Distributional Consequences Part III

THE WORKPLACE ENVIRONMENT

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In this section, the links between poverty and workplace health risks are explored. To establish a context for this discussion, it is useful to describe the relative roles of labor markets and regulation in the abatement of health risks.

Conventional economic analysis explains that the extent of workplace risk is a function of employment markets. Workers aware of risks will bargain for extra pay, called wage premiums, to compensate for those risks. In response, employers will reduce workplace risks up to the point where it is less expensive to pay workers for those risks. Economists, however, have been unable to verify that workers receive wage premiums adequate to compensate them for existing health risks. Indeed, Congress passed the Occupational Safety and Health Act (OSH Act) in 1971 in recognition that employee bargaining, even when augmented by workers' compensation, had not reduced significantly employee exposure to toxic substances.

The OSH Act empowers the Occupational Safety and Health Administration (OSHA) to promulgate health standards "which most adequately assure, to the extent feasible, that no employee will suffer a material impairment of health or functional capacity if such employee has regular exposure to the hazard for the period of his working life." By requiring abatement of health risks to the extent that is "feasible," Congress intended to reduce residual health risks, or risks remaining after abatement caused by labor markets and workers' compensation, to the extent that is achievable as a technological and economic matter.

OSHA regulation, however, has not ended the debate concerning worker exposure to toxic risks. OSHA has been slow to promulgate health standards, and advocates for workers have questioned the adequacy of the standards that have been promulgated. Employers, as well as economic critics of OSHA, respond that it is a serious drag on economic productivity to minimize such risks to the extent feasible. They argue that OSHA has promulgated health standards whose costs are far in excess of their benefits. Supporters of OSHA regulation have responded that the critics have overstated the costs and understated the benefits of the agency's health regulations.

Critics of OSHA are prepared to reduce the extent to which the agency regulates toxic chemicals and rely to a greater extent on labor markets and workers' compensation. Underlying their analysis is an assumption that workers have a choice whether to accept health risks in return for ex ante compensation in the form of wage premiums, or ex post compensation in the form of workers' compensation. Tom McGarity, Elinor Schroeder, John Kennedy, Mike Blumenthal, and I consider the extent to which such a choice is in fact voluntary.

Tom McGarity and I discuss whether the option of taking a safer job is a realistic choice for poor workers. Professor Elinor Schroeder and John Kennedy discuss the Johnson Controls case, which decided whether an employer can deny women access to higher paying jobs that could put an unborn fetus at risk. Among numerous others, the case raises the issue of how environmental safety is linked to economic security. As Mr. Kennedy's paper indicates, the employer believed that because of the lure of higher paying jobs, as well as the uncertainties involved in determining health risks, the employer was in a better position than the female employees to determine whether fertile women should be exposed to lead in the manufacturing process.

Finally, Mike Blumenthal's paper warns us that empowering workers to protect themselves from workplace hazards will present some complicated issues that must be resolved. These include whether labor unions ought to be liable to injured workers when union agents negligently perform safety inspections as part of a joint employer/employee safety committee. As Blumenthal indicates, the resolution of this issue has important ramifications concerning the distribution of the costs of workplace injuries.

Perhaps in no other context is the environment so closely linked with human health and economics as in the workplace. For this reason alone, all environmentalists will be focusing their attention in the future on the law and public policy that regulates the workplace environment. The distributional equity of costs and benefits in this sphere will undoubtedly play an important role in the formation of subsequent non-workplace environmental policies.

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Notes

3. Id. at 1240-41.
4. Id. at 1256-57.
7. See Shapiro & McGarity, Reorienting OSHA: Regulatory Alternatives & Legislative Reform, 6 Yale J. on Reg. 1, 11 (1989) (OSHA has continuously been attacked by labor unions, public interest groups, and some members of Congress for underregulation.).