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• **Monitoring of OSHA State Plans Expected to Increase**—In mid-October, OSHA released a study of Nevada's state OSHA plan. The study was prompted by press reports criticizing Nevada's OSHA program. The results of the study—that Nevada OSHA had failed to "issue appropriate willful and repeat citations," that inspectors were poorly trained, and that there was little or no follow-up "to determine whether hazards were abated"—has led Acting Assistant Secretary for OSHA Jordan Barab to decide that there will be "strengthened oversight, monitoring, and evaluation of state programs." DOL wishes to ensure that state OSHA programs are "at least as effective as the federal program." In addition, Mr. Barab noted that, in the future, OSHA will make all federal OSHA National Emphasis Programs "and other similar initiatives mandatory rather than discretionary changes to the states' programs."

Mr. Barab also noted that the federal share of the cost of state OSHA programs, initially around fifty percent, has declined to about thirty-three percent, and that the current fiscal condition that most states find themselves in does not bode well for increases in state funding. However, DOL expects to increase the current federal share of the cost of the program. ([Barab House Committee on Education & Labor testimony.](#))

• **2008 Injury and Illness Rates Decline**—The Bureau of Labor Statistics (BLS), on October 29, 2009, released its 2008 statistics for workplace injuries and illnesses. The [report](#) showed a "significant decline" for the combined injury and illness rate for private industry, for injuries only, and for illnesses. Labor Secretary Hilda Solis commented that she was "cautiously optimistic" about the drop in the rates, but also noted that they "do not lessen the need for strong enforcement." She also noted, as we reported in last month's NMSA Bulletin, that OSHA has begun a National Emphasis on Recordkeeping to ensure the accuracy of employer records.

• **OSHA Issues Huge Fine Against BP**—As perhaps a harbinger of things to come, OSHA levied a record \$87.4 million fine against BP. Following a 2005 explosion at a Texas refinery that killed 15 employees, BP and OSHA reached a settlement agreement, with BP agreeing to take corrective actions to "eliminate potential hazards." OSHA, contending that BP has not complied with the settlement terms and which has cited the company for additional willful violations, levied the record fine at the end of last month. Rep. George Miller (D-CA), Chairman of the House Education & Labor Committee, commented that "OSHA is taking the agency's enforcement responsibilities seriously...This sends a clear message to other employers that they cannot ignore the health and safety of their workers."

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- **OSHA Assistant Secretary Nomination Postponed**—David Michaels' nomination was scheduled to be considered by the Senate Committee on Health, Education, Labor, and Pensions (HELP) on October 21, 2009. However, the Committee postponed its consideration of the nomination and has not yet rescheduled. The HELP Committee did not schedule a hearing on the nomination of Mr. Michaels, and members of the business community objected strongly to any approval of the nominee without full committee hearings, which have been standard for all previous OSHA Assistant Secretaries.

- **Ergonomics Rears Its Head Again**—OSHA is expected to initiate another push on ergonomics, including a rule on repetitive-motion injuries. You may recall that OSHA's National Advisory Committee on Ergonomics made a variety of recommendations on the ergonomics issue to the Department of Labor prior to the Committee's charter expiring at the end of 2004. The 2004 news release detailing the recommendations is available on the [OSHA website](#). The last time that ergonomics was a serious issue, the Senate killed the regulation at the last minute during the Clinton administration. Despite the fact that the regulation did not apply to the maritime industry, NMSA played a role in this effort.

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