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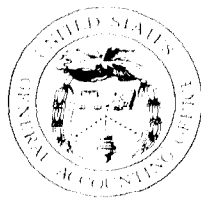
United States General Accounting Office

Report to Congressional Requesters

April 1989

OCCUPATIONAL SAFETY & HEALTH

California's Resumption of Enforcement Responsibility in the Private Sector



Human Resources Division

B-226390

April 17, 1989

Congressional Requesters:¹

In response to your January 5, 1989, request, this report presents information on California's resumption of the occupational safety and health enforcement program in the private sector. The federal government has administered the California program since July 1987, when the state terminated its enforcement responsibility. You asked us to monitor the reversion to a state-administered program to insure that the state's staffing and funding are sufficient to assure compliance not only with federal occupational safety and health requirements but also with the statutory requirements of the state of California.

This report summarizes the information available at this time on the status of the change in program administration. We obtained this information from discussions with officials at the Occupational Safety and Health Administration (OSHA) in the U.S. Department of Labor and the California Department of Industrial Relations, the agencies responsible for worker safety and health activities at the federal and state levels. To supplement our discussions, we obtained and reviewed correspondence between the two agencies relevant to the transition.

Background

The Occupational Safety and Health Act of 1970 was intended to assure every U.S. worker safe and healthful working conditions. The act authorizes the Secretary of Labor to (1) establish mandatory safety and health standards for employers; (2) enforce, through inspections and penalties for violations, compliance with those standards; and (3) provide for training and education programs to help employers and employees avoid hazardous working conditions. The act encourages the states to operate their own safety and health programs. States that operate their own programs may receive federal funds to help defray the programs' operating costs.

To assume responsibility for administering its own program, OSHA requires a state to submit to it a detailed plan for assuring workers' safety and health through appropriate legislation and standard-setting and enforcement procedures, adequate funding, and a sufficient number of competent enforcement personnel. The plan must also assure that the state program will operate safety and health training and education programs.

¹See appendix I for a list of the requesters.

Once OSHA determines that a state's plan is acceptable, the state may begin administering its own program and receiving federal funds. OSHA monitors these states' performance to assure that the plans are implemented as proposed and that the programs are at least as effective in providing safe and healthful workplaces as OSHA-administered ones.

California operated its own safety and health programs for both private and public sector workers until July 1, 1987, when the Governor discontinued the funding for the program in the private sector. Since then, OSHA has had the responsibility for enforcement in California's private sector; the state has continued to enforce its standards in the public sector. Because of proposed legislation and judicial challenges in California to the Governor's actions, and in accordance with a rider to the Labor Department's fiscal year 1988 and 1989 appropriations, OSHA did not terminate California's state plan despite the fact that the state was not administering the program in the private sector.

In November 1988, California voters approved a referendum mandating reinstatement of the state's enforcement program in the private sector. In a November 29, 1988, letter, the Governor notified the Labor Department that he would reinstate the program and make available the resources needed to sustain it. Negotiations between state and OSHA officials to accomplish the transition back to a state-administered program began almost immediately.

Adequate Number of Qualified Enforcement Staff Needed

Before reinstating the California program, according to OSHA officials, the most critical condition that must be met is an adequate number of qualified enforcement staff. Before the Governor discontinued funding in 1987, the state had an authorized staffing level of 214 compliance officers for both public and private sector enforcement. In order to reestablish the program, the state has again authorized 214 positions, of which 190 are for private sector enforcement. In comparison, OSHA has been providing private sector enforcement in the state with a staff of about 120 compliance officers.

California officials told us that, as of April 3, 1989, the state had about 95 new compliance officers, many of whom had held these positions before the private sector program was terminated. The state believes it will have at least 130 compliance officers by May 1, 1989. According to a memorandum of understanding between OSHA and California, the state will assume responsibility at that time for responding to all complaints

of unsafe working conditions in the private sector. It also will investigate accidents and conduct follow-up inspections of sites where a previous state inspection found a serious violation. OSHA will continue to conduct other inspections. The state plans to have the program fully staffed by July 1 and fully operational by October 1, 1989.

Funding Availability Uncertain

California expects to provide funding comparable with that for its earlier private sector program, but the availability of federal funds is uncertain. Under federal law, a state may receive up to 50 percent of its program's operating cost from the federal government. In 1987, if California had continued administering the program for the full year, the total cost of the program would have been about \$33 million, of which OSHA would have provided about \$14 million (42 percent).

As start-up costs for its private sector program, in January 1989, California appropriated about \$8.5 million for the rest of its current fiscal year (which ends on June 30, 1989). According to state officials, the Governor's proposed budget for next fiscal year (beginning July 1, 1989) anticipates an increase in total costs for both the public and private sector programs from \$33 million in 1987 to \$36 million, which is primarily attributable to increased personnel costs.

California has applied to OSHA for funds in federal fiscal year 1989 and will do so for 1990, but neither OSHA's 1989 appropriation nor its 1990 budget proposal includes funds for the state to administer the private sector program. As a result, OSHA's options for fiscal year 1989 include (1) transferring some funds to California from other activities, (2) requesting the Congress to approve a supplemental appropriation for the California program, or (3) making no federal funds available to California for 1989. Although California officials hope the program will receive some federal funds this fiscal year, they believe the state's \$8.5 million (available through June 30, 1989) will be sufficient to begin implementing it as planned.

