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## A Survey of the Washington Industrial and Safety Act's First Months of Operation

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# A SURVEY OF WISHA'S FIRST MONTHS OF OPERATION

## I. INTRODUCTION

The still brief existence of the Washington Industrial Safety and Health Act (WISHA)<sup>1</sup> has not begun to yield a full view of its operations, effects, strengths and weaknesses. But a look at the preliminary data compiled by the Division of Industrial Safety and Health of Washington's Department of Labor and Industries does give one an idea of the shape that the Act's enforcement will take, as well as its effect on the business and working communities.<sup>2</sup> This comment will provide a brief overview of Washington's early experience with the Act, based on statistics and interviews with the individuals responsible for carrying out the statute's mandates.

## II. COMPLIANCE ACTIVITIES

The Division of Industrial Safety and Health has over 170 employees in offices throughout the State of Washington. Of these, about 60 are safety inspectors who visit workplaces to determine if employers are in compliance with Division-promulgated standards; seven are field hygienists; three are laboratory chemists; five are consultants who provide employers with information on job safety and health practices; 22 work in safety education; and the remainder perform a range of administrative tasks.<sup>3</sup> The Division operates on a \$2.99 million budget for fiscal year 1974, one-half of which is reimbursed by

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<sup>1</sup> WASH. REV. CODE §§ 49.17.010-.910 (1973), [hereinafter cited WISHA].

<sup>2</sup> This article is based on statistics contained in the Quarterly Reports of State Compliance/Standards/Activity for the periods ending September 30, 1973, and December 31, 1973. These reports are submitted by the Division of Safety and Health, Dep't of Labor & Industries, State of Washington (hereinafter referred to as Division) to the Occupational Safety and Health Administration of the United States Department of Labor, under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-78 (1970), [hereinafter cited OSHA]. OSHA § 24. Other data were obtained through interviews of Division personnel, and from interoffice communications provided by Steve Levette and Michael Pingree, Research Analysts in the Division's Office of Research and Statistics. The compilation of statistics by the Division is provided for in WISHA §§ 5(5), 5(6), 21.

<sup>3</sup> Data were obtained through interviews of Division personnel, and from interoffice communications provided by Steve Levette and Michael Pingree, Research Analysts in the Division's Office of Research and Statistics.

the federal government. This compares with a \$2.64 million budget for fiscal year 1973 before WISHA was operative.<sup>4</sup>

Before WISHA, and for the Act's first 6 months, inspectors and their supervisors decided which work locations to visit, based on their records and experience under Washington's prior work safety legislation.<sup>5</sup> With over 80,000 firms and 160,000 workplaces in Washington,<sup>6</sup> Division officials found that it was impossible to check every location, but inspectors attempted to visit every large employer at least once each year.<sup>7</sup> Since January 1, 1974, inspector visits have been pre-determined by computer and scheduled so that the employers with high accident rates are seen first.<sup>8</sup> Inspectors are scheduled for about 20 visits per week, with a lower number for those who must drive long distances between each inspection.

Prior to WISHA, an inspection consisted of a walk through the factory, construction site or kitchen, during which the inspector would point out hazards to the manager with the expectation of its correction. Although a knowing violation of Washington's pre-WISHA safety law was a misdemeanor,<sup>9</sup> criminal prosecution was extremely rare.<sup>10</sup> Since June 7, 1973,

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<sup>4</sup> Interview with Michael Pingree, Research Analyst, Division of Safety & Health, in Olympia, Washington, Dec. 19, 1973. Federal contributions provided under OSHA § 23 have actually reduced the state expenditure of money from industrial insurance funds for Division operations, while the total amount spent on industrial safety and health operations has increased and allowed a significant expansion of the Division.

