

Workers' comp cuts still on the table in Washington Legislature

By DAVID GROVES (OLYMPIA) — The Washington State Senate budget makes reference to Senate Bills 5127 and 5128, which would lower or eliminate age restrictions on compromise-and-release buyouts of injured workers. The bills are technically dead, having missed the cutoff deadline in the House, where Democratic leaders share Gov. Jay Insee's opposition to further "reform" of the workers' compensation system at least until the 2011 legislative changes have been fully implemented.

Organized labor and other injured worker advocates strongly oppose these bills because expanding buyouts to younger workers puts more at risk of being shortchanged. Young workers, in particular, would be making critical financial decisions in an atmosphere of great stress and uncertainty, given the longer stretch of their work lives ahead. (See: "Four Reasons Why Our Current Workers' Compensation System WORKS.")

By including reference to SB 5127

and 5128 in their budget, the Republican-controlled Senate is saying it considers the bills "necessary to implement the budget" and therefore exempt from the cutoff deadlines. They accomplished this by pretending the state will save \$10 million in the next biennium by passing either bill. (Apparently, it doesn't matter which bill, even though one lowers the buyout eligibility age from 55 to 40 and the other eliminates all age restrictions. Either way — poof — \$10 million!)

How does getting more injured workers to accept less money up-front than they would otherwise receive save the state money? Good question, considering that any systemic cost savings benefit the workers' compensation state fund — financed by employers and workers — and not the state's general fund. The only way the budget can book any savings is if the state's own workers' compensation rates, as an employer covering state employees, drop.

So, the Senate budget makes two as-

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4 Reasons Why Our Current Workers' Comp System WORKS

1) Premium costs are shared

50% Medical Aid
50% Supplemental Pension

50% Medical Aid
50% Supplemental Pension
100% Accident Fund

2) Recessions (not benefits) raise rates

Source: Washington State Department of Labor & Industries

3) Employer costs are competitive

(Based on our 1/1/12 rates. Since that date, Washington will have had all of 2012 and 2013 with NO rate hike. So we can expect to drop even further in the next study — by doing nothing more.)

4) 2011 changes are saving \$1.5 billion

Legislative changes approved in 2011 are already projected to save nearly \$1.5 billion through fiscal year 2013, \$200 million more than initially projected by the state Department of Labor & Industries. **And these changes have not even been fully implemented yet.**

The Washington State Labor Council, AFL-CIO urges legislators to **REJECT** all efforts to undermine the workers' compensation safety net for injured workers. Please **OPPOSE** Senate Bills 5112, 5127 and 5128. No more "reforms" until we see how the changes currently being implemented are working!

... Silica dust can cause a host of occupational lung diseases

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woman in the nation safe and healthful working conditions."

And the law gave OSHA its own rigorous and lengthy public review process. After careful scientific and technical study, the agency puts out a proposed rule for public comment, and holds hearings to get input on whether or not the rule is needed, the science behind it, and whether it's feasible in terms of cost and technology. Then the agency makes a determination whether to proceed with the final rule.

But in 1993, President Bill Clinton issued Executive Order Number 12866, directing all federal regulatory agencies, including OSHA, to submit proposed regulations first to the OMB when they would have significant economic impact. OIRA, the OMB sub-unit, would review whether the regulatory agency had assessed the costs and benefits of available alternatives, and then would approve it for further development, or propose changes, within 90 days, with an opportunity for one 30-day extension. President Bush kept the executive order in place, and so did President Obama. The executive order says that if OMB doesn't complete its review in that time frame, a regulatory agency can move forward without it.

But that hasn't happened. Regulatory agency directors — who are appointed by the president — don't push rules forward on their own when OMB fails to meet its deadline to review proposed rules. Instead, and the silica rule is just one example, federal regulations to protect the public interest — though authorized by previous acts of Congress — increasingly fall into a kind of black hole at the OMB.

"They've hijacked the rule," says the AFL-CIO's Seminario, who has spent two decades in Washington, D.C., fighting for worker safety. "They've hijacked the public process. So instead of it being a public process where everybody gets to come in and make their comments to the agency that has the expertise, OSHA, you have all these industry groups going into closed-door meetings with OMB, essentially having private hearings on



the rule even before it sees the light of day in proposed form."

