



## UNITED SUPPORT & MEMORIAL FOR WORKPLACE FATALITIES

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**BECAUSE GOING TO WORK SHOULDN'T BE A GRAVE MISTAKE!**

February 8, 2010

The Honorable David Michaels, PhD, MPH  
Assistant Secretary of Labor for  
Occupational Safety and Health  
200 Constitution Avenue NW  
Washington, DC 20210

Dear Dr. Michaels:

Congratulations on your recent confirmation by the U.S. Senate to serve as the assistant secretary of labor for occupational safety and health. We wish you the best in fulfilling the responsibilities of this important position.

United Support and Memorial for Workplace Fatalities (USMWF) is a not-for-profit organization devoted to supporting and uniting family members who have lost loved ones in fatal workplace incidents and health hazards. Our sons, husbands, fathers, wives, brothers, sisters, uncles, daughters, and partners are the victims of a regulatory and oversight system that failed to protect them. We are committed to improve it so that families do not have to endure the sorrow, pain, and loss that ours have suffered. Through our support network and experiences conversing with each other, we find that many family-member victims of workplace fatalities share three fundamental goals:

1. To understand what happened in the worksite that led to our loved one's death,
2. To see that responsible parties are held accountable, and
3. To make sure it doesn't happen to another worker and their family.

Federal OSHA and the OSHA State Plans States have a key role in helping us to accomplish these goals. With respect to the item #1, we hope you can put yourself in our shoes. Our loved one went off to work, but never came back home. Understandably, we have a burning desire to know what happened to him or her, yet the individuals who may be able to answer our questions avoid us or are prohibited from providing the details we desperately need. Our waking hours are spent yearning to know what happened to our loved one, to no avail. It is frustrating to know that investigators are taking photographs, interviewing witnesses and gathering other pieces of information, yet we are rarely permitted to see or read any of it. We just feel like we are left in the dark. Most families don't know anything about the OSHA personnel who are assigned to our case. It's hard to trust people you've never met and we aren't exactly in the frame of mind to trust anyone after our world has collapsed. Naturally we wonder whether the OSHA personnel will be thorough, and whether they will speak up for our loved ones and really try to get to the underlying cause of the incident. We know that the current OSHA investigation focuses on whether there were violations of specific

standards. We think the investigations should serve a larger purpose: to identify all the factors that contributed to the incident, even if there are not OSHA rules on the books for these factors (e.g., number of shifts worked in a row before the incident, an employer's practice of relying on a worker's OSHA 10-hour card to avoid giving site-specific training.)

USMWF's support activities include hosting regular conference calls and on-line discussions with family member victims of workplace fatalities. Through those discussions we developed our "Family Bill of Rights" for victims of workplace fatalities. The principles contained in it were informed by the harsh experiences encountered by families during the official fatality investigations. We understand that some of the topics may extend beyond the authority of federal OSHA and the State Plans (e.g., MSHA, state workers' compensation laws) but with your leadership and guidance, we can gain the necessary support for all of these improvements.

We appreciate the opportunity to speak at the OSHA Listening session on February 10, 2010. You will hear family members address briefly the following topics:

- ◆ OSHA should change its regulation to require an employer to immediately notify federal or State OSHA of a fatality or serious incidents, rather than giving an employer 8 hours to do so. OSHA should have the authority to prohibit any alterations to the scene in order to preserve physical evidence. The Mine Safety and Health Administration's (MSHA) regulations require employers to notify MSHA of serious incidents within 15 minutes, and prohibit an employer from altering the scene until it is released back to company by the agency. OSHA should adopt equivalent requirements.

- ◆ OSHA's website says:

"OSHA investigates all work-related fatalities and catastrophes."\*

But we know this isn't true. There are many work-related deaths that OSHA does not investigate. Some fall under the authority of another federal agency (e.g., NTSB, MSHA.) Others are not investigated because OSHA has made a policy decision not to do so, such as the case of motor vehicle incidents, even though there may be a work-related factor that contributed to the individual's death (maybe the vehicle was not in sound working order, or the worker was in the midst of a long-shift.) We think that OSHA must be more transparent to the public and family members that it only investigates a portion of the 6,000 fatal worker injuries every year, and none of the thousands of work-related illness cases.

- ◆ Family members must have the right to visit the scene of the incident before it is released by the investigation team back to the employer's control. Similarly, the investigators must assure that all physical evidence related to the accident investigation is preserved and secured in a tamper-resistant environment. Family members should have the right to view all physical evidence.

- ◆ Family members should be given full party status in legal proceedings involving OSHA, MSHA, or whatever State or federal agency is conducting the workplace-fatality investigation. We understand that the term "party status" has a legal meaning. We are simply asking that we be considered an equal partner in OSHA's investigation, meaning whatever rights, privileges and courtesies are given to the employer should be afforded to the deceased worker's family.

