than the guidance for its audits of state-run programs.

Guidance for audits of its offices requires that regional offices conduct a comprehensive audit with on-site review of inspection case files at least once every four years and other audits focused on more specific activities in all other years.

In contrast, guidance for regional office audits of state-run programs changes from year to year and does not include a regular schedule for comprehensive audits with on-site case file reviews.

The GAO found that while the frequency of OSHA's monitoring of state-run programs is necessarily different because of the independent enforcement authority of participating states, OSHA's lack of consistent guidance for audits of these state-run programs may allow enforcement deficiencies to go undetected, increasing the risk of worker injuries, illnesses, or death.

In addition, there is little participation by OSHA's national office in comprehensive audits of its regional offices despite a 2010 directive to do so. As a result, OSHA cannot ensure that the results of regional audits are impartial.

The GAO found that OSHA is taking steps to better assess the effectiveness of both its federal enforcement efforts and of state enforcement efforts, but it is often not clear how these steps will help OSHA demonstrate what efforts result in better outcomes for workers, such as reduced worker injuries, illnesses, and fatalities.

For example, OSHA recently revised some of the measures it uses to assess state-run programs by adding acceptable ranges of performance. However, the revised measures still largely focus on outputs — such as the average number of violations per inspection — rather than outcomes.

For fiscal year 2012, Kentucky had the second highest average penalty for serious citations issued by state plans, \$3,456, compared to the federal average of \$2,154. Kentucky's average was exceeded only by California's average of \$6,301.

OSHA is also conducting studies to examine the results of specific enforcement activities, including one designed, in part, to evaluate the effect of OSHA providing additional educational support to employers.

While tracking progress in meeting performance goals — such as the annual number of conducted inspections — is useful, the lack of focus on outcomes makes it difficult for OSHA to determine which specific enforcement activities are most effective or to convince states to implement changes designed to improve outcomes.

For example, only two state-run programs raised their penalty amounts in fiscal year 2011 as recommended by OSHA; state-run program representatives stated that OSHA lacked evidence to show that higher penalties are more effective in deterring future employer violations.

However, as shown in Figure 5 on page 18 of the report, for fiscal year 2012, Kentucky had the second highest average penalty for serious citations issued by state plans, \$3,456, compared to the federal average of \$2,154. Only three state plans exceeded the federal average. Kentucky's average was exceeded only by California's average of \$6,301.

The GAO also reported that OSHA does not use data already in hand to assess the effectiveness of federal and state enforcement efforts.

For example, OSHA does not use data from its annual audits of its regional and area offices or of state-run programs to inform its planning or share information across regions.

Additionally, OSHA annually collects data on activities conducted under emphasis programs that focus on national safety and health issues, but it does not evaluate these data to determine whether these programs are responsible for desired outcomes.

GAO recommends that OSHA standardize guidance for its audit practices, include outcomes in its assessments of its enforcement initiatives, better use data from its audits, and ensure national office participation in audits.

OSHA generally agreed with the GAO's recommendations but expressed concern about overuse of outcomes to assess effectiveness. GAO stated in response that it continues to believe the recommendations are valid.

Commenting on the GAO report, Chairman Kline and Rep. Walberg issued this statement: "OSHA is charged with enforcing health and safety standards in 8 million worksites, yet it still doesn't have an effective way to determine whether its policies actually work.

"Rather than devote precious resources to unnecessary regulatory schemes, the agency should develop a strategy that can identify strengths and weaknesses in its enforcement practices. Until then, we cannot be certain we are providing workers the safety they deserve. The persistent challenges facing OSHA's enforcement policies must come to an end." ▲

CITATIONS & FINES

Below is a listing of the citations and fines issued by the Kentucky Occupational Safety and Health agency during the month of November 2012. Provided here are summaries of the citations and the total amount of the fines. A company has 15 working days from receipt of the citations and proposed penalties to either elect to comply with them, to request and participate in an informal conference with the KYOSH area director, or to contest them before the independent Occupational Safety and Health Review Commission.

TOM DREXLER PLUMBING

2232 Bardstown Road, Louisville

Inspection site: 2409 Mahan Dr., Louisville

11-28-12

\$50,400

Repeat Serious

- Two employees were working in a trench with a spoils pile 19 inches tall within 17 inches of face of excavation. \$8,000
- Two employees were working in a trench at least eight feet deep without cave-in protection. \$11,200
- Two employees were working in a trench that had not been inspected by a competent person. \$11,200

Serious

- Two employees working in excavation were not wearing hard hats while another employee was operating excavator above them. \$4,800
- Pump used in excavation had no path to ground. \$4,000
- Plywood used to cover a trench had no markings or labeling. \$5,600
- Two employees digging and working in a trench did not determine exact location of gas line and damaged the line, causing a gas leak. \$5,600

BOARMAN BROTHERS MASONRY

1617 Jackson St., Owensboro

Inspection site: 101 W. Main St., Owensboro

11-13-12

\$47,250

Repeat Serious

- Scaffold erected in elevator shaft was not fully planked. \$7,000
- Employer did not ensure scaffold was inspected by a competent person. \$7,000
- Employees were working on scaffold up to 57 feet above