



**SCHOOL OF
PUBLIC HEALTH**

University of Medicine & Dentistry of New Jersey

U.S. Constitution and Amendments Workshop

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A Selected History of Safety and Health

1790 BC: Code of Hammurabi authored by Babylonian king, Hammurabi, and partial copies exist on a human-sized stone stele and various clay tablets. The Code consists of 281 laws (skipping number 13), with scaled punishments, adjusting "an eye for an eye" as graded depending on social status. The first "Building Code" If a builder builds a house for someone, and does not construct it properly, and the house which he built falls in and kills its owner, then the builder shall be put to death. Another version or interpretation is, If the owner's son dies, then the builder's son shall be put to death

460-377 BC: Hippocrates, the forerunner of the modern physician, described symptoms of lead poisoning among miners and metallurgists.

23-79 AD: Gaius Plinius Secundus AKA Pliny the Elder, Roman statesman and author of natural history wrote about workers who protected themselves from dust by tying bladders over their mouths. He also noted hazards such as asbestos and cinnabar (Mercury ore).

1473: Ulrich Ellenbog, a German physician, he recognized the dangers of metal fumes, described the symptoms of such exposures and preventive measures

1493-1541: Paracelsus– AKA (Phillip von Hohenheim, Theophrastus Philippus Aureolus Bombastus von Hohenheim) A Swiss physician, he wrote a treatise on occupational diseases. Described lung diseases among miners and attributed the cause to vapors "Father of Toxicology"

1494-1555: Agricola born: Georg Bauer, he was a physician, He noted the need to provide ventilation for miners.

1633-1714: Bernardino Ramazzini, Italian physician, known as the "patron saint of industrial medicine" His book De Morbis Artificum Diatriba (The Diseases of Workmen) described the symptoms of mercury and lead poisoning and other

occupational diseases. He wrote about the pathology of silicosis and recommended precautions to avoid hazards.

1750-1752: Ben Franklin experiments with lightning and lightning rod, also forms safety committees which include the protection and safeguards against fire and the spreading of fire to other homes and structures

1877: Massachusetts passed the nation's first safety and health legislation in 1877, requiring the guarding of belts, shafts, and gears, protection on elevators, and adequate fire exits in factories. By 1890, nine states provided for factory inspectors, 13 required machine guarding, and 21 made limited provision for health hazards

1900: International Ladies Garment Workers Union (ILGWU), established 1900, pushed for comprehensive safety and workers' compensation laws

1905: U.S. Supreme Court LOCHNER

1910: Bureau of Labor published a study by John B. Andrews on phosphorus necrosis ("phossy jaw"), a disfiguring, sometimes fatal disease of the jawbone suffered by employees in the whitephosphorus match industry. This shocking study led the U.S. to place such a high tax on phosphorus matches that the industry nearly collapsed. In 1911, a method was developed to use sesquisulfide of phosphorus to produce matches, eliminating the hazard.

1911: Triangle Shirtwaist Factory Fire, 146 workers died from fire in the upper floors of this "fireproof" building, Fire exits were inadequate or locked, Many victims jumped to their deaths, The tragedy led to 36 laws reforming the state labor code

1911: American Society of Safety Engineers

1914: Studies in New York City and Youngstown, Ohio revealed unsanitary conditions and tuberculosis among workers, leading to the abolishment of "sweat shops."

1923: Studies of the "dusty trades," led to the development of industrial hygiene sampling equipment.

1930: Gauley West Virginia Bridge Disaster, also known as the Hawks Nest tragedy, this was America's worst industrial disaster killed at least 476 men and disabled 1500 by

silicosis. Economic factors of the Great Depression forced the men to work in unhealthy conditions

1933: President Franklin D. Roosevelt selected Frances Perkins to be the new Secretary of Labor; she became the first woman to serve as member of the Cabinet. Perkins brought to the Labor Department extensive experience in occupational safety and health with the State of New York. To help assure that workplaces would be “as safe as science and law can make them,” Perkins created the Bureau of Labor Standards in 1934. This was the first permanent federal agency established primarily to promote safety and health for working men and women. The bureau also helped state governments improve their administration of workplace safety and health laws and raise the level of their protective legislation.

History of BLS Safety and Health Statistical Programs

The seeds for safer workplaces through improving knowledge were sown at the beginning of the 20th century. Back then, the Bureau of Labor Statistics fielded its first full-scale survey of safety and health conditions in American workplaces, with its 1912 study of industrial accidents in the iron and steel industry.

Paralleling its interest in worker safety, the Bureau also sponsored the pioneering work of industrial hygienists, such as Dr. Alice Hamilton's early 20th century research on lead poisoning in the workplace. Other BLS studies of individual industries and safety and health topics followed, but it was not until the late 1930's that injury recordkeeping was sufficiently uniform to permit the collection of nationwide work injury data.