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\* See: [http://www.osha.gov/dep/fatcat/fatcat\\_weekly\\_rpt\\_01152010.html](http://www.osha.gov/dep/fatcat/fatcat_weekly_rpt_01152010.html)

◆ Family members must have the opportunity to recommend names of individuals to be interviewed by the accident investigation team and to submit questions to the investigators for response by the interviewees. OSHA's current investigation procedures do not seem to recognize the potentially valuable information that family members may be able to provide with respect to working conditions at the site in the days or weeks preceding our loved one's death. The current OSHA operations manual simply says:

"when taking a statement from families of the victim(s), explain that the interview will be handled following the same procedures as those in effect for witness interviews. Carefully evaluate the information received and attempt to corroborate it during the investigation."

Family members may not only have personal knowledge about the workplace, but may also have physical evidence that might assist with the investigation.

◆ A representative selected by the family should have the opportunity to participate in all discussions and be aware of all correspondence between the Department of Labor (OSHA and/or Office of the Solicitor) and the employer. If the investigation is being conducted by officials operating in an OSHA State Plan State, equivalent rights and access must be offered to family-member victims in those States.

◆ Family members firmly believe that there must be comparable enforcement, standards and protection of rights whether a worker is employed in a state covered by federal OSHA or one of the OSHA State Plans. Federal OSHA and the States should develop criteria to assess the performance of each government entity's program, and the criteria used to evaluate the State Plans should be used to assess federal OSHA's performance as well. The most current and past grades or rankings given to each program should be available on OSHA's website so the public can compare the performance across the programs.

◆ We would like to see monetary penalties for violations raised by a substantial amount to make them an effective sanction for employers who violate the law. We urge the Obama Administration to work with Members of Congress to increase the maximum allowable penalty and ensure these levels are regularly adjusted for inflation.

◆ We believe that all workers and their families need the protection of the OSHA law, including those individuals employed by state, county and municipal government agencies. We urge the Obama Administration to advocate strongly for the legislative changes necessary to extend OSHA coverage to the 9 million U.S. workers who do not currently have it.

◆ All documents provided and correspondence sent to the employer should be provided and sent simultaneously to worker's family. Before OSHA issues citations and penalties related to the incident to the employer, the victim's family should be provided a copy. It is not right that families learn after the fact or from a newspaper story that the company received (or didn't receive) a citation and penalty. This simple courtesy is extended by MSHA to families of mine workers, and OSHA should do the same for the fatality cases it investigates.

◆ In those situations when an employer has contested a citation, and the management of the case is for all practical purposes in the hands of Department of Labor attorneys, the Solicitor of Labor must ensure that family members are kept informed of the status of the case (e.g., at least once per month.)

◆ Family members should have access to all documents gathered and produced as part of the accident investigation. This includes records prepared by first responders, all transcripts of interviews, affidavits, or written statements made by witnesses and others interviewed for the investigation, as well as training and maintenance records, videotapes and photographs. We realize that some documents may need to be withheld until the completion of the investigation, but we do not believe that every record in the case file needs to be withheld. We also believe that at such time when the employer receives documents from OSHA as part of "discovery," they should no longer be withheld from the victim's family.

◆ Documents mentioning the deceased family-member's name and condition should not be redacted before being sent to family members. All fees related to the production of documents should be waived for family members.

◆ We would like to see federal resources devoted to a federal liaison office to provide reliable and responsive information to family-member victims. The staff manning this office would have information about workplace fatality and serious injury investigation procedures, the role of state or federal agencies, and workers' compensation.

◆ We request that at least one member of the National Advisory Committee on Occupational Safety and Health (NACOSH) be reserved for a family member victim.

◆ We believe that family members can be a real ally in helping you accomplish your goals of worker injury and illness prevention. We believe the Administration's goals of workers' rights and prevention can be advanced by allowing family and injured worker support groups to be eligible for grants and contractual arrangements. Family members and injured workers are continuing to have increasing influence on the occupational safety and health community. Grant programs would enable groups such as USMWF to have an even stronger impact on the advancement of safety in the workplace.

Finally, many family members have had different experiences with Federal and State OSHA programs, including how we learned about the steps in a typical investigation, and gaining access to information about our loved one's death. We would very much appreciate clarification on OSHA's official policy on notifying and involving family members in both the federal and State Plan programs, and how the effectiveness of that policy has been evaluated.

Mr. Secretary, we sincerely appreciate your invitation to us to share our thoughts and perspective with you. We would be happy to discuss any of these issues with you or your staff.

Sincerely,

*Tammy Miser*

Tammy Miser  
Executive Director