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Hilda Solis: Labor's New Sheriff

By [Esther Kaplan](#)



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Editor's Note: The mine explosion in West Virginia on April 5 is the worst since a 1984 accident at Wilberg, Utah. As a union safety expert, Joe Main was on the scene then; he's now the head of the Mine Safety and Health Administration at the Department of Labor, which under Hilda Solis is taking a tough stand on labor law violations.

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In 1984, on the Wasatch Plateau in southern Utah, the Wilberg coal mine, a property of Emery Mining, exploded into flames. Witnesses described plumes of dark gray smoke billowing up into the heavens. Twenty-seven coal miners were trapped inside. By the following night it was clear none of them would make it out alive. "If hell existed," the *Salt Lake Tribune* reported, "it was down in the Wilberg mine."

David Lauriski was Emery's chief safety officer when Wilberg caught fire, an accident later attributed to numerous violations at the mine. The owners, it turned out, had been trying for a one-day production record. Seventeen years after the disaster, Lauriski became George W. Bush's first mine safety chief, a perch from which he halted a dozen new safety regulations initiated under Clinton, advocating instead a more "collaborative" approach with industry. His successor was also from private industry; during a stint as a state regulator, his lax enforcement played a role in another mining disaster, this one at the Quecreek Mine in Pennsylvania.

Now, for the first time in its history, the Mine Safety and Health Administration (MSHA), a division of the Department of Labor (DoL), is headed by a union man, Joe Main. Main began his working life as a teenager in 1967, doing the precarious work of sinking a coal mine shaft in West Virginia. By 19 he was a mine safety committeeman, later joining the United Mine Workers' health and safety department, where he worked for decades. He was working for the union at the time of the Wilberg fire and rushed to the scene. He recalls spending four or five days there during the grueling rescue and recovery operation. "It took us a year to recover the last miner," he recalls, "and I dealt with the families a lot during that time. It's something that's stayed with me my whole life." Main was confirmed by the Senate in late October; six weeks later he launched a major national initiative to end black lung disease.

During the Bush years, the Department of Labor became a cautionary tale about what happens when foxes are asked to guard the henhouse. But since California Congresswoman Hilda Solis became labor secretary last winter, she has brought on board a team of lifelong advocates for working people--some of whom come from the ranks of organized labor--and has hired hundreds of new investigators and enforcers.

President Obama calls Solis part of his economic team, but the truth is she's not part of the daily huddle at the White House with Summers and Geithner and Orszag. She's tapped instead as a lead voice in the "jobs, jobs, jobs" choir, advocating for Obama's latest stimulus package. She has tiptoed into the realm of financial regulation, organizing a joint hearing with the Securities and Exchange Commission on the abysmal performance of target date retirement funds during the market crash, and she doles out hundreds of millions of dollars in job training funds, a decent chunk of which she has used to shape policy by channeling it to green industries. But Solis understands that her real influence lies in her power to enforce the nation's labor laws--the primary mission of the DoL. It's a role she embraced with relish at her swearing-in, where she announced with a grin, "To those who have for too long abused workers, put them in harm's way, denied them fair pay, let me be clear: there is a new sheriff in town."

Indeed, Solis threw her weight around on Capitol Hill when one key deputy, Labor Solicitor Patricia Smith, faced stiff opposition from business lobbies and the GOP. One of Smith's

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predecessors as labor solicitor--the nation's top enforcer of labor laws--was Eugene Scalia, son of the Supreme Court justice. Scalia's previous claim to fame was his successful campaign to block an ergonomics safety standard, using an industry-supported Astroturf group to question whether repetitive-motion injuries exist at all. As labor solicitor, he invoked the Taft-Hartley Act against West Coast longshoremen locked out by their employer (a former client) and made a habit of undermining his own agency, writing a brief supporting limits on whistleblower protections. After a one-year tour, he landed on the lush payroll of Gibson Dunn, a leading "union avoidance" firm, where he now serves as an expert on "downsizing" when not penning attacks on the Employee Free Choice Act for the *Wall Street Journal*.

Smith, on the other hand, has spent more than twenty years going to battle on behalf of vulnerable, low-wage workers, first at the New York State attorney general's office and then as the state's labor commissioner. "She turned it from a backwater agency to a national model in just three years," says Andrew Stettner, deputy director of the National Employment Law Project. "In my career I've never seen an agency turned around so quickly." What Smith did in New York, according to labor officials, community advocates and business leaders, was to take a targeted approach not just to rogue players but to rogue industries, such as retail, residential construction and restaurants, where minimum-wage and safety violations were rampant.

