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Kill a Worker? You're Not a Criminal. Steal a Worker's Pay? You Are One.

Posted: 07/20/2015 12:48 pm EDT | Updated: 07/20/2015 12:59 pm EDT

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Labor Secretary Tom Perez came into office pledging to create good jobs and take on the economic injustice that oppresses blue-collar workers, from raising the minimum wage and restoring unpaid overtime to combatting wage theft. Luckily, the head of his Wage and Hour Division, David Weil, the author of a revelatory report on how to make the most of strategic enforcement, has moved out quite aggressively. It's a pity that other, even more serious crimes, don't seem to get the same priority from elsewhere in the Labor Department.

Last week, Weil and New York State Attorney General Eric Schneiderman announced that they'd filed charges and secured a guilty plea from the owner of nine Papa John's restaurants who did not pay his workers the minimum wage, stole some of the wages they owed the workers, and fabricated tax returns to cover up his misdeeds.

"My office will not hesitate to criminally prosecute any employer who underpays workers and then tries to cover it up by creating fake names and filing fraudulent tax returns," said Schneiderman. Added Weil, "This judgment should be a wake-up call for all employers who think they can break the law, not pay their workers, cover it up and get away with it. It is part of our commitment to ensure that employers who play by the rules aren't unfairly undercut by competitors who cheat, and that workers are guaranteed a fair day's pay for a fair day's work."

Meanwhile, back at Labor Department headquarters, a decidedly more mixed message has emerged from the Occupational Safety and Health Administration, which investigates hundreds of cases where workers are killed on the job. One of the most troubling involved the death of four workers at a large DuPont chemical plant in LaPorte, Texas, following the unexpected release of mercaptan, an acutely toxic chemical that kills instantly.

Among other extraordinarily reckless behaviors, senior managers at the plant failed to ensure that pipes carrying the chemicals were configured consistently with crucial drawings of the plant's infrastructure, did not have enough emergency rescue equipment to save workers in the event of a toxic leak, and failed to call 911 or private emergency responders for a full hour after the fatal incident. Yet the OSHA regional office in Texas responded by issuing a \$99,000 civil fine -- a pittance for DuPont -- and citing the company for relatively minor violations -- worse than a hand slap because it precludes criminal charges.

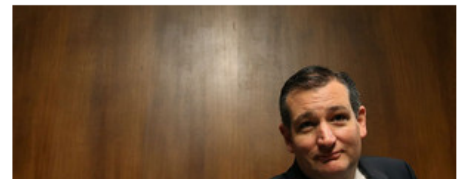
Perhaps in response to some bad press on the settlement that may have worked its

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way into OSHA chief David Michaels' clip pack, he announced that OSHA was charging DuPont with significantly more serious violations that could lead to criminal prosecution, and that it was placing the company on its "severe violators" list. "DuPont promotes itself as having a 'world-class safety' culture and even markets its safety expertise to other employers, but these four preventable workplace deaths and the very serious hazards we uncovered at this facility are evidence of a failed safety program," he declared.

The problem with this new show of toughness is that the second set of citations concerns a different manufacturing unit at the plant than the unit where the workers died. So citing the company for potentially criminal violations there, as opposed to the unit that caused the fatalities, makes it far more difficult for OSHA to pursue a federal prosecution even if it was so inclined. I've called for the Harris County, Texas prosecutor to take on the case, but so far there's no indication she will do so.

More to the point, even in the too-rare circumstances when OSHA cites companies for potentially criminal violations, it almost never refers criminal cases to the Department of Justice for prosecution. The agency does not seem to have even considered bringing alliances with state and local prosecutors like Schneiderman, who for many reasons, including the fact that they must run for reelection, are committed to filing criminal charges against perpetrators whose behavior breaks the law and shocks the conscience -- like wage theft crooks.

Sadly, OSHA staff abandoned the potent weapon of criminal prosecutions years ago, having convinced themselves that because their legal authority is weak, there was no point in working too hard on such cases, which are likely to be fought tooth and nail by corporate behemoths like DuPont. It's true that the Occupational Safety and Health Act does not provide authority for a criminal charge more serious than a misdemeanor with respect to managers who create circumstances that kill and maim workers, and also true that jail time is restricted to six months and fines to \$70,000. For reasons that have to do with the business community's long-standing hatred of OSHA, the overwhelming clout of groups like the Chamber of Commerce enjoy on Capitol Hill, and the waning of organized labor, there's no chance the law will be updated anytime soon.

But that's no reason to abandon prosecution. The fines might not make much of an impact on a lot of companies, but jail time for their senior managers will get their attention, even if the sentences are only for a few months. And bringing prosecutions and proving criminal behavior in open court, only to have weak punishments imposed would spur Congress to toughen the law.

Rationalizing ineffective enforcement because the law is less than ideal is a fundamentally self-serving justification for taking the easy way out. OSHA's budget has been cut to the point where inspectors can visit only one percent of American workplaces annually. If all that happens when the inspectors show up is a light rap on the wrist and the imposition of penalties so slight that they're easily absorbed as a cost of doing business, pretty soon a strong economic incentive is created to ignore the law. Secretary Perez needs to upgrade health and safety enforcement to the level of wage and hour enforcement. Workers must be paid a fair wage, but they also need to survive a day on the job.

Steinzor is the author of, "Why Not Jail? Industrial Catastrophes, Corporate Malfeasance, and Government Inaction."

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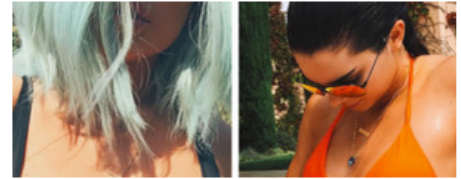
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