Once the American Standard Method of Measuring and Recording Work Injury Experience (the Z16.1 standard) was accepted by employers and statistical agencies, the BLS launched an annual nationwide survey of work injuries that resulted in death, permanent impairment, or temporary disability (unable to perform a regularly established job beyond the day of injury). Spanning three decades, these surveys proved useful in measuring and monitoring injury frequency and severity. However, they had some major limitations: first, the work injury data were compiled only from employers who volunteered to record and report that information; second, only disabling injuries defined in the Z16.1 standard were counted. Thus, numerous work injuries that required medical treatment but did not result in a full day away from work were excluded from survey estimates, as were, with few exceptions, occupational illnesses. These and other limitations eventually were addressed in a major piece of safety legislation passed by the Congress in the waning days of 1970.

The Occupational Safety and Health Act of 1970 was passed to ensure "so far as possible every working man and woman in the nation safe and healthful-working conditions and to preserve our human resources" (PL 91-596, 1970). As a result of this legislation, the Occupational Safety and Health Administration (OSHA) was created under the assistant secretary of labor for occupational safety and health to enforce the regulations established by the 1970 act. Very specific language in the act gave an indication that Congress recognized statistics on workplace injuries and diseases were essential to an effective national program of prevention. The act, among other things, directed the Secretary of Labor to issue regulations to require employers to maintain records on workplace injuries and illnesses. The Secretary of Labor was also directed to compile accurate statistics on occupational injuries and illnesses and to make periodic reports on such occurrences.

The responsibility for collecting statistics on occupational injuries and illnesses was delegated to the Bureau of Labor Statistics (BLS). In order to further the purposes of this act, the language was quite specific: "the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries and illnesses, whether or not involving loss of time from work other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job."

Source: Bureau of Labor Statistics

1970: OSH Act, Williams-Steiger Occupational Safety and Health Act of 1970



President Richard M. Nixon signs OSH Act

The Occupational Safety and Health Act was signed into law on December 29, 1970, by President Richard M. Nixon, culminating nearly a

Commerce Clause from

Original Constitution of the United States

Source: Daily Packet

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

**JOSEPH LOCHNER, v.
PEOPLE OF THE STATE OF NEW YORK.**

**Argued February 23, 24, 1905
Decided April 17, 1905**

(Excerpt)

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor.

There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation.

Section 110 of the labor law of the State of New York, providing that no employes shall be required or permitted to work in bakeries more than sixty hours in a week, or ten hours a day, is not a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to labor, and, as such, it is in conflict with, and void under, the Federal Constitution.

This is a writ of error to the county court of Oneida county, in the state of New York (to which court the record had been remitted), to review the judgment of the court of appeals of that state, affirming the judgment of the supreme court, which itself affirmed the judgment of the county court, convicting the defendant of a misdemeanor on an indictment under a statute of that state, known, by its short title, as the labor [198 U.S. 45, 46] law. The section of the statute under which the indictment was found is 110, and is reproduced in the margin (together with the other sections of the labor law upon the subject of bakeries, being 111 to 115, both inclusive).

The indictment averred that the defendant 'wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread, and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week,' after having been theretofore convicted of a violation of the name act; and therefore, as averred, he committed the crime of misdemeanor, second

LOCHNER

Mr. Justice Holmes' Descent

I regret sincerely that I am unable to agree with the judgment in this case, and that I think it my duty to express my dissent.

*This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 Sup. Ct. Rep. 358, 49 L. ed. _____. United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court. *Northern Securities Co. v. United States*, 193 U.S. 197, 48 L. ed. 679, 24 Sup. Ct. Rep. 436. Two years ago we upheld the prohibition of sales of stock on margins, or for future delivery, in the Constitution of California. *Otis v. Parker*, 187 U.S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168. The decision sustaining an eight-hour law for miners is still recent. *Holden v. Hardy*, 169 U.S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. [198 U.S. 45, 76] It is made for people of fundamentally differing views, and the*

accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word 'liberty,' in the 14th Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

The Job Safety Law of 1970: Its Passage Was Perilous

Three decades ago Congress enacted the Occupational Safety and Health Act of 1970 to help protect the Nation's workers on the job, following a 3-year struggle.

By Judson MacLaury

On December 29, 1970, President Richard Nixon signed into law the Williams-Steiger Occupational Safety and Health Act, which gave the Federal Government the authority to set and enforce safety and health standards for most of the country's workers.¹ This act was the result of a hard fought legislative battle which began in 1968 when President Lyndon Johnson unsuccessfully sought a similar measure. However, the roots of government regulation of workplace hazards date back to the late 19th century.

