

**Experiences of the United States in Implementing  
the ILO Guidelines on General Principles of Labor Inspection (March 2022)  
regarding  
Chapter 3. Policy, Planning and Monitoring, and  
Chapter 4. Labor Inspectors' Status and Careers**

**Prepared Remarks**

**Zhao Li  
Deputy Director of International Relations and Economic Research  
November 17, 2022  
Valencia, Spain**

Opening and Introduction

Thank you, Carmen [Bueno, ILO Office for the Southern Cone of Latin America], for the kind introduction. On behalf of the United States, I would like to thank the ILO, especially my dear colleague and friend, Joaquim [Nunes, ILO Branch Chief for LabAdmin/OSH], for the invitation to speak at this event. The March 2022 Governing Body meeting approved the publication of the new ILO Guidelines on General Principles of Labor Inspection. We believe the guidelines, along with the full implementation of the two related ILO Conventions [Numbers 81 and 129], would bring tremendous protection and benefits to workers and employers, respectively.

The United States Department of Labor has a number of enforcement agencies. Today, I will mainly discuss the work of three agencies:

- The Mine Safety and Health Administration (MSHA)
- The Occupational Safety and Health Administration (OSHA), and
- The Wage and Hour Division (WHD)

As their names imply, MSHA enforces all laws and regulations at our nation's coal mines, metal mines and non-metal mines. OSHA enforces health and safety laws in other occupations. And WHD is charged with protecting workers' wages, minimum working age, and safety and health in the agriculture, among other responsibilities.

In the next 10 minutes or so, I will highlight the work by these three agencies with regard to selected guidelines contained in Chapter 3, *Policy, Planning and Monitoring* and in Chapter 4, *Labor Inspectors' Status and Careers*.

Protecting Underserved Populations

Section 3.2.1 of the Guidelines outlines the importance of protecting vulnerable groups of workers who may face challenges and who are unwilling to file complaints to labor inspection authorities. In the United States, the balance of power between workers and employers has shifted more towards the employers in recent years. The COVID-19 pandemic has made the

underserved communities even more vulnerable. President Biden signed an executive order on the first day of his presidency – on January 20, 2021 – to advance racial equity and support underserved communities through federal government programs.

Many of the high hazard industries under **OSHA**'s purview employ a high percentage of Black, Latinx, and Asian American and Pacific Islander (AAPI) workers. These workers often are exposed to many types of health and safety hazards. Some may have immigration status concerns, experience social and cultural inequalities, and are not always empowered to advocate for themselves due to fears of retaliation. Additionally, women in the care economy are more likely to face workplace violence and health and safety concerns. As a matter of policy, OSHA now is even more intentional in understanding these kinds of pressures, social inequities and challenges in enforcing worker health and safety standards, providing training, outreach and education assistance for underserved workers.

Almost all the workforce within the jurisdiction of **MSHA** belongs to the underserved communities. These miners typically reside in rural areas; some are systematically denied a full opportunity to participate in aspects of economic, social, and civic life. Some of them are migrant workers who face even more hardship due to their immigration status. Indigenous miners, such as those in the Navajo Nation, develop black lung not only from work exposure but also from exposure at home from burning coal as a heating source. To protect these miners from workplace and other common hazards, MSHA has redoubled its efforts and developed bilingual education materials that focus on raising awareness among Navajo citizens on

- Best practices in mining safety and health
- Compliance assistance for smaller employers
- Campaigns to educate and train miners on their worker rights, and
- Increasing the awareness of the law to better protect their rights and wellbeing.

The large number of migrant workers in the agricultural sector fall under the jurisdiction of the **WHD**. These migrant workers are seasonal and depend on their employers to provide housing, transportation, and other necessities. Language barriers and their temporary working status make them vulnerable to exploitation. WHD conducts directed enforcement programs to ensure pay equity, strengthens stakeholder engagement to detect and identify problem areas, and has increased targeted enforcement actions among employers in the Mississippi Delta to protect integrity of the H-2A temporary agricultural worker program. It also focused enforcement efforts on the H-2B visa program, which allows U.S. employers to bring foreign workers to the United States to perform non-agricultural labor or services of a temporary nature. During the enforcement program, WHD took actions against employers that failed to hire qualified U.S. workers, imposed restrictions or obligations on the H-2B workers that were not equally applied to U.S. workers, failed to pay offered wage due to impermissible deductions, or failed to pay for H-2B workers' inbound and outbound travel expenses and subsistence. This targeted enforcement program alone recovered more than \$1 million in back wages denied to nearly 1,000 workers from October 2019 through March 2022. WHD also assessed more than \$650,000 in civil money penalties and debarred four employers and labor contractors for their violations of the H-2B visa program.

