

A Cautionary Tale

How a powerful interest group used the initiative process to overturn Washington's ergonomics rule

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ABSTRACT

This case study examines who participated in a state rulemaking process, when and how they were engaged, and what difference their involvement made. The Washington State Ergonomics Rule is the only rule in state history that was overturned by citizen initiative. Its development became a classic struggle between labor, seeking a safer workplace, and management, which called it a "job-killing" rule. The two sides were unable to resolve their difference during a 1999-2000 public participation process. The Building Industry Association of Washington (BIAW), a disgruntled but well-financed party, left the deliberative forum and went directly to voters through the initiative process. The BIAW filled the airwaves with ads that scared potential voters and may have swayed a majority. The Ergonomics Rule was the first time this happened in Washington State, but it may not be the last. Despite a long-held preference for rulemaking, situation-specific solutions may work better in some complex and adversarial situations.

CASE STUDY

Methods

This case study used multiple methods: content analysis, historical research, and interview.

Results

Rulemaking was initiated by the Washington State Department of Labor and Industries (L&I) in response to a high incidence and cost of repetitive stress claims in a dozen industries, including construction. Employers characterized the rule as an example of governmental over-regulation that created a hostile economic climate for business in the state. They coined the phrase "job-killing ergonomics rule." Workers organized as "working families for safer jobs" and framed the issue as prevention of pain and suffering. An extensive public participation process failed to find common ground and left the business community unsatisfied. After the rule was adopted—but before it took effect—opponents launched an initiative campaign. The initiative passed in 2003 and not only overturned the rule, but prohibited L&I from proposing a revised rule, unless the federal government required it.

Discussion

This paper focuses on the role of one of a powerful interest group, the Building Industry Association of Washington (BIAW), and the role of a misleading advertising campaign in an initiative election. It provides a cautionary tale for health and safety professionals in the 27 states and territories with initiative and referendum processes.

WHAT WENT WRONG?

The Washington State Ergonomics Rule fell into three traps, each capable of swallowing a sound regulatory effort:

- "Wicked" social problems
- Scientific claims vulnerable to a "junk science" attack
- A well-funded opponent who refused to follow norms

Who is BIAW?

- Building Industry Association of Washington
- Largest trade association in the state
- Has millions to defend interests of the homebuilding industry
 - Targets: governors, Supreme Court justices, regulations
 - During 2008 gubernatorial race, Seattle Times called it a more powerful force than the state Republican Party

Lies & distortions

- Paid petition gatherers
 - Ergo rule would limit the hours people could work
 - Full-time workers would lose jobs
 - Even baseball catchers
- TV campaign
 - Children would lose insurance coverage
- In Washington State, Supreme Court ruling protects false statements in political campaigns (19 other states differ)

NEW MODEL

- Despite a long-held preference for rulemaking, situation-specific solutions may work better for these "wicked" problems (complex social problems where a scientific approach is bound to fail)
- Situation-specific deliberations could move toward the "empowerment" model under the Public Participation Spectrum