She did high-profile investigations and carefully orchestrated surprise inspections, conducted special outreach to immigrant workers, and used the full arsenal of penalties, including criminal charges, to send a message to employers. Deborah Axt, legal director of Make the Road, a New York City community organization, recalls Smith doing a sweep of retail outlets in Bushwick, where investigators uncovered \$200,000 in back wages owed at nineteen businesses on a single commercial strip. According to Axt, Smith was a master at leveraging her limited resources for maximum impact; her department quickly became a national model for community partnerships. And she did all this while maintaining warm relations with New York's business community. Kathryn Wylde, president and CEO of the Partnership for New York City, a leading business association, was so impressed by Smith's quick response to the tens of thousands of Wall Street layoffs in late 2008 that she wrote a letter to the Senate in support of Smith's nomination.

After Senate Republican Mike Enzi put a hold on her nomination for months, Smith was finally confirmed on February 4.

Or take OSHA, the Occupational Safety and Health Administration. Bush's final OSHA director was Edwin Foulke, a former partner at Jackson Lewis, another large unionbusting law firm, who was such a fan of voluntary compliance over enforcement that the *New York Times* called him an "antiregulatory ideologue." Shortly after joining OSHA in 2005, he began delivering a PowerPoint lecture, "Adults Do the Darndest Things," featuring images of workers near live power lines or on improper scaffolding, which he played for laughs.

Now, under the leadership of David Michaels and his deputy, Jordan Barab, OSHA's second-floor conference room features photographs of workers killed on the job. Staffers meet under the wide grin of Tyler Kahle, in his orange safety vest, who was crushed by a lift at 19, and the shy gaze of Erin Sperrey, who was beaten to death at 20 while working the night shift at a Tim

Horton's. Michaels, an epidemiologist at George Washington University, is a lifelong expert on occupational health--he helped to found the New York Committee on Occupational Safety and Health (NYCOSH) in the 1970s--and on industry's use of fake science to undermine government regulations, the subject of his 2008 book, *Doubt Is Their Product*. In it, he is harshly critical of Bush's OSHA, writing that industry "alliances" and other forms of voluntary compliance "replaced any effort to strengthen weak standards and improve inspections." He writes witheringly of OSHA's handling of popcorn lung, once an extremely rare disease, which exploded in 2000 among workers exposed to diacetyl, used in buttery flavorings. The lungs of afflicted workers corroded so quickly, it was as if they had inhaled acid. Only now is OSHA finally developing a health standard on the safe use of diacetyl.

In early March, Michaels presided over a daylong forum called "OSHA Listens." At that event, industry was well represented, and Michaels gave prominent spots to speakers from the Chamber of Commerce and the National Association of Manufacturers, who complained that the department was "trying to scare employers by touting its enforcement agenda." But it was no accident that he scheduled them immediately after a panel of grieving women who broke down as they spoke about their husbands or sons or uncles dying in factory explosions, burns and falls.

Other tested activists are scattered throughout the department: Mary Beth Maxwell, a leader in the fight for labor law reform as head of American Rights at Work, was brought on as a senior adviser to Solis. Deborah Berkowitz, OSHA's new chief of staff, was health and safety director for the United Food and Commercial Workers. And Main's deputy for policy at MSHA, Greg Wagner, is a doctor who spent more than a decade treating miners with respiratory illnesses at a West Virginia clinic. "It's fair to say," says AFL-CIO legislative director Bill Samuel, "that some of the president's best appointments have been at the Department of Labor."

Yes, capital may reign at Government Sachs, where the shrunken paychecks of working people are tithed to subsidize the very Wall Street institutions that forced the country into recession. But in one forgotten corner of the administration, over on C Street and Constitution, at a department whose entire \$1.5 billion enforcement budget couldn't pay for a single B-2 bomber, Solis has formed a rump group that's fighting on the right side of the class war.