State Factory Laws

In the factories that sprang up after the Civil War, chemicals, dusts, dangerous machines, and a confusing jumble of belts, pulleys, and gears confronted inexperienced, often very young workers. The reports of State labor bureaus in the 1870's and 1880's were full of tragedies that too often struck the unwary or the unlucky. The Massachusetts report of 1872 described some particularly grisly accidents. These tragedies and the industrial accident statistics that State labor bureaus collected, spurred social reformers and the budding labor movement to call for State factory safety and health laws. In 1870, the Massachusetts Bureau of Statistics of Labor urged legislation to deal with "the peril to health from lack of ventilation." In 1877, Massachusetts passed the Nation's first factory inspection law. It required guarding of belts, shafts, and gears, protection on elevators, and adequate fire exits.² Its passage prompted a flurry of State factory acts. By 1890, nine States provided for factory inspectors, 13 required machine guarding, and 21 made limited provision for health hazards.

The labyrinth of State job safety and health legislation covered a wide range of workplace hazards but was badly flawed. There were too many holes in the piecemeal system and numerous hazards were left uncontrolled. The laws had to be amended

often to cover new hazards. Many legislatures failed to provide adequate funds for enforcement. Inspectors, who were often political appointees, were not always given the legal right to enter workplaces. State with strong safety and health laws tended to lose industry to those with less stringent ones, which made States competitive and limited their legislative efforts.

The Progressive Era and the growth of mass circulation newspapers and national magazines helped forge a national movement for workers' safety and health. In 1907, 362 coal miners were killed at Monongah, W. Va., in the worst U.S. mine disaster. This widely publicized tragedy shocked the Nation and led to the creation in 1910 of the U.S. Bureau of Mines to promote mine safety.

That same year William B. Hard, a muckraking journalist, published an article in Everybody's Magazine titled, "Making Steel and Killing Men," based on his firsthand investigations of a Chicago mill.³ Hard estimated that every year, out of a work force of 10,000 workers, 1,200 were killed or seriously injured. He urged the steel industry to use its technical knowledge to reduce this casualty rate. U.S. Steel, spurred by mounting accident tolls, had already begun to collect accident statistics. Safety programs in subsidiaries dated back to the 1890's. In 1908, U.S. Steel formed a safety committee with instructions from the company president, Judge Elbert Gary, to cut the accident rate as much as possible. A highly successful "safety first" movement developed from this which spilled over to other industries and led to the creation of the National Safety Council in 1915.⁴

The "Pittsburgh Survey," a detailed study of living and working conditions in Allegheny County, Pa., done in 1907-08, had a special impact on job safety and health.⁵ One of the major topics of the investigation, which was sponsored by the Russell Sage Foundation, was industrial accidents. The survey found that the injured workers and the survivors of those killed on the job bore the economic brunt of accidents, even though most were the employers' fault. The authors of the survey agreed that, for reasons of social equity, employers should bear a substantial share of the economic burden, giving them more incentive to eliminate the causes.

Workers' Compensation Started

Years before the Pittsburgh Survey, the idea of compensating injured workers from an insurance fund to which employers would contribute had gained a foothold in this country, though it was not at first promoted as a preventive measure. Prince Otto von Bismarck had initiated the first workers' compensation program in Germany in 1884, and the idea soon spread throughout Europe. In the United States, a few States tried to establish early compensation systems. Organized labor successfully opposed the concept, precisely because it was intended as a palliative, not a preventive measure. In 1908, Congress passed, with President Theodore Roosevelt's support, a limited workers'

compensation law for Federal employees. Encouraged by this example, several States appointed study commissions. However, until the Pittsburgh Survey, compensation was treated mainly as a humanitarian measure.

The survey's call for an economic incentive to encourage accident prevention struck a responsive chord. It quickly became a key part of the rationale for workers' compensation. This seemed to tip the scales. Both labor and business rallied in support.⁶ In 1911, Wisconsin became the first State to successfully establish a workers' compensation program. Within one year it was joined by nine other states and by 1921 most States had followed suit.

Ironically, it was as a preventive measure that workers' compensation accomplished the least. The general level of this type of insurance premium was already so low that there was no real incentive for a company to invest heavily in safety improvements to be eligible for the slightly lower rates offered firms with good safety records. Very few States included compensation for disease, although much was already known about occupational illness. Still, insurance company safety experts helped improve their clients' safety programs and the establishment of compensation gave the safety movement a moral boost.⁷

An idea that developed alongside of workers' compensation probably produced more significant long-run results. If the States would create industrial commissions with authority to establish specific safety and health regulations, it would not be necessary to go back to the legislatures and amend the factory laws in order to cover new hazards or change requirements. A workers' compensation advocate, John R. Commons of the University of Wisconsin, found this system in use in Europe and urged its adoption in the United States. Wisconsin, in another pioneering move, created the first permanent State industrial commission which developed and enforced safety and health regulations, after hearing comments from labor, management, and others.⁸ This idea was widely accepted and became a guide for future State and Federal regulation of occupational safety and health.

