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July 12, 2021

James Frederick  
Acting Assistant Secretary of Labor for Occupational Safety and Health  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

*Submitted via email to [Frederick.James.S@dol.gov](mailto:Frederick.James.S@dol.gov)*

Dear Mr. Frederick:

We welcomed the announcement in the Unified Agenda (RIN 1218-AD40) that the Occupational Safety and Health Administration (OSHA) will issue a Notice of Proposed Rulemaking (NPRM) to restore the provisions of the Improve Tracking of Workplace Injuries and Illness rule, 81 Fed. Reg. 29,624 (May 12, 2016) — rolled back by the Tracking of Workplace Injuries and Illness rule, 84 Fed. Reg. 380 (Jan. 25, 2019) — that required covered employers to submit electronically certain information from OSHA Forms 300 and 301 regarding workplace injuries and illnesses. We agree with OSHA's determination in its 2016 rulemaking on this issue that the electronic reporting requirement is a matter of critical importance for American workers.<sup>1</sup> We urge you to execute this rulemaking process with all possible speed.

According to the Survey of Occupational Injuries and Illnesses (SOII), in 2019 American workers experienced 2.8 million serious injuries and illnesses at work.<sup>2</sup> Unfortunately, this unacceptably high number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually.<sup>3</sup> The electronic reporting requirement will help protect employees from these dangers by significantly improving the way OSHA monitors and responds to preventable injuries and illnesses.

OSHA currently only has access to establishment-specific injury and illness information if the establishment was included in a Bureau of Labor Statistics survey or if it is one of the tiny proportion of establishments OSHA is able to inspect each year. Indeed, since it would take decades to inspect each workplace under its purview, OSHA relies on self-reporting.<sup>4</sup> Requiring the automatic electronic

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<sup>1</sup> Improve Tracking of Workplace Injuries and Illness Rule, 81 Fed. Reg. 29,624, (May 12, 2016) *hereinafter* [Improve Recordkeeping Rule](#)].

<sup>2</sup> *Employer-Reported Workplace Injury and Illnesses, 2019*, BLS (2020), <https://bit.ly/3w6fmpA>.

<sup>3</sup> Cummings, Karen, *SOII Undercount Research: Employee Interview Project*, NEW YORK STATE DEPARTMENT OF HEALTH (2014), <https://bit.ly/3dsZM14>; J. Paul Leigh, Juan Du & Stephen McCurdy, *An estimate of the US government's undercount of nonfatal injuries and illnesses in agriculture*, *ANN. EPIDEMIOL.* 24 4 254-259 (April 2014), <https://bit.ly/3w5fw0s>.

<sup>4</sup> Improve Recordkeeping Rule, 29,629.

submission of recordkeeping data will greatly expand OSHA’s access to the establishment-specific information employers are already required to record. This will allow OSHA to more effectively target its enforcement resources to establishments where workers are at greatest risk and to better evaluate its interventions.<sup>5</sup>

Publication of worker injury and illness data can also push employers to abate hazards and thereby prevent workplace injuries and illnesses without OSHA having to conduct onsite inspections.<sup>6</sup> By making this information accessible to job seekers, consumers, investors, and state and local governments, the the electronic reporting requirement will encourage many employers – whether they are concerned about attracting desirable employees, appealing to customers or financial backers who value worker safety, or winning public contracts – to lower the incidence of workplace injuries and illnesses among their employees by complying with workplace safety standards.<sup>7</sup>

In addition, disclosure of injury and illness information will ensure public health researchers have access to the occupational health and safety data they need to improve research on the distribution and determinants of workplace injuries and illnesses. Currently, there are no comparable data sets available to researchers at either private institutions or state, county, and local Departments of Health.<sup>8</sup> With data collected under this electronic reporting requirement, researchers will be better able to identify patterns of injuries and illnesses across establishments that were previously unrecognized or masked by the aggregation of data in the SOII. This research can provide valuable insights that may help prevent workplace injuries and illnesses from occurring in the future.<sup>9</sup>

Because systematic electronic injury and illness reporting has such critically important implications for worker health and safety, we urge OSHA to both initiate and finalize its rulemaking procedures with all possible speed. This is particularly important considering the significant amount of time expected between promulgation of a final rule and actual collection of this critical data. The original 2016 rule had an electronic submission date for employers of July 1, 2017, over 13 months after the rule was issued. Because of the delay likely required for implementation, it will take significant time for workers to see the workplace safety benefits of electronic reporting, even after the rollback rule is rescinded. OSHA must act urgently.

OSHA should be greatly aided in its ability to move quickly on this rulemaking because it has already developed a well-reasoned rule on this topic. During the course of the three-year rulemaking procedure leading to the promulgation of OSHA’s original 2016 rule, the Agency did an enormous amount of work that can support its restoration of the electronic reporting provisions. With these factors in mind, we request that OSHA commit to issue the NPRM restoring the electronic reporting requirement by September 15, 2021, and to issue the final rule by March 15, 2022.

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<sup>5</sup> *Id.* at 29,630.

<sup>6</sup> See Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Penguin Books, 2009).

<sup>7</sup> Improve Recordkeeping Rule, 29,631.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Requiring electronic submission of workplace injuries and illnesses is critical to OSHA’s statutory directive to “assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)) “by providing for appropriate reporting procedures with respect to occupational safety and health” (29 U.S.C. 651(b)(12)). America’s workers need the enhanced enforcement, increased compliance, and improved workplace safety research that electronic reporting will produce. We urge you to move forward with this critical rule with the urgency and speed it deserves.

Sincerely,

A handwritten signature in black ink, appearing to read "Juley Fulcher", with a long, sweeping horizontal stroke extending to the right.

Juley Fulcher  
Worker Health and Safety Advocate

cc: Maureen Ruskin, OSHA Directorate of Standards and Guidance  
Andrew Levinson, OSHA Directorate of Standards and Guidance