<sup>5</sup> Law of Mar. 6, 1905, ch. 84, [1905] Wash. Sess. Laws 164 (repealed 1973) (originally codified at WASH. REV. CODE §§ 49.20.010-.110 (1963) [hereinafter cited to WASH. REV. CODE]). WASH. REV. CODE § 49.20.040 (1959) required the Director of the Department of Labor and Industries "to examine, from time to time, all factories, mills, [and] workshops . . . for the purpose of determining whether they do conform to [the provisions of the law]." WASH. REV. CODE § 49.20.010 (1959) provided that when an employer violated a safety standard, the Division could, where "practicable with due regard to the ordinary performance of the work", order a discontinuance of the dangerous operation or machine "until such unsafe practices or methods [were] corrected." This section of the statute was known as a "red tag" provision because the Division placed a red tag on any machine halted because it was dangerous. Red tag powers have been continued under WISHA § 13(1).

<sup>6</sup> See note 2 *supra*.

<sup>7</sup> Interview with James T. Sullivan, Chief Safety Inspector, N.W. Washington, Division of Safety & Health, in Seattle, Washington, Nov. 30, 1973.

<sup>8</sup> See note and accompanying text, *infra* note 15.

<sup>9</sup> WASH. REV. CODE §§ 49.20.010, 110 (1963). The maximum fine for a violation was only \$100. *Id.* § 49.21.110.

<sup>10</sup> Interview with John R. Dick, Ass't Att'y General, Division of Safety & Health, in Olympia, Washington, Nov. 11, 1973.

inspectors have been required to complete a detailed "Safety and Health Report" after each inspection, describing each observed violation of a standard. A "Citation and Notice" is drawn up from the report by computer, and sent to the employer informing him of each violation. This document specifies an abatement date for each violation, and officially informs the employer that an appeal is allowed.<sup>11</sup> This document also must be "prominently posted, at or near each place a violation . . . occurred", so that employees can inform themselves about on-the-job hazards.<sup>12</sup>

During the second half of 1973 (WISHA's first 6 months of operation) inspectors made 8,878 safety and health visits to locations where a total of 286,616 people worked. Of these inspections, 7,503 were scheduled safety checks; 791 were "re-checks" of sites previously visited; 228 resulted from accidents or fatalities; 145 were in response to written complaints from employees; and 211 were occupational health inspections.<sup>13</sup>

The bulk of safety inspections were concentrated in three industries: construction (32 percent); manufacturing, including wood products (22 percent); and retail trade, including culinary operations (20 percent). Other inspections were spread throughout the state's industries.<sup>14</sup> Statistics on fatalities and serious accidents subsequently compiled indicate that the concentration of inspections in these industries is warranted.

During the first 10 months of 1973, there were 148 fatalities in Washington that are known to have been work-related: 28 of these occurred in logging, 15 in construction, 13 in farming, and 8 in trucking and warehousing.<sup>15</sup> Data on a combination of

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<sup>11</sup> Issuance of citations is allowed by WISHA § 12. The appeal process is set forth in WISHA §§ 14, 15.

<sup>12</sup> WISHA § 12.

<sup>13</sup> Although only 145 inspections resulted from written complaints, a substantial number of "scheduled" inspections were in response to phone calls from workers. The Division visits most locations where a hazard has been spotted by an employee who then calls for a safety inspection. The Division does not now keep records on how many visits result from nonwritten complaints.

<sup>14</sup> Inspections, apart from construction, manufacturing and retail, occurred at the following rates: service industry (8% of inspections), transportation (7%), wholesale trade (4%), state and local government (3%), agriculture (2%), mining (1%), and financial industry (1%).

<sup>15</sup> Interoffice communication from Michael Pingree, Research Analyst, Division of Safety & Health, to Bert Pearson, Field Supervisor, Division of Safety & Health, November 9, 1973. Other work-related deaths occurred as follows: aluminum industry

fatalities and serious injuries for the 6-month period ending December 31, 1973, show a similar distribution of danger among industrial classifications: manufacturing (82 deaths and serious accidents), construction (59), transportation and public utilities (20), and agriculture (18).<sup>16</sup>

These figures, compared with the data on inspections, show that safety inspectors have visited more construction sites than logging crews or factories, although there were more injuries in the latter workplaces. Also noteworthy are the small number of agricultural visits, despite the high injury rate.<sup>17</sup> Presumably the computerized inspection-assignment system implemented in January 1974 will schedule visits according to the accident rate in each industry and location.