Early Federal Action

The Federal Government was relatively inactive, though not dormant, on safety and health until the era of workers' compensation. In 1790, the First Congress passed an ineffective merchant seaman's act which gave the crew of a ship at sea the right to order the vessel into the nearest port if a majority of the seamen plus the first mate believed it was unseaworthy.⁹ In 1887, Congress created the Interstate Commerce Commission partly because of the large numbers of railroad workers killed or injured in train wrecks. In 1893, at the urging of the commission and the railroad unions, Congress passed the "coupler bill" which banned the notoriously dangerous link-and-pin method of coupling cars.

Industrial disease studied. After the turn of the century, the Federal Government quietly began investigation into industrial diseases. In 1903, the U.S. Bureau of Labor began publishing graphically detailed studies of death and disease in the dusty trades, as well as other safety and health topics. In 1910, the Bureau published a study by a labor law advocate, John B. Andrews, on the horrors of phosphorus necrosis ("phossy jaw"), a disfiguring and sometimes fatal disease of the jawbone suffered by workers in the white phosphorus match industry.¹⁰ This shocking study jolted the Nation to demand action. In 1912, Congress passed the Esch Act, which placed a prohibitive tax on white phosphorus matches. The Diamond Match Co. agreed to release its patented substitute for general use.

By a lucky stroke, U.S. Commissioner of Labor Charles Neill met Dr. Alice Hamilton (now considered the founder of industrial medicine in America) at a 1910 European conference on occupational accidents and diseases. Hamilton, at the time just beginning her career, was in the midst of pioneering investigations into the lead trades as director of the Illinois Occupational Disease Commission. Neill invited her to work as a special investigator for the Bureau of Labor. She accepted and until 1921 traveled around the country visiting lead smelters, storage battery plants, and other hazardous workplaces. In 1911, she published a study of the white lead industry that was the first of a series of Bureau of Labor reports known as the "Federal survey." Hamilton had a free hand but lacked authority to enter plants other than by moral suasion. She found many examples of foul conditions and gross neglect and some "remarkable instances of wise and humane employers."¹¹

Department of Labor formed. In 1913, Congress created the Department of Labor and one of its main purposes was "to improve working conditions." A Senate resolution specifically called on the newly appointed Secretary of Labor, William B. Wilson, to report on industrial diseases and accidents.¹² Wilson, an ex- coal miner and mine union official, needed no prodding. A "miner" poet, Wilson described the horror of a mine disaster in this excerpt from "The Explosion," originally written in 1903:

*Stalwart men were but as feathers
Driven with a cyclone's fire.
Fast their flesh and sinews shriveled,
Scorched and roasted with the fire.*¹³

Under Wilson, the Bureau of Labor Statistics (formerly the U.S. Bureau of Labor) started compiling regular accidents statistics in the iron and steel industry and gradually included other industries. Wilson sought to establish the principle that, instead of feeding men "into the maw of unhealthy occupations ... the thing to do is to make the unhealthy occupations healthy."¹⁴

Working Conditions Service created. The entry of the United States into World War I precipitated a crisis in health and safety conditions in the hard-pressed war production industries. To meet this challenge, Congress initiated the Working Conditions Service. The service inspected war production sites, advised companies on reducing hazards, and helped States develop and enforce safety and health standards. When the war ended, the service was allowed to expire, but the Labor Department ordered its records saved for the time "when public and legislative opinion again shall have become focused upon the necessity for a constructive organization of this character."¹⁵

Labor Standards

Frances Perkins appointed. In 1933, President Franklin D. Roosevelt selected Frances Perkins as Secretary of Labor and first woman Cabinet member. She brought to the Labor Department long experience in occupational safety and health with the State of New York. To help assure that workplaces would be "as safe as science and law can make them," Perkins created a Bureau of Labor Standards in 1934 as a rallying point for those interested in job safety and health.¹⁶ This was the first permanent Federal agency established primarily to promote safety and health for the entire work force. The Bureau helped State governments improve their administration of job safety and health laws and raise the level of their protective legislation.

Congress enacted three laws as part of Roosevelt's New Deal which augmented the Federal Government's role in protecting people on the job. The Social Security Act of 1935 allowed the U.S. Public Health Service to fund industrial health programs run by State health departments. This made the Public Health Service, which had begun doing industrial health studies in 1914, the national leader in this field. The Fair Labor Standards Act of 1938, which set a minimum wage and banned exploitative child labor, gave the Labor Department the power to bar workers under age 18 from dangerous occupations. The Walsh-Healey Public Contracts Act of 1936 allowed the department to ban contract work done under hazardous conditions.

