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Workers Left Behind Under Trump's OSHA

President Places Big Business Before Health and Safety of America's Workforce

Acknowledgments

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Contents

INTRODUCTION: WORKER PROTECTIONS ARE UNDER ATTACK.....	4
I. REGULATORY DELAY AND DEREGULATION THREATEN WORKERS.....	7
A. VOLKS RULE	7
B. TRACKING OF WORKPLACE INJURIES AND ILLNESSES.....	8
C. FAIR PAY AND SAFE WORKPLACES RULE.....	10
D. PROTECTING WORKERS FROM BERYLLIUM	11
II. INACTION LEAVES MANY HAZARDS UNADDRESSED.....	14
A. HEAT STRESS PROTECTIONS	14
B. SAFE PATIENT HANDLING	15
C. LOWER LINE SPEEDS AT POULTRY AND MEATPACKING PLANTS	16
III. THE EROSION OF OSHA	19
A. DWINDLING OSHA LEADERSHIP, STAFFING AND ENFORCEMENT.....	19
B. TRUMP DISMANTLES FEDERAL ADVISORY COMMITTEES	20
CONCLUSION	23

Introduction: Worker Protections Are Under Attack

In June 2016, presidential candidate Donald Trump promised: “[u]nder a Trump Presidency, the American worker will finally have a president who will protect them and fight for them.”¹ A year and a half into the Trump presidency, that claim is utterly broken. The administration is failing to fulfill one of its most fundamental duties, which is to protect workers from injuries.

The administration has scuttled or weakened several standards that help the U.S. Occupational Safety and Health Administration (OSHA) protect workers. These were purely commonsense measures. One ensured that businesses could be fined for failing to record employees’ injuries as required by law. Another required employers to transmit to OSHA records of their employees’ injuries and illnesses, and would have allowed for non-personally identifying data to be posted on the web.

Meanwhile, the administration has eroded a long-awaited rule to protect workers from beryllium, a cancer-causing toxic metal. Perhaps most outrageous of all, it worked to undo a requirement that employers comply with safety requirements as a condition for receiving federal contracts.

Among OSHA’s current shortcomings, it has been without a permanent leader for the duration of the Trump administration, and staffing and enforcement activity have declined. Those hoping for a change of attitudes should the U.S. Senate ever confirm the administration’s nominee likely will be disappointed. That nominee, Scott Mugno, was recently the chairman of the U.S. Chamber of Commerce’s OSHA subcommittee. That subcommittee’s primary work has been to block or undo standards created by OSHA.

The Chamber’s work to block OSHA rules is diametrically opposed to OSHA’s mission. Standards that address recognized workplace hazards are the primary tool at OSHA’s disposal to ensure that employers maintain safe workplaces and undertake enforcement efforts against those that do not.

In the absence of a dedicated standard to address a hazard, OSHA must rely on the catch-all “general duty” clause in its authorizing legislation, which requires employers to maintain safe workplaces.² While the clause is well-intended, the evidentiary burden to uphold

¹ Full transcript: Donald Trump’s jobs plan speech, POLITICO (June 28, 2016), <https://politi.co/2wrRqkx>.

² Under the General Duty Clause, employers are required to provide their employees with a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” However, the General Duty Clause is a poor substitute for a standard. In addition to lacking guidelines to prevent a particular hazard, it carries a much higher burden of evidence than specific standards and is often used in response to tragedies rather than to prevent them. *OSH Act of 1970*, U.S. DEPARTMENT OF LABOR (viewed on August 14, 2018) <https://bit.ly/2o06h0W>.

citations invoking it is much greater. Consider the following example. California is one of three states that has a law to protect workers from extreme heat. OSHA has no such standard. Over the past five years, California alone has issued 50 times more citations for unsafe heat conditions than OSHA has issued on that subject nationwide while relying on the general duty clause.

There are many other priorities that Trump's OSHA could undertake if it were dedicated to protecting workers rather than ingratiating itself to businesses. Health care workers, for instance, suffer more injuries requiring time away from work than employees of any other industry. Solutions are available, and providers that have implemented them have typically recouped their costs in about four years. But OSHA has not taken action.

Poultry workers, meanwhile, suffer from musculoskeletal injuries at rates several times those who work in other industries. But the poultry industry has been pressing for *increasing* line speeds—a leading contributor to musculoskeletal disorders—rather than addressing the epidemic of debilitating injuries. OSHA has acknowledged those dangers, but has rejected requests by worker safety advocates to slow down line speeds within slaughter plants.

Despite the benefits of regulations for workers and the U.S. economy at large, the Trump administration has repeatedly acted as a mouthpiece for industry and argued that regulations place an unfair burden on the economy and businesses.³ In the first month of Trump's presidency, U.S. Chamber of Commerce President and CEO Thomas J. Donohue stated, "We look forward to working with the administration to identify the regulations doing the most harm."⁴ That same day Trump signed Executive Order 13771, which directs federal agencies to eliminate two existing regulations for every new regulation issued.⁵

In 2017, Public Citizen, Natural Resources Defense Council and the Communications Workers of America sued the Trump administration to block Executive Order 13771. "No one thinking sensibly about how to set rules for health, safety, the environment and the economy would ever adopt the Trump Executive Order approach – unless their only goal was to confer enormous benefits on big business," Public Citizen President Robert Weissman said. "If implemented, the order would result in lasting damage to our government's ability

³ The Office of Management and Budget reported that under the Obama administration, federal regulations provided a net benefit to society of between \$103 billion and \$393 billion per year. Those figures do not reflect the benefits of healthy and safe workplaces, which are not monetized. Further, the National Safety Council estimates that work-related injuries cost U.S. businesses nearly \$200 billion annually. OFFICE OF MANAGEMENT AND BUDGET, 2016 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT 3 (2016) <https://bit.ly/2nkiHP4>.

⁴ Press Release, U.S. Chamber of Commerce, *U.S. Chamber's Donohue Comments on President Trump's Executive Actions on Regulations* (January 30, 2017), <https://uscham.com/2P1lhaF>.

⁵ Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, WHITE HOUSE (January 30, 2017), <https://bit.ly/2LoCwT>.

to save lives, protect our environment, police Wall Street, keep consumers safe and fight discrimination."⁶

The administration's efforts to block commonsense worker safety measures have become business as usual.

⁶ *Public Citizen v. Trump*, PUBLIC CITIZEN (viewed on August 14, 2018) <https://bit.ly/2BEIzFw>.