For fiscal year 1990, OSHA said it would submit to the Congress a revised appropriation request for California once the plan is final for the private sector program to be state administered. According to OSHA officials, in this revised request, OSHA might seek congressional approval to transfer funds from federal enforcement activities to state ones or request additional funds for the state program.

OSHA and California officials believe it is unlikely that funds will be available to award California \$18 million (50 percent of its proposed budget) for its 1990 fiscal year. To the extent that all these federal funds are unavailable, California, during 1990, will have to either provide additional state funds for the private sector program or reduce the total program expenditures.

Federal and State Safety and Health Standards Differ

States are allowed to develop different or additional safety and health standards as long as they are at least as effective as those of OSHA. The California standards, before the state withdrew from the private sector program, were more comprehensive, were broader in scope, and covered more potential worksite hazards than federal OSHA standards.² Some state standards, however, were less stringent than the federal ones, and since July 1987, OSHA has implemented new and revised (more stringent) standards that have not been adopted by California. For example, OSHA's field sanitation standard, adopted in May 1987, is more stringent than California's, and OSHA's recent reduction in the permissible exposure levels for almost 400 hazardous substances has not yet been matched by California.

OSHA has been enforcing federal standards in California since it took over the private sector program in 1987. To minimize confusion during the transition period when federal and state inspectors will be carrying out enforcement activities concurrently, OSHA will enforce applicable federal standards, but will continue to accept compliance with California's standards when the state standards are at least as effective as the OSHA standards. In cases where state standards exceed federal standards, OSHA inspectors will make employers aware of the state standards and their responsibility to comply with them.

For its part, California will enforce state standards. In cases where the state inspectors find employers who are in compliance with state but not federal standards, they will refer the cases to OSHA. California is considering adopting immediately by reference—on an interim basis—those federal standards that are more stringent than its own. The state says it will permanently upgrade the state standards to the level of the federal standards as soon as feasible.

²See OSHA's Resumption of Private Sector Enforcement Activities in California (GAO/T-HRD-88-19, June 20, 1988).

Ultimately, California and OSHA will need to complete an "operational status agreement," whereby OSHA acknowledges the state's capability to independently enforce its own standards in accordance with OSHA's established requirements and OSHA limits its enforcement in all or certain program activities covered by the state's plan.

Monitoring and Evaluating State Programs

To ensure the effectiveness of California's reinstated enforcement program in the private sector, OSHA officials have said that they will monitor and evaluate the state's progress in adopting state safety and health standards that are at least as effective as OSHA's. As part of its monitoring and evaluation, OSHA will also track numerous other state program activities (inspections, penalty assessments and collections) and compare the state's performance with that of OSHA.

It should be noted, however, that, in congressional testimony,³ we raised general concerns about shortcomings in OSHA's monitoring and evaluating of state programs that would also apply to California. We found, for example, that no desired performance levels or incentives for attaining them are established for states and information is lacking on how to assure program quality and on how the programs affect worker safety and health.

Although OSHA said it would consider implementing some of our recommendations for improving its oversight of state-administered programs, to date it has neither implemented them nor identified alternative actions to correct the problems. In June 1988, OSHA provided general responses to our recommendations, stating that it would develop more specific responses after reviewing the results of a study being conducted by Labor's Office of the Inspector General on OSHA's monitoring of state-administered programs. In its general response, OSHA told us it would consider (1) developing desired performance levels for the state-administered programs, but only in areas where such levels are developed for OSHA enforcement activities; (2) establishing a requirement for quality assurance programs in state programs; and (3) requiring states that evaluate the effect of their programs to share that information with OSHA. Providing financial incentives to states to attain desired performance levels, which we had recommended that they consider, was rejected as infeasible because of funding limitations.

³OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

OSHA is reviewing the Inspector General's report, which was issued on January 30, 1989, and expects to develop an action plan for responding to it by July 31, 1989. We expect to receive OSHA's more specific response to our 1988 recommendations at that time.

We did not obtain official agency comments on this report. We did, however, discuss its contents with OSHA officials and incorporated their suggestions where appropriate. We are sending copies of this report to interested congressional committees; the Secretary of Labor and the Assistant Secretary for Occupational Safety and Health; the Director, Office of Management and Budget; the Director, California Department of Industrial Relations; and other interested parties. Copies will be made available to others on request.

The major contributors to this report were Carlotta J. Young, Assistant Director, and John T. Carney, Evaluator-in-Charge. Please call me at (202) 275-5365 if you or your staff have any questions concerning this report.



William J. Gainer
Director of Education and
Employment Issues

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Related GAO Products

Occupational Safety & Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

"Sweatshops" in the U.S.: Opinions on Their Extent and Possible Enforcement Options (GAO/HRD-88-130BR, Aug. 30, 1988).

OSHA's Resumption of Private Sector Enforcement Activities in California (GAO/T-HRD-88-19, June 20, 1988).

OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

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