Maritime rules. By the late 1950's, the Federal-State partnership which Frances Perkins had cultivated was no longer adequate to deal with growing threats to workers' safety and health, so gradually the Federal Government took a more prominent role. In 1958, Congress passed a seemingly minor amendment to the Longshoremen's and Harbor Workers' Compensation Act. It gave the Labor Department authority to set safety and health standards for the very small work force covered under this law. In addition to protecting workers in one of the Nation's most hazardous industries, the amendment closed "the last remaining 'no man's land'" in safety enforcement. The Secretary of Labor was authorized to seek penalties against willful violators, but not against those who only carelessly broke the rules. After holding public hearings, the department began enforcing standards in 1960. Compliance was good, and the high accident rates declined sharply.¹⁷

In December 1960, shortly after the congressionally ordered maritime rules became effective, the department issued on its own a set of mandatory safety and health standards under the Walsh-Healey Act. The department had previously issued most of these standards in a "Green Book" of informal guidelines to aid Federal and State inspectors. States had been encouraged to inspect Federal contractors and enforce their own rules. Now they were barred from applying their standards and had to enforce the Federal rules instead. For the first time, the Federal occupational safety and health requirements were applied to the whole range of industry.¹⁸

The new rules were not popular. Because there had been no hearings or prior announcement, labor and industry were caught by surprise and miffed that they had not been consulted. Business protested strongly to the Labor Department against making the rules mandatory. The National Safety Council deplored this "monumental set of rigid regulations."¹⁹The department took the criticisms to heart, and in October 1963 it announced proposed revisions, with hearings held in March 1964.

Business opposition had been building up for 3 years and reached a peak at the hearings.²⁰ They ran for 2 weeks, and the transcript filled 1,347 typed pages. More than 100 witnesses appeared, mostly from industry. Business felt that the new rules were not only illegal, but also technically deficient and would inhibit innovation. By substituting Federal for State regulations, the Labor Department generally undermined State safety programs, it was argued. Business also felt that the new policy weakened its own long-established pattern of voluntary safety efforts.

Coordination of programs. The powerful wave of criticism that climaxed at the 1964 hearings prodded the Department of Labor into a serious examination of all its safety programs in order to develop a more coordinated safety and health policy. A study by an outside consultant found in the department a fragmented collection of safety programs and laws. It recommended consolidation of all these safety programs under a single agency, which was done somewhat in 1966.²¹

A movement to protect the natural environment from the ravages of mankind and technology began growing while the Labor Department was seeking to improve and expand its protection of workers' safety and health. Large-scale Federal air and water pollution control programs were developed, helping to increase awareness and concern about the occupational environment.

Spurred by this movement, in 1965 the Public Health Service produced a report, "Protecting the Health of Eighty Million Americans," which outlined some of the recently found technological dangers. It noted that a new chemical entered the workplace every 20 minutes, that evidence now showed a strong link between cancer and the workplace, and that old problems were far from being eliminated. The report called for a major national occupational health effort centered in the Public Health Service.

The AFL-CIO urged President Lyndon Johnson to support the report's recommendations. On May 23, 1966, Johnson told a meeting of labor reporters that "the time has ... come to do something about the effects of a workingman's job on his health." The Departments of Labor and Health, Education and Welfare promptly set about to develop legislation for such a program. A joint task force was then to combine both departments' ideas and submit a proposal to the President. However, Labor and HEW could not agree on which department would control a national program and by late 1966 the task force was deadlocked.²²

Mining tragedy breaks deadlock. In 1967, it was revealed that almost a hundred uranium miners, an abnormally high number, had died of lung cancer since the 1940's. Up to a thousand more such deaths were expected. In 1947, when large-scale uranium mining was getting underway, the Atomic Energy Commission discovered that radiation levels in these mines were dangerously high. The Commission, in cooperation with the Public Health Service, began a long-term health study of the miners. A number of Federal agencies had limited jurisdiction over uranium mines, but none had clear responsibility for them, and there was very little enforcement.

The lack of action took on tragic overtones with the revelations of 1967, and public attention focused on the Federal Radiation Council. Created in 1959 to advise the President on protective measures to take against all types of radiation hazards, the council was composed of representatives from concerned agencies. In 1967, it had just completed a study of the uranium mines and was expected to recommend a standard shortly. However, when the council met on May 4, 1967, it became deadlocked between a standard that the Atomic Energy Commission recommended and a tougher one preferred by the Labor Department.²³

The next day, Secretary of Labor Willard Wirtz, impatient with inaction, announced a bold step. Previously, Wirtz had been reluctant to act because he felt that uranium mining was not properly a Department of Labor area. However, without holding public hearings, Wirtz adopted under the Walsh-Healey Act the standard he had unsuccessfully advocated before the Federal Radiation Council.²¹