I. Regulatory Delay and Deregulation Threaten Workers

The U.S. Chamber of Commerce and other industry groups have lobbied against worker safeguards, and repeatedly Trump's OSHA has acted as an enabler of their agenda. In 2017, the Trump administration partnered with the GOP Congress to roll back commonsense workplace protections established under the Obama administration through the use of the Congressional Review Act (CRA). The CRA allows Congress to block regulations from implementation through an expedited procedure known as a "resolution of disapproval" shortly after a regulation is finalized.⁷

This process not only voids the regulation, but also prohibits the agency from issuing future regulations that are "substantially the same" without accompanying legislation.⁸ The regulations that Congress scuttled through the use of the CRA have strong-armed OSHA from holding corporations accountable for workplace safety and other violations. The Trump administration did not stop there. Trump's OSHA has also sought to delay and roll back regulations that safeguard workers from cancer-causing chemicals and make public employers' injury and illness data. This section examines four OSHA rules that have been eliminated, delayed and or rolled back by the Trump administration.

a. Volks Rule

PURPOSE OF RULE: The OSHA Recordkeeping Rule, or "Volks rule," was created in 2016, in response to a 2012 federal court decision, *Volks Constructors v. Secretary of Labor*. That decision held that while employers were required to *retain* records of employees' injuries for five years, their failure to *document* an injury could only be penalized for six months after the injury occurred. This finding was based on the fact that OSHA's authorizing legislation calls for a six-month statute of limitations for enforcing violations of the law. As a result of the decision, which reversed 40 years of OSHA practice, an employer could essentially dodge the requirement to retain records simply by failing to create the records in the first place. In response to the court's decision in the *Volks* case, OSHA issued a regulation stipulating that it retained the authority to penalize businesses for a failure to possess a required record throughout the five years it is required to retain the record.⁹

⁷ *Congressional Review Act: Questions and Answers*, COALITION FOR SENSIBLE SAFEGUARDS (viewed on August 14, 2018) <https://bit.ly/2NclKGc>.

⁸ *Congressional Review Act: Questions and Answers*, COALITION FOR SENSIBLE SAFEGUARDS (viewed on August 14, 2018) <https://bit.ly/2NclKGc>.

⁹ Grace Aylmer, *The Chamber's (Never-Ending) War on Workers*, CHAMBER WATCH (March 1, 2017), <https://bit.ly/2oZZ1h>.

ACTIONS TAKEN TO UNDERMINE RULE: The Chamber of Commerce alleged that the Volks rule would “improperly subject millions of American businesses to citations for paperwork violations, while doing nothing to improve worker health and safety.”¹⁰ This was a preposterous claim because requirements to document employee injuries unmistakably help protect workers. Further, the Volks rule did not expand employers’ documentation requirements. Instead, it ensured that those requirements were enforceable throughout their duration, as had been OSHA’s custom for its first 40 years of existence. Nonetheless, Congress and President Trump used the CRA to rescind this commonsense rule in the spring of 2017.¹¹

THE NEED FOR RECORDKEEPING: Since OSHA’s inception, employers have been required to maintain accurate records of serious workplace injuries and illnesses for five years.¹² However, many employers underreport injuries to mask the full extent of workplace dangers, rendering OSHA enforcement essential.¹³ U.S. Rep. Bobby Scott (D-Va.), ranking member of the House Education and Workforce Committee, cautioned that overturning the Volks rule “will block OSHA’s enforcement efforts and create a new safe harbor for those employers who deliberately underreport.”¹⁴ In response, congressional Democrats introduced the bicameral Accurate Workplace Injury and Illness Records Restoration Act, which would clarify OSHA’s statutory authority to issue citations for violations that continue for more than six months.¹⁵

b. Tracking of Workplace Injuries and Illnesses

PURPOSE OF RULE: In 2016, OSHA issued the Improve Tracking of Workplace Injuries and Illnesses rule, also known as the “electronic recordkeeping rule.” The rule requires certain establishments to electronically submit to OSHA data on injuries and illnesses that they are already required to keep. In turn, OSHA would make the pertinent data publically available after it removed personally identifying information.¹⁶ With the information obtained

¹⁰ Letter from Jack Howard, Senior Vice President, Congressional and Public Affairs, U.S. Chamber of Commerce to Members of the U.S. Congress (February 28, 2017), <https://uscham.com/2MJ2fYR>.

¹¹ *Congressional Review Act Resolutions Signed Into Law*, U.S. CHAMBER OF COMMERCE (viewed on August 14, 2018) <https://uscham.com/2o5SGFn>.

¹² Employers with more than 10 full-time employees are required to record injuries and illnesses within seven days of learning about them, prepare a year-end summary of those injuries and illnesses, and maintain the documents for five years. *OSHA Injury and Illness Reporting Requirements*, U.S. DEPARTMENT OF LABOR (viewed on August 14, 2018) <https://bit.ly/1Fbnbyq>.

¹³ *OSHA Recordkeeping Rule*, RULES AT RISK (viewed on August 15, 2018) <https://bit.ly/2PtBS85>.

¹⁴ Press Release, Education and the Workforce Committee Democrats, *Scott Statement on the Rollback of Workplace Safety Protections* (March 1, 2017) <https://bit.ly/2m3Lxp8>.

¹⁵ H.R. 2428 – “The Accurate Workplace Injury and Illness Records Restoration Act”, COMMITTEE ON EDUCATION AND THE WORKFORCE DEMOCRATS (viewed on August 15, 2018) <https://bit.ly/2BEGwaU>.

¹⁶ Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29623 (May 12, 2016) (to be cited at 29 C.F.R. 1902, 29 C.F.R. 1904) <https://bit.ly/2LmS1Zt>; 1904.7 – *General Recording Criteria*, U.S. DEPARTMENT OF LABOR (visited on August 16, 2018) <https://bit.ly/1JWy0Y3>.

through the rule, OSHA explained “employers, employees, employee representatives, the government, and researchers may be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.”¹⁷ However, Trump’s OSHA has taken repeated actions to undermine the benefits of this rulemaking.

ACTIONS TAKEN TO UNDERMINE RULE: In May 2017, the U.S. Chamber of Commerce, the National Association of Home Builders, and other industry stakeholders petitioned OSHA to stay the rule, incorrectly arguing that it would require companies to report confidential information, among other concerns.¹⁸ In June 2018, OSHA announced that it would neither require nor accept the more detailed injury and illness reporting data while it reconsidered the rule. The following month, it released a Notice of Proposed Rulemaking to eliminate the more detailed reporting requirements altogether.¹⁹

PRIVACY AS A PRETEXT: Under the rule, establishments with 20 or more employees are required to submit an annual summary of work-related injuries and illnesses (OSHA Form 300A). Establishments with 250 or more employees are also required to submit a log of work-related injuries and illnesses (OSHA Form 300), and an incident report that provides a detailed description of the injuries and illnesses (OSHA Form 301).²⁰

In June 2018, OSHA announced that it would neither require nor accept Forms 300 and 301 as it reconsidered the rule.²¹ Public Citizen, the American Public Health Association and the Council of State and Territorial Epidemiologists filed a lawsuit in response to OSHA’s failure to comply with the rule.²² Shortly thereafter, OSHA issued a formal proposal to eliminate the

¹⁷ Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29623 (May 12, 2016) (to be cited at 29 C.F.R. 1902, 29 C.F.R. 1904) <https://bit.ly/2LmS1Zt>.

