

**AN UPDATE ON GIN LABOR ISSUES:
A LEGISLATIVE PERSPECTIVE**

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Abstract

The 105th Congress is expected to pursue a similar labor legislative agenda as last year, but with a more bipartisan approach toward incremental reforms. Legislation which could potentially affect the ginning industry is summarized. Personnel changes at the Dept. of Labor may shift the balance towards the organized labor. Anticipated OSHA proposals, including ergonomics, indoor air and safety and health management programs, will now be subject to a range of new requirements under Small Business Regulatory Enforcement Fairness Act (SBREFA).

Introduction

The reform minded Republican majority of the 104th Congress took up a number of labor issues, including reforming the Occupational Safety and Health Administration (OSHA), amending the National Labor Relations Act in the form of the TEAM Act legislation, and regulatory reform. They were, for the most part, unsuccessful in passing their legislation into law, as most of their labor agenda either never reached the President's desk or was vetoed.

The 105th congress is expected to pursue many of the same labor issues as last year, but in a more conciliatory manner toward incremental reforms. Republicans are expected to target areas that they think they can garner Democratic support and attempt scaled back rather than sweeping changes.

House Economic and Educational Opportunities Committee

Making federal labor law more flexible and "family friendly" is the top priority for the House Economic and Educational Opportunities Committee according to Rep. William F. Goodling (R-PA), the panel's chairman. Goodling's committee has jurisdiction over labor and employment laws, job training, welfare reform, pension, and workplace safety. Randy Johnson, Labor Coordinator for the committee expressed the agenda for 105th Congress as "doing less and doing better" with a "kinder and gentler" approach to labor reforms.

Rep. William Clay (D-Mo), the ranking Democrat on the committee does not see a true bipartisan effort from Republican members in light of expectations that the 105th

Congress would press for the same labor-related proposals that Democrats rejected last term.

Senate Labor and Human Resources Committee

Senator James M. Jeffords (R-Vt), a moderate Republican, is the incoming chairman of the Labor and Human Resources Committee. The Senate labor panel will have a pair of new subcommittees this year. To better reflect the panel's broad legislative authority, according to Sen. Jeffords, the new panels -- Public Health and Safety, and Labor and Training -- will replace subcommittees on Disability Policy and on Education, Arts and the Humanities. Those issues will be handled by the full committee.

Sen. Bill Frist (R-Tenn) is expected to be named Chairman of the Public Health and Safety Panel, which will address OSHA reform.

New Labor Secretary

Shortly after the November elections, Robert B. Reich said he did not plan to stay on as Secretary of Labor in Clinton's second term. Reich is expected to leave the Department around the middle of January and return to Massachusetts to be with his family.

Clinton announced the week of Dec. 20 his intention to nominate White House Public Liaison Director Alexis M. Herman as Secretary of Labor. Herman will face confirmation hearings sometime after Congress convenes in January. If confirmed Ms. Herman will confront a variety of workforce matters, including regulation of ergonomics in the workplace.

New Assistant Secretary of OSHA

On Dec. 20, Assistant Secretary of Labor Joseph A. Dear announced his resignation as head of the Occupational Safety and Health Administration. He plans to leave in January to become Chief of Staff to Governor-elect Gary Locke of Washington.

Dear directed OSHA for over 3 years. He guided the agency through the shift to "a new direction" and was able to implement many of these changes suggested by the Administration's efforts to reinvent government. Many business and industry proponents lauded Dear's attempts to communicate more openly with the regulated community.

1997 Labor Issues

OSHA Reform

Although the 104th Congress actively pursued OSHA reform legislation in 1995-96, they were unsuccessful in bringing a bill to a floor vote in either the House or the Senate. Three Senate bills and two House bills were introduced; HR 1834 and S. 1423 appeared to be the most likely vehicles for OSHA reform. However, HR 1834, a far-reaching bill introduced by Rep. Cass Ballenger (R-NC),

was shelved in April due to the Administration's veto threat, heavy opposition from organized labor, and the House leadership's reluctance to become embroiled in controversial legislation during an election year. On April 16, 1996 Rep. Ballenger introduced a scaled back, narrow reform bill (HR 3234) which was more in line with OSHA's own reinvention directives and the Clinton Administration's proposals for reinventing government.

Senators Kassebaum and Gregg introduced OSHA reform legislation (S. 1423) that would have directed 15% of OSHA funds to be spent on consultation and training, included provisions for exemptions from routine inspections, codified the Voluntary Protection Program (VPP), protected employee-involvement safety and health committees in non-union settings, and penalty reductions for good-faith efforts to protect workers.

Rep. Goodling (R-PA), who chairs the House Economic and Educational Opportunities Committee with jurisdiction over workplace safety, has suggested that his committee may attempt to codify the reforms already underway at OSHA rather than try to enact a comprehensive OSHA reform bill. Oversight hearings on OSHA are expected to begin in the Spring. If a bill is introduced in 1997 it will be after the oversight hearings.

Team Act (HR 743, S. 295)

Many cotton belt states require employee-management committees by law under their state safety and health programs, forcing those who comply into a violation of the National Labor Relations Act. The National Labor Relations Board has ruled that those committees are illegal employer-dominated "labor organizations," even where required by state law, unless workers are represented by a union.

As promised, President Clinton vetoed the Teamwork For Employees and Management (TEAM) Act. Congress did not have the support necessary to override the presidential veto. President Clinton, siding with organized labor, contended that the legislation was not necessary and could lead to the creation of sham "company unions" set up by unscrupulous employers. Proponents of the TEAM Act argue that employers need greater flexibility in setting up work teams to address workplace issues.