#### A. *Violations and Penalties*

Of the 8,878 establishments visited during the third and fourth quarters of 1973, only 2,305, or about 25 percent, were found to be in compliance with WISHA standards. In the other locations 25,564 violations were found, of which 98 percent were labelled "nonserious"; there were 564 "serious" violations. Not surprisingly, the bulk of the penalties were levied against the employers held responsible for serious violations. Of a total of \$73,375 of penalties assessed, \$51,309 were for serious violations. In the fourth quarter, penalties for nonserious violations increased substantially: from \$1,391 in the previous period to \$20,675. The average penalty was about \$125, but Division personnel suggest that this figure is being increased to a level that will more effectively encourage business to comply with standards.

As of December 15, 1973, there were 96 appeals from findings of violations, the majority in instances where a penalty

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(5); retail trade, home furnishings and equipment (4); aircraft operations (3); power, light and communications (3); mining (2); real estate (2); sawmills (2); "other industries" (35); heart attacks/nonindustrial (28).

<sup>16</sup> From Quarterly Reports of State Compliance/Standards/Activity. See note 2 *supra*.

<sup>17</sup> The high number of construction site inspections may reflect a predilection on the part of safety officers to inspect in an industry with which many of them are familiar. By contrast, there are few inspectors trained in observing farm hazards because before WISHA the emphasis was strongly in favor of industrial, rather than agricultural safety.

had been assessed.<sup>18</sup> Division staff members found that early hearings indicated that inspectors were not adequately documenting violations so that it was difficult to show that an employer was actually in violation of a standard.<sup>19</sup> In one case, for example, inspectors issued a citation for a crane which allegedly did not provide a metal guard between the operator and the machine's moving wheel housing. The employer appealed and the Division reassumed jurisdiction under WISHA § 14(3), investigated the matter, and dropped the citation when the employer showed that the operator was fully protected from moving parts. The Division is encouraging safety inspectors to more thoroughly list and document violations, a time-consuming but necessary operation.

### B. Health Inspections

WISHA includes "health" in its title as well as "safety," and currently seven industrial hygienists inspect workplaces for dangerous particulate matter or gases in the air, hazardous noise levels, and other situations which might impair the health of employees. During the period July-December 1973, hygienists made 211 inspections compared with 8,667 for safety inspectors.<sup>20</sup> The disparity in the number of visits is partly due to the more technical nature of the health specialists' work; hygienists spend considerable time operating sophisticated testing equipment. Another suggested reason for the few health inspections during the Act's first months of operation is the lack of refined permanent standards that could be confidently used in enforcement.<sup>21</sup> Similar problems may arise if the Divi-

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<sup>18</sup> See note 11 *supra*.

<sup>19</sup> See note 7 *supra*.

<sup>20</sup> In the Seattle area employee phone calls are the cause of most hygienist visits. Hygienists are also referred to workplaces where safety inspectors have spotted possible violations of industrial health standards, and sometimes visit locations of their own choosing. Safety inspectors perform certain basic tests to assess health hazards, but more complicated analyses are left up to the industrial hygienists.