¹⁸ Jordan Barab, *OSHA Proposes to Delay Recordkeeping Rule*, WORKING ECONOMICS BLOG (June 28, 2017) <https://bit.ly/2oaneWV>; Letter from Bradford T. Hammock and Maurice Baskin, National Association of Homeowners Association et. al. to Alexander Acosta, Secretary of Labor, U.S. Department of Labor (May 5, 2017) <https://bit.ly/2P0xV9L>.

¹⁹ *Injury Tracking Application - Electronic Submission of Injury and Illness Records to OSHA*, U.S. DEPARTMENT OF LABOR (visited on August 16, 2018) <https://bit.ly/2jfBahq>.

²⁰ In addition, the rule includes anti-retaliation protections, which prohibit employers from discouraging workers from reporting an injury or illness; Memorandum from Dorothy Dougherty, Deputy Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, to Regional Administrators, Occupational Safety and Health Administrators, U.S. Department of Labor (October 18, 2016) <https://bit.ly/2o4Tuu8>.

²¹ After multiple delays, establishments were required to submit their 2016 Form 300A by December 15, 2017. For the second phase, all 2017 forms were due by July 1, 2018; *Injury Tracking Application - Electronic Submission of Injury and Illness Records to OSHA*, U.S. DEPARTMENT OF LABOR (visited on August 16, 2018) <https://bit.ly/2jfBahq>.

²² The lawsuit argued that OSHA’s delays and decision not to implement portions of the rule 1) violated the law by forgoing the notice-and-comment procedures, and 2) its stated reason for the delay was arbitrary and capricious *Public Citizen Health Research Group, American Public Health Association, and Council of State and Territorial Epidemiologists v. Alexander Acosta, U.S. Department of Labor, and Occupational Safety and Health Administration* 2, No. 18-cv-1729 (D.C. Cir. July 25, 2018) <https://bit.ly/2KqjokQ>.

more detailed reporting requirements, due to alleged concerns around worker privacy and “the burdens of complying with the current rule.”²³ The claims of privacy concerns ignore decades of existing U.S. Department of Labor practices and the measures in OSHA’s original rulemaking to protect confidential information.²⁴ In response to the latest proposal, AFL-CIO Health and Safety Director Peg Seminario countered, “The real reason for this rollback is to protect employers who don’t want workers or the public to know about dangerous conditions and hazards at their workplaces.”²⁵

c. Fair Pay and Safe Workplaces Rule

PURPOSE OF RULE: The Obama administration issued the Fair Pay and Safe Workplaces executive order in 2014 to “promote economy and efficacy in procurement by contracting with responsible sources who comply with labor laws.”²⁶ The requirement was formalized through OSHA regulations in 2016 that required federal contractors to comply with workplace laws—including health and safety standards, wage laws and civil rights laws—in order to be eligible for new federal contracts. Through accountability measures, it aimed to improve protections for federal contractors’ employees, who are estimated to comprise nearly a quarter of the U.S. workforce, while eliminating taxpayer waste, fraud and abuse.²⁷

ACTIONS TAKEN TO UNDERMINE RULE: In response to a lawsuit filed by the Associated Builders and Contractors of Southeast Texas that challenged the legality of the rule, a court order prevented portions of the regulation from implementation.²⁸ In the spring of 2017, Congress and the Trump administration used the CRA to overturn it.²⁹ Its demise was a “top priority” for the Chamber and trade associations, which claimed it would be overly

²³ Press Release, Occupational Safety and Health Administration, U.S. Department of Labor, *The Department of Labor Proposes Rule to Better Protect Personally Identifiable Information* (July 27, 2018) <https://bit.ly/2LknNGG>.

²⁴ There are decades of established processes under the Freedom of Information Act, Privacy Act, and by the Mine Safety and Health Administration to protect sensitive information. Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29623 (May 12, 2016) (to be cited at 29 C.F.R. 1902, 29 C.F.R. 1904) <https://bit.ly/2LmS1Zt>; *Big Ridge Inc v. Federal Mine Safety and Health Review Commission*, Nos. 12-2316, 12-2460 (U.S. 7th Cir. April 26, 2013) <https://bit.ly/2LhdqU0>.

²⁵ Jordan Barab, *Nice Try: OSHA’s Rollback of the Recordkeeping Rule – The Real Story*, CONFINED SPACE (AUGUST 1, 2018) <https://bit.ly/2LSEuOA>.

²⁶ Press Release, White House, *Executive Order – Fair Pay and Safe Workplaces* (July 31, 2014) <https://bit.ly/2kx3rQA>.

²⁷ OFFICE OF SENATOR ELIZABETH WARREN, BREACH OF CONTRACT: HOW FEDERAL CONTRACTORS FAIL AMERICAN WORKERS ON THE TAXPAYER’S DIME 2 (2016) <https://bit.ly/2lPHnhc>; Fair Pay and Safe Workplaces EO <https://bit.ly/2P0tvzH>.

²⁸ Edward T. DeLise, *Federal Court Puts a Halt to “Fair Pay and Safe Workplaces”*, FEDERAL CONSTRUCTION CONTRACTING BLOG (November 4, 2016) <https://bit.ly/2NBY524>.

²⁹ *Fair Pay and Safe Workplaces EO*, RULES AT RISK (viewed on August 15, 2018) <https://bit.ly/2P0tvzH>; Kimberly Kindy, *Senate Votes to Kill Worker Safety Rule Aimed at Federal Contractors*, WASHINGTON POST (March 6, 2018) <https://wapo.st/2OZxkVE>.

burdensome and costly.³⁰ In truth, the real cost is the one to taxpayers, as the government potentially contracts with unsafe establishments on the public dime.

PLAYING BY THE RULES: The federal government is already required by law to contract with companies that have a satisfactory record of performance, integrity and business ethics.³¹ However, this requirement is not adequately enforced. Systemic abuses justified the Fair Pay and Safe Workplaces Rule. The U.S. Senate Health, Education, Labor and Pensions (HELP) Committee reported in 2013 that “almost 30 percent of the top violators of federal wage and safety laws are also current federal contractors.”³² A 2016 report by the office of U.S. Senator Elizabeth Warren (D-Mass.) found that “major federal contractors regularly engage in illegal practices that harm workers financially and endanger their health and safety.”³³ Contrary to industry claims that the rule was overly burdensome, it was consistent with longstanding legal reporting systems within the federal procurement system and at the state level.³⁴ Further, it reflected smart business. Companies in the private sector have found that requiring their contractors to comply with workplace laws is a cost effective method to ensure compliance. As one construction contractor explained, “It makes good business sense to vet the contractor before he gets the job. It’s common in our industry; we do it all the time, and we don’t see it as being a burden to any legitimate fair contractor that’s playing by the rules.”³⁵

d. Protecting Workers From Beryllium

PURPOSE OF RULE: Beryllium is a toxic metal known to cause cancer and other fatal diseases, such as chronic beryllium disease (CBD) of the lungs. In January 2017, OSHA issued a rule to modernize the beryllium workplace exposure limit in general industry, construction and shipyard trades.³⁶ The rule included additional provisions, such as requirements for

³⁰ *Congressional Review Act Resolutions Signed Into Law*, U.S. CHAMBER OF COMMERCE (viewed on August 14, 2018) <https://uscham.com/2o5SGFn>; Karla Walter, *Opponents of the Fair Pay and Safe Workplaces Executive Order Claim Cost Concerns in a Last Ditch Effort to Delay Final Implementation*, CENTER FOR AMERICAN PROGRESS ACTION FUND (February 9, 2016) <https://bit.ly/2BG19c4>.