In the first six months of "review" on the silica rule, OMB officials met eight times with industry groups. Attendees included the National Industrial Sand Association, American Road and Transportation Builders Association, representatives of brick companies, mineral companies, and foundries, and on behalf of mining interests, a lawyer from powerhouse lobby firm Patton Boggs. Construction industry groups were there too: Associated Builders & Contractors, National Association of Home Builders, Independent Electrical Contractors, Mechanical Contractors Association of America, Mason Contractors Association of America, and the National Roofing Contractors Association. The meetings weren't open to the public.

At the time, the head of the Office of Information and Regulatory Analysis was Cass Sunstein, a friend of Obama's from their days teaching at University of Chicago. Sunstein left OIRA in August 2012 to return to teaching at Harvard Law School.

In December, Sunstein submitted an article to

the Harvard Law Review, intended to clear up myths and "pervasive misunderstandings" about OIRA. Those closed-door meetings with business groups, Sunstein wrote, don't matter; the meetings just take place because OIRA "accepts all comers." Nor is politics a consideration, he wrote, "if the term refers to public reactions and electoral factors." In Sunstein's telling, OIRA is just an "information aggregator," a kind of bureaucratic talk shop where apolitical experts from multiple federal agencies weigh in on the impacts of proposed rules. If the agency representatives don't achieve consensus, there can be delay, Sunstein wrote.

If there's one revealing sentence in the 38-page Harvard Law Review article, it's this one: "Insofar as the President and his closest advisers are clear on their priorities, OIRA will of course be made aware of their views and act accordingly."

In other words, if the president wants OIRA to release the silica rule, it will.

Union officials are upset about inaction on silica, but they're not the only ones. U.S. Sen. Tom Harkin of Iowa is chair of the Senate Subcommittee on Employment and Workplace Safety, which oversees OSHA. In July 2011, once the 90-day rule had come and gone, Harkin wrote to OMB asking that the regulation be released so that OSHA's public review process begin. He got the brushoff.

Nine months later, Harkin convened a Senate hearing about the impact of OSHA rule delays on worker safety. Randy Rabinowitz, director of regulatory policy at the non-profit watchdog group OMB Watch, testified that OSHA is finding it more difficult to respond to threats to workers health because the agency is required to complete an ever increasing array of onerous, duplicative, and unreasonable regulatory analyses.

"In the early days of its existence, it took OSHA from six months to two years to develop major rules — even controversial ones that addressed asbestos and vinyl chloride hazards," Rabinowitz told senators. Now it takes almost eight years on average to promulgate an OSHA standard. And in the case of the silica standard, 39 years and counting.

With the federal government doing nothing, others stepped in. New Jersey banned dry cutting of concrete as an unsafe practice. So did California. Responsible employers are voluntarily adopting best practices. Union training programs like Lenczowski's are getting the word out to members about silica.

On the eve of the two-year mark since the silica rule went to OIRA, AFL-CIO President Richard Trumka — himself a former coal miner and mineworkers union leader — published a column about it in the Huffington Post. "The delay in job safety protections for silica is inexcusable and heartless," Trumka wrote. "It's time for industry opponents to stand down and time for the White House to stand up for working men and women."

On Feb. 27, Harkin sent a second letter to OMB, also signed by Washington U.S. Sen. Patty Murray, and Congressmen George Miller and Joe Courtney: "This unwarranted delay is deeply concerning to us, as leaders of Congressional Committees with jurisdiction over worker safety and health, and it is dangerous for the nearly two million U.S. workers who toil at great risk of exposure to unsafe working conditions due to silica exposure."

"Modernizing OSHA's crystalline silica standard is a commonsense and necessary improvement to worker safety," the letter continues. "In many cases, protections are as basic as a water hose or spray. It is intolerable that workers are not benefiting from these protections due to roadblocks in the regulatory process. Moreover, there is simply no justification for OIRA's delay."

Addressed to OMB deputy director Jeffrey Zients, the letter requests a "date certain" upon which that review will be completed.

The reply came from OIRA deputy administrator Dominic Mancini: "While workplace safety is a priority of this administration, it is not OMB's practice to provide dates in advance for the issuance of agency regulation." OIRA's review of the silica standard, Mancini wrote, is currently ongoing. "Let me assure you that the OMB appreciates and shares your interest in worker safety and concern about exposure to crystalline silica."