Experiences tell us that in a vast country as large as the United States, the federal government and the state government can do better by developing partnership with strategic partners. I am excited to highlight a truly innovative program that we have developed in the United States. It is called the Consular Partnership Program, or **CPP**. The basic premise of this program is to work with foreign embassies and consulates in the United States and through these foreign missions, we conduct education and outreach programs, as well as receive complaints of possible violations of labor laws by US or foreign employers located in the United States. CPP has been helpful to us in both enforcing our labor laws and protecting the rights of migrant workers. Since 2004, the U.S. has had partnership arrangements with Mexico, Honduras, El Salvador, and Guatemala. They help us disseminate vital information on worker safety and health, and proper payment of wages. Through this program, the Department has been able to reach and serve millions of workers with life-saving workplace rights information.

### Reactive and Proactive Inspections

Section 3.2.1 also describes achieving a proper balance between reactive and proactive enforcement actions. Among the enforcement agencies in the United States, our domestic laws determine how to achieve such a balance.

**MSHA** enforces the US Mine Safety and Health Act of 1977. This law sets very strict enforcement requirements for MSHA, including

- All underground mines must be inspected four times each year (proactive)
- All surface mines must be inspected two times each year (proactive), and
- Every complaint about a hazard must be investigated (reactive)

Within these mandates, MSHA prioritizes outreach, education, and enforcement programs based on injury and fatality data. For example, in 2021, 47% of fatalities were related to power haulage. MSHA prioritized resources to raise awareness among workers and operators on hazards associated with power haulage. MSHA emphasized the importance of using seat belts, observing road rules, and conducting pre-operation inspection of vehicles. Because many of the fatalities occurred among managers and supervisors, MSHA directed all managers and supervisor to be “task-trained.” As a result of all these enhanced programs, we have seen a sharp decline in power haulage related fatalities this year.

**OSHA** conducts two types of inspections:

- (Proactive) programmed inspections, which are targeted inspections oriented towards high hazard workplaces and recalcitrant business owners and employers, and
- (Reactive) unprogrammed inspections, which are initiated for reasons such as imminent danger situations, fatalities and catastrophes, and worker complaints and referrals.

Approximately 60% of OSHA inspections are of the unprogrammed type. The Severe Violator Enforcement Program (SVEP), which focuses the agency’s resources on employers that willfully and repeatedly commit violations, helps OSHA in determining programmed inspections.

OSHA also conducts Emphasis Programs at the national, regional, and local levels. These emphasis programs are temporary programs that focus OSHA’s resources on particular hazards and high-hazard industries. The programs are evaluated using inspection data, injury and illness data, National Institute for Occupational Safety and Health (NIOSH) reports, peer-reviewed literature, analysis of inspection findings, and other available information sources.

**WHD** utilizes the “strategic enforcement” model. Under this model, WHD tries to achieve industry-wide compliance by maximizing the ripple effect of the directed enforcement from the very top of the supply chain to lower points in the chain. WHD uses media, stakeholder engagement, and all other tools at its disposal to amplify the message in the entire sector with the goal of having the entire industry to be in compliance rather than individual employers. This approach has reimagined how WHD enforces its laws and regulations. It does not automatically take every complaint. Rather, it prioritizes inspection efforts to focus on area where the challenge and the results are both the greatest. For example, WHD has taken strategic enforcement actions in:

- Transportation safety in Agriculture
- Child labor
- Construction
- Health care and home care
- Other low wage and high prevalence sectors

#### Meeting Human Resources Challenges

Section 4.1.8 of the Guidelines set forth principles of how to determine the appropriate number of inspectors and a few helpful criteria. In reality, the inconsistency between the availability of resources and the increasing demand on the workforce continues to challenge policymakers and frontline managers of the labor inspectorate. Most governments will never have enough labor inspectors for every single worksite, and this paradox drives innovations in inspection strategies (as discussed above) and requires continued investment in making inspections more effective.

**MSHA** has increased the number of inspectors during the first two years of the Biden-Harris Administration. Currently it has 851 mine inspectors, who are responsible for inspecting 12,500 worksites. As stated before, every single mine in the United States must be inspected either four times a year or twice a year, MSHA tries its best to meet the mandate. The COVID-19 Pandemic seriously jeopardized our record of success. In any given period in 2020 and 2021, MSHA saw a consistent workforce reduction of 20%. COVID related social distancing protocols further affected our ability to carry out inspections. The brave men and women at MSHA met these challenges with resolve and creativity. We moved available inspectors from one district to another to cover gaps. We sent supervisors to conduct field inspections. We mobilized every agency personnel with an inspection credential and dispatched them to conduct inspection. We have learned many value lessons from the pandemic on personnel management.

