

## The Protecting Americas' Workers Act (S. 1580/H.R. 2067) Is Unnecessary and Will Not Improve Workplace Safety

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- **Workplace injury, illness and fatality rates are at all time lows.**
  - BLS data show that workplaces are safer than ever. Workplace fatalities have declined 23 percent since 1994. This drop occurred even as the workforce expanded, with the economy adding 23 million new jobs over the same time period.<sup>1</sup>
  - Injury rates have shown a similar drop.<sup>2</sup> Since 1994, the total case rate has declined by 50 percent and the lost days from work rate has declined by 44 percent. While the government's reporting system may not capture every workplace injury or illness, the data undeniably reveals the trend of declining workplace injury rates.
- **Declining fatality and injury rates support the 15 year bipartisan approach to workplace safety started by the Clinton Administration as its "New OSHA, Reinventing Occupational Safety and Health":**
  - Targeted Enforcement focused on high hazard industries;
  - Outreach to private sector through partnerships;
  - Safety education and training for employers and employees;
  - Results: More serious, willful, egregious citations issued; More criminal referrals; Record high participation in partnerships; Almost 800,000 employers/employees trained by OSHA in 2008.
- **PAWA largely abandons this approach in favor of increased penalties and enforcement.**
- **Most companies are not 'bad actors'. How will they respond to higher civil penalties and new criminal provisions in PAWA? Companies will respond to the increase in civil penalties in ways not anticipated by the proponents of PAWA:**
  - Increasing the civil and criminal penalties will make it far more likely that large companies will have their lawyers require OSHA to obtain a search warrant before entering a workplace and have their attorney present during an OSHA inspection.
  - The possibility of large fines will make companies more likely to litigate against citations.
  - In the case of fatality investigations, the possibility of a felony charge promotes an adversarial posture between OSHA and the employer during a fatality investigation.
- **Small companies will bear the brunt of the higher OSHA civil penalties as they do not have the resources to hire lawyers to fight citations.**
- **Experience with MSHA shows that increasing penalties increases litigation and impacts Department resources.**
  - Increased civil penalties will also impact the operation of the Solicitors' Office at the Department of Labor by triggering more litigation.
  - Increased civil penalties will likely require compliance officers to spend more time on inspections to insure their citations will withstand being challenged by the employer.
  - Increased litigation will also pull many compliance officers away from inspecting workplaces for safety and health hazards, as they defend their citations.

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<sup>1</sup> Bureau of Labor Statistics, Establishment Data, Historical Employment Data

<sup>2</sup> Bureau of Labor Statistics, Occupational Injuries and Illnesses Annual Report,

<http://www.bls.gov/news.release/osh.nr0.htm>

*The CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.*



**Coalition for Workplace Safety**

## Key Provisions of PAWA (S. 1580/H.R. 2067)

### PAWA Would Significantly Increase OSHA Civil Penalties and Increase Them at Least Once Every Four Years for Inflation

Types of Violations	Current Penalty	Proposed penalty
Willful or Repeat	Minimum: \$5,000 Maximum: \$70,000	Minimum: \$8,000 Maximum: \$120,000
Willful or Repeat Causing Empee Death	Same	Minimum: \$50,000 Maximum: \$250,000
Small Bus. w/ 25 or fewer Empees		Minimum: \$25,000
Serious/Less than Serious	Maximum: \$7,000	Maximum: \$12,000
Serious/Less than Serious Causing Empee Death	Same	Minimum: \$20,000 Maximum: \$50,000
Small Bus. w/ 25 or fewer Empees		Minimum: \$10,000

### PAWA Would Significantly Increase OSHA Criminal Penalties Making Death in the Workplace a Felony and Removing Death as Requirement for Criminal Penalties

Types of Violations	Current Penalty	Proposed penalty
Willful Causing Death of an Employee	Maximum: \$10,000, 6 months prison or both	18 U.S.C. 3571 and possible 10 years or both
Repeated Willful Causing Death	Maximum: \$20,000, 1 year prison or both	18 U.S.C. 3571 and possible 20 years or both
Willful Causing Serious Bodily Injury		18 U.S.C. 3571 and possible 5 years or both
Repeated Willful Causing Serious Bodily Injury		18 U.S.C. 3571 and possible 10 years or both

Note: Serious Bodily Injury means: (A) a substantial risk of death; (B) protracted unconsciousness (C) protracted and obvious physical disfigurement; or (D) protracted loss or impairment, of the function of a bodily member, organ, or mental faculty.

**“Employer” means any responsible corporate officer.**

**Would allow employee or representative of employee to challenge settlement agreements or citation modifications.**

**Would require abatement of violations for serious hazards during the time employer contests to a citation are being reviewed and resolved.**

**Would prohibit employer safety incentive programs.**

**Would expand OSHA jurisdiction to industries currently covered by other agencies.**

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