



New Mine Safety Bill Introduced to Force MSHA Action on COVID-19

Insights

5.14.20

A group of U.S. Senators have joined the United Mine Workers of America call for MSHA action by introducing a new mine safety bill. The proposed Mine Worker Protection Act – which would require the agency to issue an Emergency Temporary Standard (ETS) based on current CDC, NIOSH, and OSHA guidance within seven days – would be aimed at protecting miners from exposure to the coronavirus that causes COVID-19. The Mine Worker Protection Act would:

- Require mine operators to provide personal protective equipment (PPE) to miners;
- Require MSHA to promulgate a comprehensive infectious disease rule within two years;
- Require MSHA to forbid mine operators from retaliating against miners for reporting infection control problems to their employers or other authorities; and
- Require MSHA to track, analyze, and investigate mine related COVID-19 infections data so it could make recommendations and provide guidance to protect miners from the virus.

The ETS would be effective upon publication in the Federal Register where it also serves as a proposed permanent standard. It would then be subject to notice and comment but must be finalized within six months. The validity of any ETS may be challenged in an appropriate U.S. Court of Appeals.

During the COVID-19 pandemic, MSHA has steadfastly maintained the Mine Safety and Health Act of 1977 (Mine Act) does not create the authority for the agency to be anything other than an enforcement agency. The UMWA has asked MSHA to take action to provide some safety leadership during the pandemic, even calling for an emergency standard to help safeguard miners and provide MSHA inspectors with personal protective equipment. MSHA has explained, however, that the agency does not have the authority to require anything other than what is in the Mine Act or associated standards and regulations.

Now, a group of Senators from Illinois, Ohio, Pennsylvania, Virginia, and West Virginia – all UMWA strongholds – have banded together to introduce this mine safety bill. Chances of this legislation passing are uncertain. This could be a case of politicians pandering to their base or something that gets passed in the dark of the night. This legislation may also prove too little, too late, as states move to reopen businesses and implement more health measures across all industries.

This mine safety bill could drastically change the compliance landscape by requiring new protocols and personal protective equipment at a time when respirators and face masks are scarce at best. MSHA inspectors would require new training and resources at a time when the agency is experiencing record lows of personnel and funding. So, while this ETS may be rushed and not fully developed, such concerns have not before stopped Congress from passing all types of troubling new legislation. We will monitor this bill and keep our readers posted.

Related People



Christopher G. Peterson
Partner
303.218.3653
[Email](#)

Service Focus

Workplace Safety and Catastrophe Management
Mine Safety & Health