<sup>21</sup> To give an illustration of the difference in complexity between safety standards and health standards, and the difficulty of testing for violations of the latter, two standards have been selected at random from the *Washington Administrative Code*. WASH. AD. CODE § 296-24-19505(2), a general safety standard for mechanical power presses, states:

Brakes. Friction brakes provided for stopping or holding the slide movement shall be set with compression springs. Brake capacity shall be sufficient to stop the motion of the slide quickly and capable of holding the slide and its attachments at any point in its travel.

sion seeks to promulgate temporary emergency standards, although they probably need not be as refined as a permanent standard.<sup>22</sup> Nevertheless, a statement of reasons for the promulgation of the emergency regulation is required.<sup>23</sup> Another reason for the greater number of safety inspections than health checks is that there are many more safety inspectors than hygienists. This is probably due to the traditional emphasis on safety; industrial disease has only recently become important

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WASH. AD. CODE § 296-62-09005(2)(b)(i), a general occupational health standard regarding nonionizing radiation, reads:

For normal environmental conditions and for incident electromagnetic energy frequencies from 10 megahertz to 100 gigahertz, the radiation protection standard is 10mW/cm.<sup>2</sup> (milliwatt per square centimeter) as averaged over any possible 0.1-hour period. . . .

In these examples, the safety inspector can immediately test a machine to determine whether the employer is in compliance with the safety standard quoted above. In contrast, the hygienist must use testing equipment to assess the amount of nonionizing radiation in the air. Yet, one cannot minimize the difficulty of the safety inspector's task: He must watch for hundreds of potential violations in each workplace, whereas the hygienist usually tests for a limited number of known health hazards endemic in the industry, or the plant being inspected.

<sup>22</sup> *Dry Color Mfrs. Ass'n v. Department of Labor*, 486 F.2d 98, 105 (3d Cir. 1973). The *Dry Color* court stated that the need for "immediate protection" of workers in promulgating an emergency standard outweighed the need for refinement which could be left to the subsequent promulgation of a permanent standard. See S. REP. NO. 1282, 91st Cong., 2d Sess. 7 (1970).

<sup>23</sup> WASH. REV. CODE § 39.04.030 (1959). In *Dry Color Mfrs. Ass'n v. Department of Labor*, 486 F.2d 98 (3d Cir. 1973), the court vacated an emergency standard promulgated by the Secretary of Labor pursuant to OSHA § 6(c) due to a lack of reasons supporting the issuance of the standard as required by OSHA § 6(e). The Secretary issued the emergency health standard because employees working in defendants' manufacturing plants were exposed to carcinogens. The Report of the Senate Committee on Labor and Public Welfare, discussed by the court, provides the following pertinent language relating to the promulgation of temporary emergency standards:

Because of the obvious need for quick response to new health and safety findings, section 6(c) mandates the Secretary to promulgate temporary emergency standards if he finds that such a standard is needed to protect employees who are being exposed to grave dangers from *potentially* toxic materials or harmful physical agents . . . .

S. REP. NO. 1282, 91st Cong., 2d Sess. 7 (1970) (emphasis added). The *Dry Color* court, *supra* at 104-05 n.9a, interpreted the Committee's statement as follows:

This language, however, should not be read to mean that a showing of mere speculative possibility that a substance is harmful to man is sufficient to call into effect the summary procedure of subsection 6(c) . . . . The courts should not permit temporary emergency standards to be used as a technique for avoiding the procedural safeguards of public comment and hearings required by subsection 6(b).

Standard-setting procedures for both OSHA and WISHA are similar in nature, except that the effective period of an emergency standard under OSHA is 6 months (section 6(c)(3)) and under Washington law, 90 days. WASH. REV. CODE § 39.04.030 (1959).

because of publicity and research discoveries.<sup>24</sup> Hygienists now plan to increase their workload to 10 visits per person per week.<sup>25</sup>

### III. CONSULTATIVE AND EDUCATIONAL SERVICES

The Division employs five consultants who visit employers at their request, inform them of possible violations, and make general suggestions on how to conform to standards in a particular location.<sup>26</sup> Consultants may not cause a notice of violation and citation to issue, but may only give advice.<sup>27</sup> Nor will consultants return from a visit and send out an inspector to check on the establishment. Unfortunately, it appears that some employers are unaware that consultants will not penalize them, and have been afraid to ask for their advice. Printouts might inform inspectors which workplaces have called in consultants, but the automatic inspection-assigning system protects employers from inspections resulting from a previous advisory visit. Division officials indicate that employer fears in requesting consultative visits seem to be disappearing.<sup>28</sup> Between June 7 and December 1, 1973, there were 325 consultations, with an average of 5.4 hours spent at each establishment.