**OSHA** currently has more than 890 inspectors at the federal level. Including our state partners, there are approximately 1,850 inspectors responsible for the health and safety of 130 million workers, employed at more than 8 million worksites around the nation — which translates to about one compliance officer for every 70,000 workers. We were at an all-time low of 750

federal inspectors when the Biden Administration started. It is estimated that it would take 160 years for OSHA to inspect each workplace under our jurisdiction once. In addition to the goal of hiring even more inspectors, OSHA employs other methods to better meet the need that exists.

One of these methods is through our Voluntary Protection Programs (VPP). VPP recognizes employers in the private and public sectors who have implemented effective safety and health management systems and maintain injury and illness rates below national Bureau of Labor Statistics averages for their respective industries. VPP sets performance-based criteria for a managed safety and health system, invites employer sites to apply, and then assesses applicants against these criteria. OSHA's verification includes an application review and a rigorous onsite evaluation by a team of OSHA safety and health experts. The injury and illness data collected from VPP sites illustrate that, on average, injury and illness rates for VPP sites are at least 50% or lower than the national averages for their industries. This means that workers on VPP sites have a much lower chance of getting hurt on the job than workers at non-VPP sites. VPP participants are exempt from OSHA programmed inspections while they maintain their VPP status, therefore allowing OSHA to re-direct inspectors to other areas of concern.

**WHD** has 800 inspectors who are responsible for 10.2 million worksites. In addition to WHD's efforts to maximize compliance targeting a whole industry as described earlier, WHD also relies on mobile technology to modernize inspection reporting and record-keeping systems and improve efficiency within the agency. In December 2020, WHD deployed an electronic case file system, vastly reducing the time inspectors spend on housekeeping items. With this new system, inspection reports are filed quickly, more securely and much more accurately. The deployment of the electronic system coincided with the COVID-19 pandemic, just in time to meet new challenges brought about by telework, remote work, and social distancing protocols.

#### Talent Retention and Reduction in Turnover

Section 4.1.9 of the Guidelines discusses providing sufficient remuneration for labor inspectors and attracting and retaining qualified inspectors. Indeed, talent retention and reduction in turnover is a timely topic, as most economies are suffering a shortage of skilled workers during and post COVID-19 pandemic. We have seen the inspectorate losing talent to the industry, which often offer higher salaries and more flexible employment arrangements.

**MSHA** experiences turnover among young mining engineers and electrical engineers. The problem is alleviated to a certain degree when retirees from the industry seek employment from MSHA to be inspectors. The health benefit plans provided by federal employment have proven to be attractive to these "second career" inspectors. To address the retention issues more proactively, MSHA established a Bridge Program to help recruit a diversified group of inspectors among people of color and ethnic minorities. We target recruitment efforts toward historically black colleges, Hispanic colleges, and tribal colleges and try to attract graduates with environmental science, engineering, and chemistry degrees.

MSHA also focuses on efforts to attract more youth people, especially women, into the agency, through a centralized federal government recruitment avenue known as the Pathways Programs. The Pathways Programs are streamlined developmental programs tailored to attract students and recent graduates in the Federal workforce. Finally, MSHA launched a brand new apprenticeship

program for mine inspectors. Participants receive on the job training over a period of five years in our field offices. Currently we have 38 apprentices in this program.

In the case of **OSHA**, while all inspectors are committed to the work they do, some do transition to the private sector, where the pay is often better. The agency is confined by federal guidelines with respect to inspector salaries. In addition to losing candidates and inspectors to the private sector, OSHA also confronts the challenge that industrial hygiene is a lesser-known field, so there may not be enough qualified industrial hygienists to join OSHA as inspectors. OSHA provides on the job training, continuing education, and opportunities for advancement.

**WHD** mainly experiences turnover due to retirement, which results in loss of intuitional knowledge. Because all inspectors at WHD are trained with sufficient investigative techniques to enforce 13 different statutes, some investigators leave the agency and enter into law enforcement career with higher pay. Generally speaking, WHD's workforce is stable, because most employers rely on in-house HR department or outside legal counsels for expertise to comply with WHD laws and regulations. There isn't an established pathway for seasoned inspectors to move from WHD to the private sector.

### Conclusion

Chapter 3 and Chapter 4 cover many important topics related to establishing and maintaining an effective labor inspection authority in the government. There are many more topics in these chapters that the United States would like to discuss in the future. They include:

- 3.4.3 inspection report and mobile platform
- 4.1.5 inspectors' independence of external influences
- 4.1.15 diversity and inclusion in the labor inspectorate
- 4.3.1 specialists in the labor inspectorate

However, due to time limitation, my presentation will stop here. I hope to get into some of these topics during the discussion and Q&A sessions. Thank you again for this opportunity to share our experience with you.