³¹ GENERAL SERVICES ADMINISTRATION, DEPARTMENT OF DEFENSE, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FEDERAL ACQUISITION REGULATION (March 2005) <https://bit.ly/2MN4cnh>.

³² U.S. SENATE HEALTH, EDUCATION, LABOR, AND PENSIONS COMMITTEE MAJORITY, ACTING RESPONSIBLY? FEDERAL CONTRACTORS FREQUENTLY PUT WORKERS’ LIVES AND LIVELIHOODS AT RISK (December 11, 2013) <https://bit.ly/2BDqB1T>.

³³ OFFICE OF SENATOR ELIZABETH WARREN, BREACH OF CONTRACT: HOW FEDERAL CONTRACTORS FAIL AMERICAN WORKERS ON THE TAXPAYER’S DIME 2 (2016) <https://bit.ly/2lPHnbc>.

³⁴ Karla Walter, *Opponents of the Fair Pay and Safe Workplaces Executive Order Claim Cost Concerns in a Last Ditch Effort to Delay Final Implementation*, CENTER FOR AMERICAN PROGRESS ACTION FUND (February 9, 2016) <https://bit.ly/2BG19c4>.

³⁵ *Fair Pay and Safe Workplaces EO*, RULES AT RISK (viewed on August 15, 2018) <https://bit.ly/2P0tvzH>.

³⁶ *Final Rule to Protect Workers from Beryllium Exposure*, U.S. DEPARTMENT OF LABOR (viewed on August 15, 2018) <https://bit.ly/2j3hrl>; Press Release, Public Citizen, *Public Citizen Applauds Final Beryllium Rule* (viewed on August 15, 2018) <https://bit.ly/2N8x85Z>.

personal protective equipment and medical monitoring, aimed at reducing the remaining significant risk associated with lower levels of beryllium exposure. About 60,000 workers are exposed to beryllium. The rule will save 90 lives a year from beryllium-related diseases and prevent 46 new cases of CBD annually, according to OSHA estimates.³⁷ Moreover, OSHA estimated the rule will yield a net economic benefit of \$487 million per year.³⁸ Portions of that victory have been short-lived, however, as the Trump administration again yielded to escalating industry pressure to undo parts of this long-overdue OSHA standard.³⁹

ACTIONS TAKEN TO UNDERMINE RULE: In the summer of 2017, OSHA proposed to rescind the portions of the beryllium standard that would have provided additional protections for construction and shipyard workers, and to delay the deadline for compliance with the remaining protections for construction and shipyard employees by one year. In its continued assault on beryllium protections, in March 2018, OSHA proceeded to delay enforcement of the primary standard that applied to all other workers by two months.⁴⁰ In June 2018, OSHA proposed delaying implementation of certain supplemental requirements for non-shipyard and construction workers by nine months.⁴¹

DEBUNKING ATTACKS ON BERYLLIUM RULE: In 2001, Public Citizen petitioned OSHA for stronger protections for workers exposed to dangerous levels of beryllium.⁴² More than 15 years later, it was finalized – following extensive negotiations by United Steelworkers and the U.S. beryllium producer Materion – only to face numerous obstructions by the Trump administration.⁴³ In defense of its proposal to rescind supplemental requirements to protect construction and shipyard employees, Trump's OSHA claimed that the provisions overlap with its existing regulations. However, in comments to the agency, Public Citizen identified seven new protective measures provided by the provision, ranging from notifications and

³⁷ *Final Rule to Protect Workers from Beryllium Exposure*, U.S. DEPARTMENT OF LABOR (viewed on August 15, 2018) <https://bit.ly/2jl3hrl>.

³⁸ Occupational Exposure to Beryllium, 82 Fed. Reg. 2470 (January 9, 2017) (to be codified at 29 C.F.R. 1910, 29 C.F.R. 1915, 29 C.F.R. 1926) <https://bit.ly/2jbleYP>.

³⁹ Barry Meier and Danielle Ivory, *Under Trump, Worker Protections are Viewed with New Skepticism*, THE NEW YORK TIMES (June 5, 2017) <https://nyti.ms/2rLKZYk>.

⁴⁰ Memorandum from Thomas Galassi, Director, Directorate of Enforcement Programs, to Richard Mendelson, Acting Deputy Assistant Secretary (March 2, 2018) <https://bit.ly/2MvYOWb>.

⁴¹ Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry, 83 Fed. Reg. 25536 (June 1, 2018) (to be codified at 29 C.F.R. 1910) <https://bit.ly/2jIOMVe>.

⁴² Letter from Public Citizen to John Henshaw, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (September 3, 2001) <https://bit.ly/2P045Cb>.

⁴³ Barry Meier, *OSHA to Propose Beryllium Limit in the Works Since 1975*, THE NEW YORK TIMES (August 5, 2015) <https://nyti.ms/2wpAFGa>.

written plans, to control beryllium exposure, to medical surveillance and training on beryllium hazards.⁴⁴

Despite employers having more than a year to prepare for the new requirements, OSHA delayed enforcement of the general industry standard to “ensure that stakeholders are aware of their obligations, and that OSHA provides consistent instructions to its inspectors.”⁴⁵ United Steelworkers countered “There’s no real justification for this delay ... [which] could eventually cost fifteen lives” based on OSHA’s own estimates.⁴⁶

In OSHA’s proposal to delay certain ancillary requirements for the general industry standard, the agency candidly explained it wanted to shield employers from the “risk of a citation” as it made technical changes to the rule.⁴⁷ Public Citizen cautioned that “delaying the implementation of these vital protections would allow employers to continue to expose workers for an extended period to levels of beryllium that even OSHA acknowledges are harmful to health.”⁴⁸

⁴⁴ Occupational Exposure: Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, 82 Fed. Reg. 29182 (June 27, 2017) (to be codified at 29 C.F.R. 1915, 29 C.F.R. 1926) <https://bit.ly/2LmRxT9>; Letter from Sammy Almashat, MD, MPH, Researcher, Public Citizen’s Health Research Group, and Sidney Wolfe, MD, Founder and Senior Advisor, Public Citizen’s Health Research Group, to Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (August 28, 2017) <https://bit.ly/2wiyS5F>.

⁴⁵ Press Release, Occupational Health and Safety Administration, U.S. Department of Labor, *OSHA Will Enforce Beryllium Standard Starting in May* (March 2, 2018) <https://bit.ly/2FSX82I>.

⁴⁶ Press Release, United Steelworkers, *OSHA Beryllium Enforcement Delay Unjustified* (March 5, 2018) <https://prn.to/2MxyKKA>.