Eighteen safety education representatives provide training programs and make general speaking engagements in the state. Training includes first-aid education, hazard prevention techniques, and information on WISHA and employers' responsibilities under the Act. Approximately 20 percent of safety education visits were made at locations where a safety inspector had noticed a lack of adequate accident prevention programs.<sup>29</sup>

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<sup>24</sup> See note 7 *supra*. An interesting, if lengthy, description of the problems of developing and enforcing effective occupational health standards is found in Brodeur, *The Annals of Industry: Casualties of the Workplace*, (pts. 1-5), *THE NEW YORKER*, 44, 92, 131, 87, 126 (Oct. 29-Nov. 26, 1973).

<sup>25</sup> Interview with Kenneth Nylund and Gene Trucano, Industrial Hygienists, Division of Safety & Health, in Seattle, Washington, Dec. 18, 1973. There were 130 inspections during the Oct.-Nov. 1973 period, as compared to 81 during the July-Aug. 1973 period.

<sup>26</sup> WISHA § 25(1) provides for "advisory and consultative services to employers", available to each employer upon request. WISHA § 25(2) distinguishes a consultative visit from an inspection, and prohibits the issuance of citations as a result of such a visit unless a serious violation has been observed.

<sup>27</sup> *Id.* § 25(2).

<sup>28</sup> See note 25 *supra*.

<sup>29</sup> According to WASH. AD. CODE §§ 296-24-040 to 067, an accident prevention

Some 30 percent of the visits were at the invitation of employers, and the remainder were based on the representatives' knowledge of their areas and the needs of particular workplaces. Representatives view their job as increasing safety consciousness; the Division is now trying to emphasize preventive education more than first aid, which was particularly important before WISHA.<sup>30</sup> Safety education representatives often visit workplaces to talk with supervisors and foremen about safety problems, though there is relatively little direct contact with the average employee.<sup>31</sup>

#### IV. STANDARD SETTING UNDER WISHA

Another aspect of the Division's activity is the determination of health and safety standards. The Occupational Safety and Health Act of 1970 (OSHA) provided the states with the option of either adopting federal standards *en masse*, or developing their own regulations.<sup>32</sup> The Washington legislature chose to adopt its own,<sup>33</sup> subject to federal approval pursuant to OSHA.<sup>34</sup> Some of Washington's standards were developed before WISHA for use in implementing Washington's health and safety legislation.<sup>35</sup> Many of these were based on codes developed by industry-oriented groups such as the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standards Institute (ANSI). Most of these were readopted after WISHA became effective although some were altered to conform to federally promulgated standards. Some regulations are being taken verbatim from the Federal Occupational Safety and Health Administration, but the Division is writing its own where it believes they will better serve Washington's needs.<sup>36</sup>

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program should include, among other things: employer-employee safety meetings, regular in-house safety inspections, a safety bulletin board, some employees trained in first aid, a first-aid station and provision for complete first-aid kits.

<sup>30</sup> Safety education representatives are responsible for certifying first-aid instructors and setting up first-aid classes for particular firms at community colleges.

<sup>31</sup> One safety project that has proven particularly beneficial is a mobile unit used to teach utility and communications workers life-saving techniques.

<sup>32</sup> OSHA § 18(c). If a state adopts its own standards, OSHA § 18(c)(2) requires that they be "at least as effective" as federal health and safety standards.

<sup>33</sup> WISHA §§ 4, 5.

<sup>34</sup> OSHA § 18(c).

<sup>35</sup> WASH. REV. CODE § 49.20.010 (1959).

