

Labor Day began as a celebration of workers' rights, which makes this a good occasion to ask what went wrong with workers' right to be free from toxics in the workplace. On paper, federal law provides powerful protection but that law has never been seriously implemented. Courts and industry opposition deserve some of the blame, but probably less important than deindustrialization and the decline of the American labor movement.

Here's the puzzle: Congress mandated aggressive controls on workplace toxics in 1970 when it created OSHA, the same year it passed the Clean Air Act. Both laws remain in effect today, but air pollution regulation has blossomed while workplace toxics regulation died on the vine. EPA didn't do much to implement the original version of restrictions on toxic air pollution, but Congress returned to the issue and fixed the law. It also gave EPA enough funding to manage despite increased requirements for quantitative analysis. That never happened with OSHA. Why?

The language of the OSHA statute couldn't be more rigorous. It provides that, in regulating workplace toxics, OSHA must "set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity." The Supreme Court made it more difficult to implement this section by requiring OSHA to do a quantitative risk assessment to show that existing exposure levels create a significant risk to workers.

This stymied OSHA's initial efforts, but this judicial intervention and adverse rulings from lower courts can't be the whole story. A combination of judicial rulings and presidential mandates has also immersed EPA in quantitative risk analysis. And EPA also has to do a cost-benefit analysis for many key regulations, but the Supreme Court exempted OSHA toxics regulation from that requirement.

The common explanation for why EPA, but not OSHA, was able to contend with increased regulatory burdens involves budgetary constraints and political opposition. But this raises further questions: Why was EPA able to get enough funding from Congress to move forward, while OSHA wasn't? Why was industry opposition to OSHA toxics regulation more successful than industry opposition to air pollution regulation?

To answer these questions, we must look more deeply into regulatory politics. The major political force behind the OSHA law were labor unions. Beginning with the Reagan presidency, private-sector unions have gone into steep decline, vastly

reducing their clout. At the same time, the toxics issues that face OSHA often come from industrial workplaces, and deindustrialization combined with automation meant that fewer workers were exposed to those risks.

In the meantime, unions had troubled relations with potential allies such as environmental groups, since unions opposed environmental regulation that might cost jobs. Beginning under Nixon, worker support for pro-regulatory Democrats has also declined, while Republicans have become more staunchly anti-regulatory with almost every passing year. The upshot was that when budget increases or statutory reforms became necessary, environmental laws received much more favorable treatment from Congress.

To put it in a nutshell, the political base for workplace toxic regulation eroded along with America's industrial unions. That deprived OSHA of the congressional support it needed to thrive. In the absence of a union revival, the right of workers to be free from toxic hazards is likely to remain an unfulfilled dream.