Solis and her able deputies have inherited a Department of Labor in tatters. By the time they arrived in Washington, health and safety compliance had become all but voluntary, as had minimum wage and overtime pay. Within two months of taking office, Bush and his labor secretary, Elaine Chao, had rammed through Congress the repeal of a new ergonomics regulation that had been a decade in the making. "It was almost like PATCO [the Professional Air Traffic Controllers Organization] in terms of its symbolic importance," says NYCOSH director Joel Shufro, referring to Ronald Reagan's crushing of the union in 1981. "That sent employers a huge message." After that, the DoL didn't issue a single new regulation unless it was forced to by Congress or the courts. Chao not only imposed new restrictions on overtime pay; she produced guidance for employers on how to avoid paying it. She imposed onerous reporting requirements that applied only to labor unions. And she left behind a layer of like-minded middle managers who, AFGE Local 12 vice president Eleanor Lauderdale says, have yet to be replaced. (The new

OSHA leadership recently fired a Bush-era dissident manager, Bob Whitmore, who'd been on administrative leave since 2007 for blowing the whistle on shoddy industry reporting.)

"It was eight years of neglect," says Samuel. "These were not people who believed in many of the statutes they were hired to enforce."

Facing badly depleted enforcement ranks, Solis hired 710 additional enforcement staff, including 130 at OSHA and 250 for the crucial wage-and-hour division, upping inspectors by more than a third. Another hundred will come on next year to staff a crackdown on the misclassification of millions of employees as "independent contractors"--a dodge to avoid paying taxes and benefits--a move that has set off enormous buzz on business blogs. Her team took a plunge to the stagnant regulatory pipeline, moving forward new rules on coal mine dust, silica, and cranes and derricks. She restored prevailing wages for agricultural guest workers and is poised to restore reporting rules on ergonomic injuries. She revoked Chao's union reporting requirements and countered with a proposed rule that employers who hire union avoidance firms must publicly report it, the sort of sunshine that could easily act as a deterrent. This latter measure hints at the sort of creative tactics being explored at the DoL, even as prounion legislation is stymied in Congress.

The real question, of course, is whether Solis and her dream team can do more than simply get DoL's engine humming again. To have a real impact on workers' rights, the department, despite its still token number of inspectors (it would take nearly 140 years for OSHA to visit every workplace in America) and the government's laborious rulemaking process, will have to tackle daunting tasks: tens of thousands of unregulated, potentially toxic chemicals; rampant wage theft; and an epidemic of ergonomic injuries.

Take wage theft. A recent large-scale study of low-wage workers in Los Angeles, New York and Chicago, the country's three largest cities, found that one in four (some 400,000 workers) is paid less than minimum wage; among those who work late, 76 percent are stiffed for the extra hours. This is corporate lawbreaking on a mind-boggling scale. How do a few hundred inspectors tackle that? Or look at the challenge of genuinely regulating toxic exposures: there are some 80,000 chemicals in use by American industry, which trigger hundreds of thousands of illnesses each year, yet OSHA has set exposure limits for fewer than 500, most of which are based on out-of-date science from the 1940s and '50s. Where to start? Or ergonomics. Lifting, twisting and repetitive motion stresses are the leading cause of workplace injuries, forcing a million Americans to lose time from work each year. Thousands of poultry workers are permanently crippled by carpal tunnel syndrome, while half of all nurses suffer chronic back pain, forcing many, at a time of acute nursing shortages, to leave the profession. And yet when Congress killed OSHA's ergonomic regulation in 2001, it also barred OSHA from writing a new one that was similar. How to escape that bind?

What's so striking about the new team at DoL is, just weeks or months on the job, they're already asking these big strategic questions.

At MSHA, Main has not only come out swinging on black lung; he's launched a big-picture safety campaign he calls Rules to Live By, which involves combing through the data to identify

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the top causes of miner deaths. First, Main says, he'll educate mining companies about the need to eliminate these risk factors; next will come "increased enforcement," with special attention to "serious" violations, which trigger the largest fines. For Main, there's a direct correlation between hefty fines and fewer deaths. "We'll provide assistance to the mine operators who do need it," he says, "but never as a replacement to the enforcement tools. There was some confusion about that in recent years. I'm not confused about that."

Even before Michaels was confirmed at OSHA, his deputy, Jordan Barab, a widely respected expert who once ran health and safety for the public sector union AFSCME, cracked down on Nevada's state program, which had looked the other way as fatal construction accidents surged on the Las Vegas strip. Barab also issued the largest fine in the history of the agency by a factor of four--\$87 million against BP Products, for failing to remedy hazards that led to a massive explosion at a Texas oil refinery, which left fifteen dead and 170 injured. At "OSHA Listens," Michaels discussed coping with his tiny enforcement staff by requiring every workplace in America to have a plan in place to identify its own unique hazards and prevent them. As for chemical exposure, he told *The Nation* that "we can't proceed on the chemical-by-chemical path" and that he is coordinating with federal scientific agencies to develop a more ambitious approach. He also said he'd immediately start issuing ergonomics citations, rule or no rule, using OSHA's broad, but extremely underutilized, "general duty clause."