<sup>36</sup> The legislature may have taken the position that local industrial problems

Local governments also have their own safety "standards" in the form of ordinances and regulations affecting workplaces. Many cities, towns and counties have, for example, electrical, elevator or fire safety rules that overlap or even conflict with the state's safety and health standards. The Division is trying to develop interagency agreements so that local agency personnel can supplement the WISHA staff in inspecting for safety hazards.<sup>37</sup> Division officials have indicated that they desire more coordination between the local and Washington-wide regulations.<sup>38</sup> Local governments, however, are not expected to give up their authority easily, and the state may encounter political barriers before a smooth, working relationship between the Division and municipalities can be reached.

Also encountered were certain difficulties in the relationship between the Division and the OSH Administration (the agency responsible for overseeing the implementation of Washington's safety legislation).<sup>39</sup>

The Secretary of Labor had to approve WISHA before it was effective,<sup>40</sup> but national involvement did not stop there. The OSH Administration maintains a four-state regional office and a Washington area office in Seattle.<sup>41</sup> Both federal units closely observe the operation of Washington's plan to determine whether or not the plan is "as effective as" direct federal enforcement would be. Federal compliance officers visit workplaces to compare their findings with those of the state safety officers, primarily to insure the effective implementation of WISHA. A formal evaluation is made of the Division of Safety and Health every 6 months. The federal government is expected to curtail much of its overseeing work in Washington in 3 to 6 years if the WISHA program operates effectively; but it will continue to be responsible for certain jurisdictional areas,

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warrant local regulations, and perhaps with good reason. For example, the federal standards on logging were developed primarily for logging in the South, and are not as applicable here as those written for workers in Washington forests.

<sup>37</sup> WISHA § 27 permits interagency agreements and local cooperation.

<sup>38</sup> See note 10 *supra*.

<sup>39</sup> Federal evaluation of state safety and health operations is provided for in OSHA § 18(f).

<sup>40</sup> OSHA § 18(c).

<sup>41</sup> Nine compliance officers are working out of the area office, and there are 15 employees on the regional staff.

including mine safety<sup>42</sup> and the protection of workers on navigable waterways.<sup>43</sup>

Federal officials responsible for monitoring the state's progress are critical of some aspects of Washington's program. For example, there have been disagreements over the necessity and size of fines, the content of some standards, and the extent of the federal role in overseeing everyday operations. Federal employees may feel more like "parents" who have to carefully watch their "child," the state, in its formative stages. In contrast, state safety and health officials appear to regard WISHA as an "adult"—particularly because Washington has had an ongoing safety program for many years.<sup>44</sup> In any case, one Occupational Safety and Health Administration official in Seattle stated that Washington is regarded as having "one of the best" enforcement programs in the United States,<sup>45</sup> and statistics show that Washington compares quite favorably with others of comparable, or even greater worker population.<sup>46</sup>

<sup>42</sup> Federal Coal Mine Health & Safety Act of 1969, Pub. L. 91-173, 83 Stat. 742 (codified in scattered sections of 15, 30 U.S.C.).

<sup>43</sup> Jones Act, 46 U.S.C. § 688 (1970).

<sup>44</sup> See note 5 *supra*.

<sup>45</sup> Interview with L. Thomas Ashcroft, Associate Ass't Regional Director, Office of Federal and State Operations, Occupational Safety and Health Administration, in Seattle, Washington, Dec. 14, 1973.

<sup>46</sup> The following chart compares Washington's enforcement program with those of selected other states. Washington is ranked 22nd in worker population.

Period: July 1, 1973-Sept. 30, 1973

State	Population Rank	Number of Workers in Thousands	Number of Inspections	Number of Non-serious Violations	Number of serious Violations
Washington	22	840	3,750	11,788	282
Oregon	27	656	1,574	5,912	67
Kentucky	24	788	126	821	3
Iowa	25	771	20	104	2
Maryland	19	1,088	2,110*	732	84
Minnesota	18	1,121	718	8,232	10
New Jersey	8	2,252	17,474	—**	—**
California	2	5,739	1,865	6,624	352
New York	1	5,889	103,550	86,410+	—

\* Including boiler and elevator inspections.