This move had a decisive impact on the shaping of a national job safety and health program in 1967, as the Departments of Labor and HEW promoted their competing proposals. The Bureau of the Budget accepted the Department of Labor's recommendations.²⁵

Johnson Bill Fails

In January 1968, President Johnson called on Congress to enact a job safety and health program virtually identical to that developed by the Labor Department. Johnson said it was "the shame of a modern industrial nation" that each year more than 14,000

workers were killed and 2.2 million injured on the job. Citing inadequate standards, lagging research, poor enforcement of laws, shortages of safety and health personnel, and a patchwork of ineffective Federal laws, Johnson argued that a comprehensive new law was needed.²⁶

The Johnson proposal, quickly introduced as legislation, gave the Secretary of Labor the responsibility of setting and enforcing standards to protect 50 million workers. The bill also had a general duty clause requiring employers to "furnish employment and place of employment which are safe and healthful." It gave inspectors legal authority to enter workplaces without management's permission without prior notice. Violators could be fined or jailed, and the Secretary could black-list transgressors who held government contracts. The Labor Department would help interested States to develop their own programs in lieu of the Federal one. The Department of HEW would provide the Labor Department with scientific material for new safety and health standards.

Congressional committee hearings on the Johnson proposal began in February 1968.²⁷ Secretary of Labor Wirtz, who led off the hearings, cited two casualty lists facing America at that time: the military toll in Vietnam -- and the industrial toll at home. Wirtz claimed that 3 of 4 teenagers entering the work force would probably suffer one minor disabling injury or more during their work life. He also displayed shocking photographs of gory industrial accident scenes. Wirtz felt that the main issue was "whether Congress is going to act to stop a carnage" which continues because people "can't see the blood on the food that they eat, on the things that they buy, and on the services they get."²⁸

The proposal aroused opposite strong reactions. Organized labor supported the bill. George Meany, AFL-CIO president, headed a long list of union witnesses at the congressional hearings. A noted occupational health researcher, Irving R. Selikoff, of the Mt. Sinai School of Medicine, and consumers' advocate Ralph Nader added their voices in support. However, industry, led by the U.S. Chamber of Commerce, vehemently opposed the broad powers which would be given to the Secretary of Labor. Industry campaigned hard against a "crash program" that would undermine the rightful role of the States.

Ironically, the Labor Department itself may have hurt the bill's chances. In March 1968, it published the booklet, "On the Job Slaughter," containing gory photographs similar to those Secretary Wirtz had displayed when testifying. When industry found out that many of the pictures were 20 to 30 years old, it accused the Labor Department of deception.

The Johnson proposal failed in 1968. President Johnson's decision not to run for re-election, domestic violence in the inner cities, demonstrations against the Vietnam War -- these and many other events diverted congressional and national attention from dealing with workers' safety and health. The bill never came to a vote in Congress.

Safety and Health Board Proposed

By 1969, the idea of a general job safety and health law had taken hold. Beginning in 1965, Congress passed several laws protecting various groups of workers. The Service Contracts Act of 1965 and the Federal Construction Safety and Health Act of 1969 provided missing links in the protection of Government contractor employees. The 1966 Metal and Non-metallic Mine Safety Act protected non coal miners. A mine explosion in 1968 causing 68 deaths in Farmington, W.Va., spurred Congress to pass the Coal Mine Health and Safety Act of 1969.

In the context of Federal action, President Richard Nixon presented his version of a comprehensive job safety and health program to Congress in August 1969. After his inauguration, he had called on his Cabinet departments to sift through his campaign speeches for election-year promises. They were to report to him on what they were doing to meet these pledges. Under Secretary of Labor James D. Hodgson²⁹, who was particularly interested in workers' safety and health, was "delighted" to find that in a speech in Cincinnati, the Presidential candidate had called for Federal action on that problem. The White House asked Hodgson to prepare a bill, and he began work immediately, consulting extensively with labor and management.³⁰

The Nixon Administration's proposal bypassed the question of whether Labor or HEW should have control and offered instead a five-person board that would set and enforce job safety and health standards. The Labor Department would be limited to inspecting workplaces and HEW would do research. Nixon emphasized use of existing efforts by private industry and State governments. The main Federal concern would be with health research and education and training, and only secondarily with direct regulation.³¹

Legislation embodying the Nixon proposal was introduced in Congress and for the second consecutive year hearings began on a national job safety and health program. Hundreds of witnesses from labor, industry, government, and the safety and health community gave thousands of pages of oral and written testimony. In addition to hearings in Washington, there were field hearings around the country at which rank-and-file workers in steel mills, automobile plants, and other industries testified.³²

Secretary of Labor George Shultz emphasized at the hearings that the Nixon bill was part of a continuous historical process. Secretary Schultz believed that a consensus had finally evolved on both the need for a Federal law and its general form. He exhorted Congress to "work out our differences and get something done."³³

Labor Opposes, Business Applauds

This turned out to be easier said than done. Democratic Congressmen, and some Republicans, raised strong objections to the bill. Many felt that, with two departments already involved, a safety board would create administrative confusion. Labor union supporters opposed any such board and wanted the programs lodged in the Labor Department. The proposed enforcement scheme came under fire because it only penalized willful, flagrant violators. Critics felt that this would take away much of the deterrent effect, because employers would be tempted to ignore Federal safety and health standards until after they were inspected. Exemptions of small employers, a 3-year delay in the bill's effective date, and a reliance on "consensus" standards devised by industry groups also drew Democratic opposition.