Even before being confirmed, Smith was credited with sparking the national enforcement drive against businesses that misclassify employees as contractors because of her success cracking down on such scofflaws in New York--a brilliant enforcement priority at a time of budget deficits, with the potential to bring in billions of dollars in unpaid taxes, unemployment insurance and Social Security payments. But she's known especially for her insight that, as Retail union organizer Jeff Eichler, who worked closely with Smith in New York, says, "to impact an entire sector had to involve working with groups outside the bureau." She used labor unions, churches and immigrant groups as her eyes and ears on the ground; they organized plaintiffs, served as liaisons with state investigators and translated big enforcement fines into long-term gains for workers by means of union contracts or sector-wide employer manuals.

In fact, it was these efforts to use community groups as a force multiplier that triggered a furious campaign by business front groups to block her nomination. Senator Enzi obtained reams of e-mails to produce an alarmist forty-page report about one small pilot program Smith had launched, Wage Watch, which trained community members to report wage violations. Conservative groups such as the Heritage Foundation and Americans for Limited Government piled on, the latter issuing an alert that if her concept went national, "it could turn tens of thousands of 'community organizers' into raving vigilantes."

Nonetheless, at the new DoL, community partnerships are fast becoming standard operating procedure. Phil Tom, a leader with Chicago's Interfaith Worker Justice, was appointed head of the department's Office for Faith Based and Community Initiatives, which until recently was little more than a feeding trough for politically connected evangelicals. He's expected to use the office to engage the religious community on workers' rights. Likewise, OSHA is tapping labor and immigration groups to expand its enforcement reach. The agency is sponsoring a major

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Spanish-language conference on Latino workers' rights in April in Texas and joined local workers' rights organizations to plan a summit in Nebraska in March on safety violations in meatpacking.

Most of the DoL's new investigators are now on board, and they'll soon be in the field handing out citations. Severe GAO reports in the past two years on the failure to enforce at the wage and hour division and the undercounting of injuries at OSHA will provide political cover as these teams step up enforcement. But they are still working with antiquated tools. OSHA threw the book at Wal-Mart last May, several months after a Long Island worker was trampled to death on Black Friday--and yet the maximum fine was \$7,000, pocket change to the massive retailer. The Protecting America's Workers Act would update those penalties to make them matter, including criminal culpability for top corporate officials. But the measure will face fierce resistance from the business community, as evidenced by Chamber of Commerce testimony at a hearing about the bill in mid-March claiming that its corporate accountability measures would provoke a "witch hunt." The Chamber also held a private strategy meeting in January to marshal forces against OSHA's proposed ergonomics reporting rule.

The department's new fervor for enforcement will be hobbled at every turn if the nation's most disenfranchised workers continue to feel unsafe reporting nonpayment of wages or workplace hazards. And that means immigration and labor law reform, the ultimate force multipliers. "In the end, it comes down to the power of a worker to say to a boss, This job is dangerous. I won't do it," says Joel Shufro. While Secretary Solis has sought to shift the conversation on undocumented workers from border security to exploitation, she has not yet used her bully pulpit to create a sense of urgency on moving immigration reform on Capitol Hill. She has also, so far, mostly held her tongue on the Employee Free Choice Act, which is unlikely to reappear on the embattled Democrats' legislative agenda without strong intervention by the administration.

It is an open question whether Obama will eventually unleash his feisty labor secretary to push Congress to upgrade the nation's moribund worker protections. But few observers have any doubt that the new team at the Department of Labor will do all it can with the broken laws and clunky regulatory powers at its disposal. "They know all the tricks of the trade," says Celeste Monforton, a veteran of OSHA and MSHA who is now at George Washington University's School of Public Health. "They know the Chamber of Commerce is going to come and say, This is going to kill jobs. None of that will surprise them, and none of that should make them blink."

About Esther Kaplan

Esther Kaplan is investigative editor at The Nation Institute, and author of [*With God on Their Side: George Bush and the Christian Right*](#). [more...](#)