⁴⁷ Letter from Michael Carome, MD, Director, Public Citizen’s Health Research Group, and Meena Aladdin, MS, PhD, Health Researcher, Public Citizen’s Health Research Group, to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 1 (June 29, 2018) <https://bit.ly/2Mrw1SK>.

⁴⁸ Letter from Michael Carome, MD, Director, Public Citizen’s Health Research Group, and Meena Aladdin, MS, PhD, Health Researcher, Public Citizen’s Health Research Group, to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (June 29, 2018) <https://bit.ly/2Mrw1SK>.

II. Inaction Leaves Many Hazards Unaddressed

The energy and resources that the Trump administration has put into delaying and undoing OSHA regulations would have been better spent advancing commonsense workplace protections. This section highlights three neglected areas in which Public Citizen and its partners have called for stronger protections in recent years. However, there is a much longer and ever-evolving list of occupational health and safety gaps and proposals that also warrant attention.⁴⁹ Again, in the absence of these standards, OSHA relies on the deficient “general duty” clause, which provides a general requirement that employers provide safe workplaces.

a. Heat Stress Protections

Excessive heat exposure while on the job can result in heat exhaustion, with symptoms such as nausea, headaches and dehydration, which, if not promptly treated, can lead to heat stroke and death. Already, heat is the leading weather-related killer in the U.S., and climate change is resulting in more days of extreme heat.⁵⁰ With record-breaking summers becoming the norm, outdoor and indoor workers across a wide variety of workplaces will be at greater risk for workplace heat illness. The solutions to heat stress are common-sense: hydration, shade and rest breaks, among other measures. Yet, most employers will not voluntarily establish practices to prevent heat stress in their workplace unless they are required to do so. Inexcusably, approximately 130 million workers in the U.S. lack any protection from a heat stress standard.⁵¹

Despite repeated recommendations by the National Institute for Occupational Safety and Health (NIOSH) and an OSHA advisory board, OSHA has not adopted a federal heat stress standard. Three states—California, Washington and Minnesota—and the U.S. military have issued standards or guidance. In the absence of a federal heat stress standard, OSHA has conducted grossly inadequate enforcement of heat-related dangers. In the five-year period of 2013 through 2017, California's state OSHA used its heat standard to conduct 50 times

⁴⁹ In the Trump Administration's spring 2018 Unified Agenda, it relegated four OSHA regulations to Long-Term Actions, including: Occupational Injury and Illness Recording and Reporting Requirements – MSD Column; Infectious Diseases; Process Safety Management and Prevention of Major Chemical Accidents, and; Shipyard Fall Protection—Scaffolds, Ladders and Other Working Surfaces. Further, it removed two OSHA proposed rulemakings from its agenda, Combustible Dust and Backover Injuries. *Agency Rule List – Spring 2018*, OFFICE OF MANAGEMENT AND BUDGET (viewed on August 16, 2018) <https://bit.ly/2L1a2wo>.

⁵⁰ MICHAEL TANGLIS AND SHANNA DEVINE, PUBLIC CITIZEN, EXTREME HEAT AND UNPROTECTED WORKERS: PUBLIC CITIZEN PETITIONS OSHA TO PROTECT THE MILLIONS OF WORKERS WHO LABOR IN DANGEROUS TEMPERATURES 1 (July 17, 2018) <https://bit.ly/2NoghFo>.

⁵¹ Letter from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 1 (July 17, 2018) <https://bit.ly/2wjlSzy>.

more inspections resulting in a citation or violation for unsafe heat exposure practices than OSHA did nationwide.⁵²

Notwithstanding the low enforcement rate, every single one of OSHA's citations recommended that the employers implement heat stress prevention programs in order to abate the heat-related hazards.⁵³ Moreover, OSHA's website cautions, "Every year, thousands of workers become sick from occupational heat exposure, and some are fatally injured. **These illnesses and fatalities are preventable**" [emphasis not added].⁵⁴ Despite its acknowledgment of the problem, OSHA has yet to issue a standard.

Public Citizen and partners petitioned OSHA for a heat standard in 2011. OSHA rejected it at the time, allegedly because it deemed the risk to workers to be no greater than "significant" and it identified its existing authority to cite an employer for heat hazards under the "general duty" clause.⁵⁵ Then-OSHA administrator David Michaels has since explained the reason for inaction to be competing priorities.⁵⁶ In July 2018, Public Citizen, United Farm Workers, Farmworker Justice and a diverse coalition of more than 130 organizations and former OSHA officials petitioned OSHA for a federal heat standard, which would help to prevent countless injuries, illnesses and deaths caused by heat in a warming climate. Sen. Patty Murray (D-Wash.), ranking member of the U.S. Senate HELP Committee, and Rep. Judy Chu (D-Calif.) both voiced their support for the petition, and Chu announced that she soon will introduce legislation to protect these endangered workers.⁵⁷

b. Safe Patient Handling

Health care workers face more injuries requiring time away from work than employees in any other profession. The primary cause of these injuries is musculoskeletal disorders (MSDs) developed from workers manually lifting and moving patients on a regular basis. MSDs are overexertion injuries to the muscles, nerves, and tendons of the limbs, neck, lower

⁵² Letter from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 17 (July 17, 2018) <https://bit.ly/2wjISzy>

⁵³ MICHAEL TANGLIS AND SHANNA DEVINE, PUBLIC CITIZEN, EXTREME HEAT AND UNPROTECTED WORKERS: PUBLIC CITIZEN PETITIONS OSHA TO PROTECT THE MILLIONS OF WORKERS WHO LABOR IN DANGEROUS TEMPERATURES 1 (July 17, 2018) <https://bit.ly/2NoqhFo>.

⁵⁴ *Occupational Heat Exposure*, U.S. DEPARTMENT OF LABOR (viewed on August 16, 2018) <https://bit.ly/1wVAwUN>.

⁵⁵ Letter from David Michaels, Assistant Secretary for Occupational Safety and Health, to Sidney Wolfe, Director of Public Citizen's Health Research Group (July 7, 2012), <http://bit.ly/2KFB8wZ>.

⁵⁶ Press Release, Public Citizen, *As Climate Heats Up, Government Must Protect Workers From Heat* (July 17, 2018) <https://bit.ly/2LIHloD>.

⁵⁷ Letter from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (July 17, 2018) <https://bit.ly/2wjISzy>; Press Release, Public Citizen, *As Climate Heats Up, Government Must Protect Workers From Heat* (July 17, 2018) <https://bit.ly/2LIHloD>.

back and related areas that result from repetitive or forceful movements.⁵⁸ Experts maintain that this type of manual lifting is unsafe, and NIOSH has concluded that health care workers should not lift more than 35 pounds. However, health care workers are often required to lift far more.⁵⁹

In 2015, Public Citizen released a five-part series, “Nursing: A Profession in Peril,” which documented that nursing employees injured while moving patients often suffered devastating and lifelong consequences, causing some workers to lose their jobs due to injuries.⁶⁰ It also documented the benefits reaped from safe patient handling programs. Patient-handling equipment, such as lifts and slide boards, reduce injuries by taking the strain from lifting patients off of the backs of health care workers. When implemented, programs using these devices are successful.