Organized labor had enthusiastically backed the Johnson bill, but it completely opposed the Nixon proposal. It agreed with congressional critics that the Labor Department was the proper locus of authority over safety and health. Unions felt that strong action was needed to deal with the hazards of the workplace, especially alarming new chemical dangers. As Anthony Mazzocchi of the Oil, Chemical and Atomic Workers union put it: "The mad rush of science has propelled us into a strange and uncharted environment . . . We grope in the dark and we can light only a few candles."³⁴

Buried in the battle of witnesses for and against the Nixon proposal were some thought-provoking comments by Irving Selikoff. He described the suffering of construction workers who succumbed to asbestosis from applying asbestos insulation to buildings. Refusing to blame any one group, he asked rhetorically, "Who killed Cock Robin?" Selikoff's answer was: "No one His has been an impersonal, technological death We have all failed."³⁵

In a crucial switch, the U.S. Chamber of Commerce, which had led the fight against the Johnson proposal, came out in favor of the Nixon bill. The National Association of Manufacturers and other industry group added their support. The main reason for the Chamber's switch was President Nixon's proposal to put a special safety and health board in charge of the Federal program, instead of giving the Labor Department that duty, as the Johnson proposal would have done. Business also was impressed with the fact that the Administration had listened to industry's views in drafting the legislation. Behind the change of heart was acceptance by business that, while the idea of Government regulation of conditions in the workplace was distasteful, some kind of safety and health law was inevitable.

A Seesaw Battle

Early in 1969, two Democrats, Representative James G. O'Hara of Michigan and Senator Harrison Williams, Jr., of New Jersey had presented bills that were similar to the Johnson proposal of 1968. Despite Republican efforts in 1970 to bottle up the bills in committee, they — and not the Nixon bill — were introduced on the floors of the House

and Senate shortly before the Congressional elections. Opponents succeeded in delaying consideration of these labor-backed measures until after the election, in hopes that it would prevent passage.

The strategy was partially successful. In the Senate, the first to act in the post-election "lameduck" session, Republicans offered an amendment substituting the Nixon proposal for the Democratic measures and came just two votes short of succeeding. With the division this close, compromise seemed likely. Senator Jacob Javits, New York Republican, offered an amendment under which the Secretary of Labor would set safety and health standards, and a separate commission would oversee Labor Department enforcement, serving as a kind of court of appeals for parties who disagreed with the Secretary's decisions. Senate Democrats and the Nixon Administration supported the compromise and the Senate passed it.

In the House, a grassroots effort which the Chamber of Commerce waged against the Democratic proposal during the election campaign drained off some support. Republican William A. Steiger of Wisconsin offered an Administration-backed bill to substitute for the O'Hara bill introduced earlier in the year. In a major defeat for labor, which had stoutly resisted any efforts at compromise, the Steiger amendment passed easily and a House-Senate conference committee met to hammer out the differences between the two bills.

However, the odds were now stacked in labor's favor. The conference committee members reflected the liberal views of the Democratic House and Senate committee chairmen who selected them. When the conferees met in December, they adopted the more liberal Senate bill almost unchanged. The only significant point on which the Senate yielded was deletion of a provision allowing the Secretary of Labor to close down a plant under conditions of imminent danger. The Senate immediately approved the measure and sent it on to the House. When Secretary of Labor Hodgson announced that President Nixon approved the bill, Republican opponents in the House abandoned plans to fight the conference committee version, and it passed easily.

All sides praised the final bill. President Nixon lauded it as a significant piece of social legislation. Although he disagreed with specific provisions, he believed that it would help attain "the goal we all want to achieve" — the protection of Americans on the job. The Chamber of Commerce termed it "a substantial victory" for those in industry seeking a fair yet effective law. AFL-CIO President George Meany called it "a long step ... toward a safe and healthy workplace."³⁶

President Nixon signed the milestone Occupational Safety and Health Act of 1970 in a ceremony at the Labor Department. George Meany and other labor figures, leaders in the business community, and prominent members of Congress were present. The ceremony ended the bitter 3-year legislative struggle on a note of harmony and

bipartisanship. It marked the culmination of a historical movement that first found expression in the Massachusetts factory act of 1877.