Rep. Goodling ranks passage of new TEAM Act legislation as second on his priority list and a new bill, virtually unchanged from S.295, is expected to be introduced in early February.

Comp Time (The Working Families Flexibility Act, HR 2391)

The House approved (225-195) on July 30 the Working Families Flexibility Act (HR 2391), a bill to give hourly workers covered by the 1938 Fair Labor Standards Act (FLSA) the option of voluntarily taking compensatory time

off instead of overtime pay. The compensation rate would be 1.5 hours of paid leave for each hour worked over 40 hours in a week. HR 2391 would amend FLSA, which requires hourly employees to be paid time-and-a-half for work past 40 hours a week. In lieu of overtime pay, the bill would allow an employee to take a maximum of 30 days off each year by mutual agreement with their employer.

The legislation is opposed by the AFL-CIO which fears that employers may coerce employees into accepting time off, instead of paying time and a half for overtime as currently dictated by the Fair Labor Standards Act. Republicans argue that employees should have the right to choose between spending more time with their families or putting extra money in the bank.

President Clinton has said he supports the bill in concept. In fact he introduced the idea as part of the "Employee-Choice Flex-Time" proposal on June 24th. However, faced with pressure from organized labor, he remains in opposition to HR 2391. Clinton's proposal called for restrictions such as mandating overtime wages for part-time, seasonal and temporary employees.

Rep. Ballenger will reintroduce the Working Families Flexibility Act early this year with only minor "technical changes" from last year's bill. Rep. Ballenger chairs the Workforce Protections Subcommittee. His panel will hold hearings in February and hopes to have the bill on the House floor by spring.

Agriculture would still keep its exemption. However, it is important to monitor the progress of this legislation as any changes to the FLSA may affect agriculture down the road.

Minimum Wage (HR 3448, Rep. Archer (R-TX))

In 1996 Congress voted to approve a 90-cent increase in the minimum wage in 2 installments: a 50-cent increase which took effect on Oct. 1 and a 40-cent raise scheduled for Sept. 1, 1997. Faced with pressure from organized labor and in fear of political fallout in this election year, many Republicans crossed party lines to vote with the Democrats in passing the bill. The bill also allows employers to pay new hires who are under 20 years of age a sub-minimum wage of \$4.25 an hour for the first 90 days. HR 3448 passed the House 281-144 on 5/23/96; the Senate 74-24 7/9/96 and was signed into law by President Clinton on 8/20/96.

SMALL BUSINESS REGULATORY ENFORCEMENT

FAIRNESS ACT (HR 3136 P.L. 104-121)

Over the past several years, regulatory reform has been a topic of much debate but many efforts to pass sweeping regulatory reform legislation have failed. However, one important regulatory reform bill passed as part of the

legislation increasing the public debt. On March 29, 1996 President Clinton signed the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The new law focuses on small business and has five key provisions: congressional review, regulatory flexibility, compliance guides, small business advocacy review panels, and small entity outreach.

60-Day Congressional Review of Regulations

SBREFA establishes a 60-day congressional review process for all rules promulgated after March 29, 1996. Before any new rule goes into effect, agencies must forward the rule to Congress for review. Major rules -- those with a \$100 million impact on the economy or a major impact on an industry, government or consumers, or those affecting competition, productivity or international trade -- cannot go into effect until congressional review is complete. Congressional review is subject to a presidential veto. Congress has up to 60 days to review a rule.

Regulatory Flexibility

SBREFA amended the Regulatory Flexibility Act of 1980 (RFA), holding agencies accountable for compliance. The Regulatory Flexibility Act is small businesses' most significant mechanism for influencing the development of federal regulations. RFA requires agencies to take steps to collect input from small entities on regulations and to determine whether a rule is expected to have a significant economic impact on a substantial number of small entities. In addition, federal agencies are required to identify alternative regulatory approaches for small businesses, small governmental jurisdictions and non-profit organizations.

Over the past 16 years, many agencies have filed to comply with RFA, and small businesses found little recourse in the courts due to absence of any enforcement mechanism. SBREFA corrects that by permitting judicial review of agencies' compliance with the Regulatory Flexibility Act.

Compliance Assistance

Agencies are now required to publish "plain English" compliance guides for all rules which will significantly impact small businesses. Also, agencies must establish a

system for addressing compliance inquiries from small business.

Small Business Advocacy Review Panels

Under SBREFA, EPA and OSHA are required to receive small special small business input before significant rules affecting small business are proposed. For each significant proposal, the agency convenes a small panel of employees from the agency, the Small Business Administration Office of Advocacy, and the Office of Management and Budget to review the draft proposed rule and related agency analyses required under the Regulatory Flexibility Act. The panel will collect advice from representatives about the draft proposed rule and submit a report to the agency within 60 days of convening the panel. The agency then reviews the report, makes any appropriate revisions to the proposed rule, and publishes the proposed rule for public comment.

Small Entity Outreach

Federal agencies are required, as part of the rule making process, to collect advice and recommendations from small business to improve their analysis of the rule's impact on small business.

Even before a proposed rule is written, the SBA's chief counsel for advocacy must gather information from small businesses about the rule's potential impact and ways to reduce the impact. Congress could delay implementing any "major" rule, usually defined as having an economic impact of more than \$100 million, while Congress reviewed whether to approve the rule.

Use of SBREFA

EPA and OSHA are using SBREFA small advocacy review panels now. The 60-day Congressional Review Process has not been tested; however, it is likely to be used when the following are proposed:

- OSHA Safety and Health Management Program rule
- OSHA Ergonomics rule -- depending on scope of the Notice of Proposed Rulemaking (NPR)
- EPA Particulate Matter (PM) and Ozone National Ambient Air Quality Standard (NAAQS) revisions