Nearly a dozen states and the U.S. Department of Veterans Affairs (VA) have enacted safe patient handling programs.⁶¹ When this equipment became the standard of care at the VA hospital system, it reported a decline in occupational injuries by an average of 40 percent.⁶² Studies show these programs consistently recoup their expenses within approximately four years due to lower workers’ compensation costs and other savings from keeping employees healthy.⁶³

OSHA has recognized the dangers of MSDs, and it established a National Emphasis Program in 2012 on ergonomic stressors and other hazards at nursing homes that expired in 2015.⁶⁴ The agency needs to take greater steps to address this problem through a standard requiring health care employers to adopt safe patient handling programs. In its absence, health care workers will remain vulnerable to devastating, career-ending injuries.

c. Lower Line Speeds at Poultry and Meatpacking Plants

Decades of findings by the federal government, worker rights organizations and workers demonstrate that increased line speeds in meat and poultry plants lead to greater worker

⁵⁸ *Musculoskeletal Disorders*, CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (viewed on August 16, 2018) <http://1.usa.gov/1jxz4WV>.

⁵⁹ Thomas R. Waters, *When Is It Safe to Manually Lift a Patient? The Revised NIOSH Lifting Equation Provides Support for Recommended Weight Limits*, 107 AMERICAN JOURNAL OF NURSING 53 (August 2007).

⁶⁰ *Nursing, A Profession in Peril*, PUBLIC CITIZEN (viewed on August 16, 2018) <https://bit.ly/2in2toc>.

⁶¹ *Safe Patient Handling and Mobility (SPHM)*, CENTERS FOR DISEASE CONTROL AND PREVENTION (viewed on August 16, 2018), <https://bit.ly/2D9TNK8>.

⁶² Daniel Zwerdling, *At VA Hospitals, Training and Technology Reduce Nurses’ Injuries*, NPR (February 25, 2015) <https://n.pr/2BRsl6z>.

⁶³ TAYLOR LINCOLN, PUBLIC CITIZEN, *PAY IT FORWARD: PROGRAMS TO PROTECT HEALTH CARE WORKERS SIGNIFICANTLY REDUCE INJURIES AND QUICKLY RECOUP INVESTMENT COSTS* (July 1, 2015) <https://bit.ly/2NaMDdG>.

⁶⁴ Memorandum from Thomas Galassi, Directorate of Enforcement Programs, Occupational Safety and Health Administration, U.S. Department of Labor, to Regional Administrators, Occupational Safety and Health Administration, U.S. Department of Labor (April 2, 2015) <https://bit.ly/2wLwL0Z>.

injuries. Meatpacking workers already suffer from injuries at a rate nearly two-and-a-half times higher than the average national rate, and poultry workers are nearly twice as likely to suffer from serious injuries as other workers in private industry.⁶⁵ Revealingly, poultry industry employers were more than four-and-a-half times more likely than employers in other industries to identify repetitive motion as the exposure resulting in a serious injury in 2013.⁶⁶ Notwithstanding the documented hazards, OSHA has failed to issue a protective standard against dangerous line speeds, and there have been a wave of recent attempts by the poultry and meat industry and the U.S. Department of Agriculture (USDA) to increase line speeds.⁶⁷

In February 2018, a coalition of 35 organizations, including Public Citizen, urged the USDA to withdraw a proposal to increase line speeds for swine plants and to put an end to its high-speed slaughter program. The letter cautioned that plants participating in a pilot program with increased line speeds “have the highest line speeds in the country and therefore may pose the greatest risk of injury to workers.”⁶⁸ The warnings were echoed by a recent congressional letter from more than 60 members of Congress to the USDA that cautioned, “Even at current line speeds, pork slaughter and processing workers face many job risks that can lead to severe injury, illness and death. An increase in line speeds will result in an already dangerous industry becoming more dangerous.”⁶⁹ In 2016, the Government Accountability Office (GAO) reported that OSHA and NIOSH officials “told us line speed – in conjunction with hand activity, forceful exertions, awkward postures, cold temperatures, and other factors such as rotation participation and pattern – affects the risk of both musculoskeletal disorders and injuries among [meat and poultry] workers.”⁷⁰

In the fall of 2013, a network of worker safety groups petitioned OSHA and USDA to regulate and reduce assembly line speeds in meat and poultry processing plants, with a goal of

⁶⁵ Deborah Berkowitz, *At a Glance: The Trump USDA's Proposed New Swine Slaughter Inspection System Will Greatly Endanger Meatpacking Workers*, NELP (viewed on April 12, 2018), <https://bit.ly/2HjNY3e>.

⁶⁶ Memorandum from Thomas Galassi, Director, Directorate of Enforcement Programs, Occupational Safety and Health Administration to Regional Administrators and State Designees, Occupational Safety and Health Administration (Oct. 28, 2015), <http://bit.ly/2B5lHcc>.

⁶⁷ Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4780 (Feb. 1, 2018) (to be codified at 9 C.F.R. 301, 9 C.F.R. 309, 9 C.F.R. 310), <https://bit.ly/2EWxd8o>; Press Release, Public Citizen, *Faster Line Speeds at Hog Slaughter Plants Would Endanger Food Safety, Workers, the Public* (May 2, 2018), <https://bit.ly/2ws1TvE>.

⁶⁸ Letter from 63 Congressional Representatives to Sonny Perdue, Secretary of Agriculture, U.S. Department of Agriculture (April 23, 2018).

⁶⁹ Letter from 35 public interest organizations to Sonny Perdue, Secretary of Agriculture, and Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (February 6, 2018), <https://bit.ly/2F14Fu8>.

⁷⁰ U.S. Government Accountability Office, *ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY* 30 (April 2016), <http://bit.ly/1NSleLl>.

minimizing ergonomic injuries related to high line speeds.⁷¹ While OSHA ultimately denied the petition due to “a lack of resources,” it found that line speed affects the risk of musculoskeletal disorders and injuries among workers.⁷² In fact, for over 30 years OSHA has been aware that faster line speeds result in greater workplace injuries within meatpacking plants. In 1993, OSHA recommended that plants “adjust line speeds” and implement solutions such as “reducing the total number of repetitions per employee by such means as decreasing production rates” in order to decrease the high injury rates of meatpacking workers.⁷³ OSHA should heed the decades of evidence-based findings that oppose increased line in slaughter plants, and issue a line speed standard to promote better worker safety conditions for poultry and meat workers.

⁷¹ Petition from 15 public interest organizations to Thomas Perez, Secretary of Labor, U.S. Department of Labor, David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Tom Vilsack, Secretary of Agriculture, U.S. Department of Agriculture, Elisabeth Hagen, Under Secretary Food Safety, U.S. Department of Agriculture (September 3, 2013), <https://bit.ly/2KpndYR>.