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NOTES

1. Employees protected by other Federal occupational safety and health laws are excluded from coverage, as are State and local government employees, but participating States provide comparable coverage.
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3. William B. Hard, "Making Steel and Killing Men," *Everybody's Magazine*, November 1907.
4. U.S. Bureau of Labor Statistics, Bulletin 428, "Proceedings of the Industrial Accident Prevention Conference," 1926, pp. 35-36; David S. Beyer, "Safety Provisions in the United States Steel Corporation," in Crystal Eastman, ed., *Work Accidents and the Law* (New York, Charities Publication Committee, 1910), pp. 244-45; David Brody, *Steelworkers in America, the Nonunion Era* (New York, Harper and Row, 1969), pp. 166-68.
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6. Roy Lubove, "Workmen's Compensation and the Prerogatives of Voluntarism," *Labor History*, Fall 1967; James Weinstein, "Big Business and the Origins of Workmen's Compensation," *Labor History*, Spring 1967, pp. 162-170.
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8. Commons and Andrews, *Principles of Labor*, pp. 430-36; Gordon M. Haferbecker, *Wisconsin Labor Laws* (Madison, University of Wisconsin Press, 1958), pp. 20-23.

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10. C.F.W. Doehring, "Factory Sanitation and Labor Protection," U.S. Bureau of Labor, Bulletin 44, 1903; John B. Andrews, "Phosphorus Poisoning in the Match Industry in the United States," U.S. Bureau of Labor, Bulletin 86, 1910.
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13. *New York Herald Tribune*, Dec. 28, 1913.
14. Letter, William B. Wilson to John B. Andrews, Nov. 13, 1914, Secretary of Labor files, National Archives.
15. U.S. Department of Labor, *Annual Report*, 1919, pp. 198-204.
16. Frances Perkins, *People at Work* (New York, John Day Co., 1934), p. 50; Arthur W. MacMahon and John D. Millett, *Federal Administrators* (New York, Columbia University Press, 1939), p. 372.
17. Assistant Secretary of Labor, John J. Gilhooley, Mar. 20, 1958, in U.S. Cong., Senate Committee on Labor and Public Welfare, *Hearings on "Amending Longshoremen's and Harbor Workers' Compensation Act"* (Washington, 1958), pp. 13-17; U.S. Department of Labor, *Annual Report*, 1960, p. 192; U.S. Department of Labor, "Maritime Safety Program, Five Year Report, 1960-64."
18. U.S. Department of Labor, "Walsh-Healey Public Contracts Act, Basic Safety and Health Requirements," Mar. 2, 1942 (Washington, 1943); *Federal Register*, Dec. 28, 1960, pp. 13809-25.
19. Letters from Walter Reuther to Secretary of Labor Arthur Goldberg, Dec. 21, 1961, John B. Olverson, Jan. 26, 1961, and G.C. Stewart, Oct. 9, 1961, Secretary of Labor files, National Archives.
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21. Thomas A. Chittenden, "A Study of Occupational Safety Responsibility of the Department of Labor" (Washington, 1964), pp. 1, 2, 53-58; Secretary of Labor's Order 12-66, July 19, 1966.
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23. Federal Radiation Council Meeting, May 4, 1967, Secretary of Labor files, National Archives.
24. Department of Labor Press Releases, May 5, May 9, 1967, Departmental Historian's Office.
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26. Lyndon Johnson, "President's Message to Congress on Manpower and Occupational Safety and Health Programs," Jan. 23, 1968, Weekly Compilation of Presidential Documents, Vol. 4, No. 4, pp. 110-11.
27. U.S. Cong., House Committee on Education and Labor, Hearings on "Occupational Safety and Health" (Washington, 1968); U.S. Cong., Senate Committee on Labor and Public Welfare, Hearings on "Occupational Safety and Health Act of 1968" (Washington, 1968).
28. 1968 Senate Hearings, p. 2.
29. James D. Hodgson was Under Secretary while George P. Shultz served as Secretary of Labor from 1969 to mid-1970. When Shultz left, Hodgson was appointed Secretary and served until 1973.
30. James D. Hodgson, interview with author, June 12, 1979.
31. Richard Nixon, "Occupational Safety and Health Message to Congress," Aug. 6, 1969, Weekly Compilation of Presidential Documents, Vol. 5, No. 32.
32. U.S. Cong., House Committee on Education and Labor, Hearings on "Occupational Safety and Health Act of 1969," (Washington, 1970); U.S. Cong., Senate Committee on Labor and Public Welfare, Hearings on "Occupational Safety and Health Act of 1970," (Washington, 1970).
33. House Hearings, pp. 312-413.

34. Ibid., pp. 1181, 1194.

35. 1970 Senate Hearings, pp. 1078-79.

36. The New York Times, Dec. 18, 1970.