

Construction industry impacted by the Miner Safety and Health Act of 2010

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On April 5, 2010, a mine explosion in West Virginia killed 29 miners. Following this tragedy many thought that a legislative response focused on reforms to bring our nation's mine health and safety laws up to acceptable standards would be a priority. This has not happened. Instead, there was remedial legislation affecting all employers and workers by changing OSHA (H.R. 5663 as reported by Committee; Section-by-section summary (only the last paragraph in the summary is listed below)).

The Robert C. Byrd Miner Safety and Health Act of 2010 (H.R. 5663), as amended and passed by the Committee on July 21, 2010, will have an unanticipated impact on the construction industry in general.

Guarantee Basic Protections in All Workplaces Under OSHA

To ensure that all workplaces have basic protections, whistleblower protections would be strengthened, criminal and civil penalties would be increased, and hazard abatement would be sped up. In addition, victims of accidents and their family members would be provided greater rights during investigations and enforcement actions. OSHA would be allowed to assert concurrent enforcement jurisdiction in states with OSHA state plans, if the state is failing to maintain protections for workers that is at least as effective as federal OSHA.

What Could This Mean to the Construction Industry?

On July 21, the House committee members voted the Act out of committee. Under the bill, OSHA violations that result in death or serious bodily injury would be a felony, rather than a misdemeanor. If a violation results in a fatality, the employer could be jailed up to 10 years for a first offense and 20 years for a second. In the case of serious bodily injury, the employer faces up to five years for a first offense and 10 years for a second. The proposed legislation also increases the maximum civil penalty from \$70,000 to \$120,000, and requires immediate abatement of alleged OSHA violations with a complicated process for obtaining a stay of abatement. While no House vote has been taken, a vote is expected soon.

Contractors, subcontractors, architects and engineers that oppose or favor this legislation should contact their representative and share their opinions. The Act is identified as H.R. 5663.