⁷² U.S. Government Accountability Office, ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 29 (April 2016), <http://bit.ly/1NSleLl>; Letter from Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture, to Michael J. Brown, President, National Chicken Council (January 29, 2018), <https://bit.ly/2nzOdu1>; *USDA Denies Poultry Industry's Request to Speed Up the Slaughter Line*, NPR (January 31, 2018) <https://n.pr/2nosG8q>.

⁷³ *Ergonomics Program Management Guidelines for Meatpacking Plants*, Occupational Safety and Health Administration (viewed on April 17, 2018), <https://bit.ly/2HzTvSx>.

III. The Erosion of OSHA

OSHA is responsible both for ensuring the health and safety of America's workers and protecting whistleblowers from retaliation under 22 federal statutes covering topics as diverse as occupational health and safety, the environment, transportation, and consumer and investor protections. The stakes are high for workers, employers and the public. But President Trump's nominee to lead OSHA shares his penchant for deregulation. Meanwhile, the number of work-related fatalities is on the rise, enforcement activity is declining, and OSHA staffing is at its lowest level in decades.⁷⁴ Notwithstanding its limited bandwidth and growing demand, the Trump administration has also taken steps to dismantle or stall the important federal advisory committees comprised of worker and employer representatives and aimed at providing additional occupational health, safety and whistleblower expertise.

a. Dwindling OSHA Leadership, Staffing and Enforcement

As the agency leadership's commitment to enforcing its mission has declined, so has the size of its staff. The OSHA lists vacancies for chief of staff and senior advisers.⁷⁵ Meanwhile, as of January 2018, the number of inspectors had declined by 50 from the previous year, from 814 to 764.⁷⁶ The low staffing levels are attributed in part to the hiring freeze that Trump implemented early in his presidency, as part of a broader campaign to shrink the size of the federal government.⁷⁷ According to Jordan Barab, former OSHA Deputy Assistant Secretary of Labor, some of OSHA's regional staff cautioned that in the wake of the hiring freeze, OSHA's enforcement and whistleblower programs were "falling apart at the seams" and OSHA was "just bleeding."⁷⁸

The staffing reduction hamstringing an already woefully understaffed agency and undermines its credibility amongst employers. David Michaels cautioned, "The lack of new inspectors makes OSHA invisible. If employers don't think OSHA will come, workers are much more likely to be hurt."⁷⁹ Those warnings have already come to fruition, and have disproportionately harmed some of the most neglected areas in the country. Four states in the

⁷⁴ *Number of Fatal Work Injuries by Employee Status*, BUREAU OF LABOR STATISTICS (viewed on August 17, 2018) <https://bit.ly/2o3cARt>; Kay Bechtold, *Panel Raises Concerns About OSHA, NIOSH Under Trump*, AIHA (May 21, 2018), <https://bit.ly/2BZmrBB>.

⁷⁵ *OSHA Organizational Chart*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (June 2018) <https://bit.ly/2wnPhFX>.

⁷⁶ Letter from Keith Ellison, Member of Congress, to Alexander Acosta, Secretary of Labor, U.S. Department of Labor (July 10, 2018) <https://bit.ly/2Lm5twB>; AFL-CIO, *DEATH ON THE JOB: THE TOLL OF NEGLECT 3* (April 2018), <https://bit.ly/2jf6DOW>.

⁷⁷ Lisa Rein, Andrew Ba Tran, *How the Trump Era is Changing the Federal Bureaucracy*, THE WASHINGTON POST (December 30, 2017) <https://wapo.st/2wk314h>.

⁷⁸ Jordan Barab, *OSHA is Bleeding: Shrinking Government and Killing Workers*, CONFINED SPACE (December 31, 2017) <https://bit.ly/2NcnUG1>.

⁷⁹ Suzy Khimm, *Number of OSHA Workplace Safety Inspectors Declines Under Trump*, NBC NEWS (January 8, 2018) <https://nbcnews.to/2D89DGa>.

southeast region lost the most inspectors in the first eight months after Trump took office, and inspections dropped by more than 12 percent compared to 2016.⁸⁰ In Mississippi, which suffers some of the highest worker fatality rates, OSHA inspections fell by more than a quarter during that timeframe.⁸¹ Alabama, Florida and Georgia disproportionately were affected as well.⁸²

From FY 2016 to FY 2017, enforcement units in OSHA's "Enforcement Weighting System"—which accounts for enforcement activity in some of the most hazardous workplaces—decreased by 1,071, from 42,900 to 41,829 enforcement units.⁸³ They declined further by 1,163 in the first five months of FY 2018, according to the National Employment Law Project.⁸⁴ In response to the declining staff and inspections, U.S. Rep. Rosa DeLauro (D-Conn.) cautioned, "OSHA is far too understaffed to fulfill its mandate of reducing workplace injuries. Under the Trump administration, OSHA has suffered a troubling decline in both staff and workplace inspections in key areas of the country."⁸⁵

b. Trump Dismantles Federal Advisory Committees

While OSHA's staff and enforcement activities have declined, the Trump administration has worked to actively dismantle several of its own advisory committees.

Congress enacted the Federal Advisory Committee Act of 1972 to ensure that federal advisory committees are open to the public and carefully vetted prior to their establishment and termination.⁸⁶ Under the Obama administration, OSHA sponsored five advisory committees and one board that advised DOL and OSHA leadership on whistleblower protection activities, and workplace safety and health issues in the general, construction and

⁸⁰ Letter from Rosa DeLauro, Member of Congress, to Loren Sweatt, Acting Assistant Secretary, Occupational Safety and Health, U.S. Department of Labor (October 4, 2017) <https://bit.ly/2N94ulq>.

⁸¹ Letter from Rosa DeLauro, Member of Congress, to Loren Sweatt, Acting Assistant Secretary, Occupational Safety and Health, U.S. Department of Labor (October 4, 2017) <https://bit.ly/2N94ulq>.

⁸² Suzy Khimm, *Number of OSHA Workplace Safety Inspectors Declines Under Trump*, NBC NEWS (January 8, 2018) <https://nbcnews.to/2D89DGa>.

⁸³ According to OSHA, in 2016 it implemented the Enforcement Weighting System, which "assigns a value to specific categories of inspections and investigations. The value is known as an Enforcement Unit (EU) and all inspections receive an EU value of at least one. The new system underscores the importance of the resource-intensive enforcement activity that is focused on some of the most hazardous work place hazards such as ergonomics, heat, chemical exposures, workplace violence and process safety management." *Occupational Health and Safety Administration Enforcement*, U.S. DEPARTMENT OF LABOR (viewed on August 17, 2018), <https://bit.ly/2wvzK6N>.

⁸⁴ Deborah Berkowitz, *OSHA Enforcement Activity Declines Under the Trump Administration*, NELP (JUNE 11, 2018) <https://bit.ly/2wiNQIN>.

⁸⁵ Suzy Khimm, *Number of OSHA Workplace Safety Inspectors Declines Under Trump*, NBC NEWS (January 8, 2018) <https://nbcnews.to/2D89DGa>.