\*\* Number of violations not reported.

+ Serious and nonserious not distinguished in report.

2 CCH EMP. SAFETY & HEALTH GUIDE ¶¶ 8834, 9058 at 7619, 8081-84.

## V. IDENTIFYING WISHA'S PROBLEMS

A review of the first few months of WISHA reveal a number of other problems that should be discussed. At this stage the Division does not have either the data or the general information necessary to analyze or gauge the impact of these difficulties, but they should be taken into account as topics for further research and discussion.

First, and not unexpectedly, Division employees have experienced some difficulty in familiarizing themselves with the new enforcement procedures under the Act. Inspectors were not accustomed to filling out detailed reports on every visit—reports that might have to stand as evidence in a hearing.<sup>47</sup> Some inspectors dislike the “police” role they now play; prior to WISHA inspectors were much more like consultants than they are now.<sup>48</sup>

Some employers resent WISHA, and this is no surprise. They complain of incorrect citations or misunderstandings on the part of inspectors. A few owners have refused to allow inspectors on their premises. But this only seems to be due to their unawareness of the statute and the state's new powers. These problems usually are settled informally by the Division. The only substantial noncooperation the Division has met thus far is from the agricultural community, which is unaccustomed to safety and health regulations.<sup>49</sup>

Another problem is the lack of worker knowledge and participation in the enforcement of WISHA. For example, the Act allows employees to accompany a safety inspector on his tour of the plant.<sup>50</sup> But few workers take advantage of the “walk-around” provision. This is ascribed to a fear of employer reprisals, a lack of interest, and the fact that few employers will pay a worker for time spent touring with the safety and health officer.<sup>51</sup> This could be remedied by a statutory or judicial order

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<sup>47</sup> See note 11 *supra*.

<sup>48</sup> Inspectors also appear to dislike the mandatory penalties attached to serious violations, and sometimes call violations “nonserious” in order to avoid levying a fine. The extent of this practice has not yet been gauged.

<sup>49</sup> The agricultural industry was not covered under Washington's prior safety and health legislation, but it is now subject to safety and health regulation under WISHA § 2.

<sup>50</sup> WISHA § 10.

<sup>51</sup> Memorandum from Richard F. Schubert, Solicitor of the Dep't of Labor, to

that employees be paid while accompanying the inspector, or by union-negotiated contract provisions to that effect.<sup>52</sup> Additional contract clauses providing pay for walk-arounds and additional safety meetings will be included in contracts only when unions themselves become more safety conscious. Among unions, there is much variation in the emphasis placed on protecting workers from job injuries. Some employee representatives, such as the United Auto Workers and the Oil, Chemical and Atomic Workers nationally, and the Longshoremens and some Washington teamster locals, have been very conscious of industrial hazards; other unions have little or no interest. The Division and independent researchers might do well to study methods for increasing union interest and participation.

Further areas for study are: (1) whether monetary penalties are truly "effective" and how large a financial "bite" is necessary to bring an employer into line; (2) how to insure uniformity in issuance of citations and fines; (3) whether there is enough emphasis on industrial hygiene as compared with safety; and (4) whether there might be groups of workers with industrial health or safety dangers who are not being given enough attention, *e.g.*, secretaries or female workers in general.

As with any statute, new or old, WISHA implementation has had some problems. But the first months of operation of the state's safety and health Act show considerable activity on the Division's part. The next few years will determine just how effective this activity has been.

*Hugh D. Spitzer\**

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George C. Guenther, Ass't Sec. of Labor. CCH EMP. SAFETY & HEALTH GUIDE [1971-1973 Transfer Binder] ¶ 8356, at 6,635.

<sup>52</sup> *Id.* at 6638.

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