⁸⁶ *Summary of the Federal Advisory Committee Act*, U.S. ENVIRONMENTAL PROTECTION AGENCY (viewed on August 17, 2018) <https://bit.ly/2wkumDy>.

maritime industries as well as the federal government.⁸⁷ Traditionally, the advisory committees have consisted of worker and employer representatives, as well as government officials and health and safety experts.⁸⁸ Three of the five committees are more than 45 years old, and all of the committees have regularly assembled over the decades, until Trump took office that is.⁸⁹

Under the Trump administration, the OSHA advisory committees have virtually stopped convening, their recommendations have stalled, and two of the advisory committees have been disbanded. In recognition of Worker Memorial Week, Public Citizen, the Union of Concerned Scientists and more than 40 organizations in April 2018 called on Department of Labor Secretary Alexander Acosta to re-establish the advisory committees, “This week is Worker Memorial Week, a solemn week to remember those who have lost their lives to workplace hazards and to recommit ourselves to protecting our critical workforce. As Secretary of Labor, you can help honor the lives of those who have suffered from unsafe work environments by reestablishing the importance of and reactivating these critical worker safety advisory [committees].”⁹⁰

In July 2018, Deputy Assistant Secretary Loren Sweatt confirmed that Trump had disbanded two of the advisory committees, the Federal Advisory Council on Occupational Safety & Health (FACOSH) and the Whistleblower Protection Advisory Committee (WPAC). FACOSH was established in 1970 to advise the Secretary of Labor on all matters pertaining to the occupational safety and health of federal personnel⁹¹ In 2017, President Trump did not renew FACOSH by executive order, and according to Sweatt, OSHA has replaced FACOSH with “more focused federal partner safety and health meetings” through the use of Field Federal Safety and Health Councils (FFSHCs).⁹² FFSHCs—forums comprised of local federal

⁸⁷ The committees includes the Maritime Advisory Committee for Occupational Safety and Health, the Whistleblower Protection Advisory Committee, the National Advisory Committee on Occupational Safety and Health, the Advisory Committee on Construction Safety and Health, and the Federal Advisory Council on Occupational Safety and Health.

⁸⁸ *OSHA Advisory Committees*, U.S. DEPARTMENT OF LABOR (viewed on August 17, 2018) <https://bit.ly/2wkn7M2>.

⁸⁹ Rebecca Moss, *Trump's Labor Department Eviscerates Workplace Safety Panels*, PROPUBLICA (March 29, 2018) <https://bit.ly/2pTvJGd>.

⁹⁰ Patty Murray, Ranking Member, U.S. Senate Health Education, Labor, and Pensions Committee and Mara Cantwell, U.S. Senator letter to Alexander Acosta, Secretary of Labor, U.S. Department of Labor (December 13, 2018)

⁹¹ *Federal Advisory Council on Occupational Safety and Health – FACOSH*, U.S. DEPARTMENT OF LABOR (visited on August 17, 2018) <https://bit.ly/2OXJLBC>.

⁹² Letter from Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, to Shanna Devine, Worker Health and Safety Advocate, Public Citizen, et. al. (July 6, 2018)

agency representatives with a focus on occupational safety and health—already were in place prior to the dissolution of FACOSH and cannot credibly be framed as a substitute.⁹³

In addition to the removal of FACOSH, Sweatt indicated that WPAC will be replaced with “focused stakeholder meetings.”⁹⁴ While OSHA and whistleblower stakeholders would benefit from meetings pertaining to each of the agency’s 22 whistleblower statutes, OSHA has only held one such meeting during Trump’s first 20 months in office, so they clearly are not serving as a meaningful substitute for the advisory committee. Further, those meetings serve a more narrow function than WPAC, which was established to advise OSHA on “the development and implementation of improved customer service models, enhancements in the investigative and enforcement process, training, and regulations governing OSHA investigations.”⁹⁵ Those services are desperately needed, as OSHA’s Whistleblower Protection Program faces many structural and financial handicaps, making it difficult to oversee the patchwork of whistleblower statutes that it administers.⁹⁶ In 2016, WPAC issued an updated “Whistleblower Investigations Manual” that sought to make significant improvements to enforcement of the whistleblower statutes under OSHA’s jurisdiction. However, questions remain about effective implementation of the manual. U.S. Sen. Tammy Baldwin (D-Wis.), ranking member of the U.S. Senate HELP Subcommittee on Employment and Workplace Safety, has called for a comprehensive review of the OSHA’s Whistleblower Protection Program.⁹⁷ It is evident that OSHA, and the brave employees who expose workplace abuses, cannot afford to lose any oversight and resources, including that provided by WPAC.

⁹³ FEDERAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, RECOMMENDATIONS REGARDING THE SECRETARY OF LABOR’S FIELD FEDERAL SAFETY AND HEALTH COUNCILS (September 8, 2016) <https://bit.ly/2MqAd5b>.

⁹⁴ Letter from Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, to Shanna Devine, Worker Health and Safety Advocate, Public Citizen, et. al. 1 (July 6, 2018)

⁹⁵ WPAC also advises OSHA on collaboration with other agencies that are responsible for areas covered by the whistleblower statutes enforced by OSHA. *Whistleblower Protection Advisory Committee*, U.S. DEPARTMENT OF LABOR (viewed on August 17, 2018) <https://bit.ly/2P4WVwL>.

⁹⁶ Moreover, most of the statutes enacted before the turn of the 21st century, including the anti-retaliation provision within the Occupational Safety and Health Act, have become obsolete and are virtually unenforceable. *EPA Case Drives Calls to Strengthen Whistleblower Rules for Private Firms*, INSIDE EPA.COM (March 14, 2018); An audit by the Department of Labor Office of Inspector General in September 2015 concluded that: OSHA did not consistently ensure complaint reviews under the Whistleblower Programs were complete, sufficient, and timely; OSHA did not ensure the manual and training reflected the most recent program updates and changing priorities; more than 70 percent of investigations were not conducted within statutory timeframes; and OSHA did not adequately and timely communicate the violations alleged by whistleblowers internally to OSHA’s enforcement units or externally to other federal agencies with jurisdiction to investigate the allegations. OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR, OSHA NEEDS TO CONTINUE TO STRENGTHEN ITS WHISTLEBLOWER PROTECTION PROGRAMS (September 30, 2015) <https://bit.ly/2wk4PdZ>.

⁹⁷ Jordan Barab, “Fund OSHA and List Workers Killed” Says the Senate, CONFINED SPACE (June 29, 2018) <https://bit.ly/2NfpNBX>.

Conclusion

The Trump administration has systematically dismantled fundamental health and safety protections, and undermined the very agency tasked with safeguarding America's workforce. Trump's campaign promise that "the American worker will finally have a president who will protect them and fight for them" cannot withstand scrutiny amid his administration's repeated actions to advance the Chamber of Commerce's deregulatory agenda and leave workers behind.⁹⁸

⁹⁸ Jenna Johnson, *'I Will Give You Everything.' Here are 282 of Donald Trump's Campaign Promises*, WASHINGTON POST (November 28, 2016), <https://wapo.st/2LlycSd>.