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The Honorable David Michaels
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room S-2002
200 Constitution Ave., N.W.
Washington, DC 20210

RE: Docket OSHA-2013-0023-0146, Comment on Proposed Improvement and Tracking of Workplace Injuries and Illnesses

March 10, 2014

Public Citizen welcomes the opportunity to comment on the Occupational Safety and Health Administration's (OSHA) proposed standard to Improve Tracking of Workplace Injuries and Illnesses published on November 8, 2013.¹ Public Citizen is a national, nonprofit public interest organization with 300,000 members and supporters that advocates for public health and safety interests before Congress, the executive branch agencies and the courts.

More than 8,400 of our members support OSHA's move to modernize recordkeeping system and have called for improvements to the proposed rule. The 8,416 members and supporters of Public Citizen whose names are gathered in the attached petition signed onto the following statement:

We, the undersigned, encourage the Occupational Safety and Health Administration to move full steam ahead with the "Improve Tracking of Workplace Injuries and Illnesses" rulemaking. In order to keep America's workers safe, OSHA needs access to information about companies' safety records in a timely manner. Further, that information must be delivered in a format that allows OSHA to efficiently analyze it for workplace hazards.

Protecting America's greatest asset, its workers, should be the top priority of the agency. Any rule that would make the process more efficient should be adopted.

The online petition can be found on Public Citizen's website at the following URL: <http://pubc.it/OSH32014> and the listed names of the signers have also been made a part of this comment (attached).

¹ Federal Register, Docket OSHA-2013-0023-0146, November 8, 2013 <https://federalregister.gov/a/2013-27366>.

Introduction

We applaud OSHA for putting forth a new standard to improve tracking of workplace injuries and illnesses. As demonstrated by the extensive evidence compiled by OSHA, the current recordkeeping standard is badly outdated and does not adequately allow workers, their representatives and the public access to injury and illness data in a timely fashion.

OSHA's amendments to the current rule will improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data. At present, OSHA does not have direct access to an establishment's injury and illness data log. This void leaves the agency to rely on data that is over a year old when attempting to respond to hazardous workplace conditions.

While we are generally supportive of OSHA's proposed rule, we believe there are ways to improve and strengthen the rule that we identify in further detail below. We believe it is crucial that OSHA adopt the most protective standard with respect to recordkeeping, and we encourage OSHA to consider and adopt the recommendations below that we believe are fully within OSHA's authority and responsibility under the Occupational Safety and Health Act (OSH Act).²

Electronic Reporting

OSHA has said it is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of the injury and illness information that employers are already required to keep under Part 1904 of the Occupational Safety and Health Act, 1970.

The proposed rule amends 29 CFR 1904.41 to add new electronic reporting requirements which would require all establishments with 250 or more employees, to electronically send all their recordkeeping data to OSHA quarterly. The improved tracking system would also require establishments with 20 or more employees, in certain industries with high injury and illness rates, to electronically send their annual summary data to OSHA once a year.

Several government agencies require electronic submission of records and or some level of reporting annually, quarterly, monthly and in some cases biweekly. For example the Federal Elections Commission requires federal candidates to disclose their political contributions on a quarterly basis and during an election year these candidates are required to disclose their contributions monthly and in some cases biweekly.³

The Security and Exchange Commission requires publicly traded companies to disclose information on an ongoing basis. For example, domestic issuers (other than small business issuers) must submit annual reports on Form 10-K, and quarterly reports on Form 10-Q, and current reports on Form 8-K for a number of specified events and must comply with a variety of other disclosure requirements.⁴

² The Occupational Safety and Health Act, 29 U.S.C. §651(1970).

³ Federal Election Commission, *2014 Reporting Dates* http://www.fec.gov/info/report_dates.shtml.

⁴ United States Securities and Exchange Commission, *Filings and Forms* (2014), <http://www.sec.gov/edgar.shtml>.

The Equal Employment Opportunity Commission (EEOC) collects workforce data from employers with more than 100 employees, with lower thresholds applied to federal contractors.⁵ Employers meeting the reporting thresholds have a legal obligation to provide the data; it is not voluntary. EEOC data is collected using electronically submitted reports and is used for a variety of purposes including enforcement, self-assessment by employers, and research. Each of the reports collects data about gender and race/ethnicity by some type of job grouping.

The Department of Labor Office of Labor Management Standards requires that Form LM-2 be filed electronically using the OLMS Electronic Forms System.⁶ The Electronic Forms System is a web-based system for completing, signing, and submitting Labor Organization Annual Financial Reports.

It is apparent that the government, particularly the Office of Labor Management Standards and the EEOC have enough experience in creating electronic filing systems that are downloadable, sortable and available to the public. There is no reason for OSHA to rely on the archaic method of paper filing, especially when other departments at the Department of Labor are already requiring electronic reporting.

Wider Protections Needed

Employer practices, policies and programs that discourage workers from reporting injuries and illnesses are prevalent in today's workplaces and they have devastating consequences. For example, in a recent study researchers found that fifty-eight percent of survey respondents reported some a negative consequence for reporting work-related injuries on their current jobsite and reporting of work-related injuries was fifty percent less prevalent when workers were disciplined for injury experiences.⁷ In the same study it is also noted that workers experience considerable fear of reprisal for reporting injuries.⁸ Less than half (46.4%) reported that work-related injuries were reported in their current workplace all or most of the time; thirty percent said they were almost never or rarely reported.⁹

OSHA's proposed changes to the recordkeeping rule will promote employers' increased use of these practices unless there is a provision added to the recordkeeping rule that prohibits employers from having programs, practices and policies that discourage workers from reporting injuries and illnesses. This provision must be enforceable through penalties and citations in the same manner as violations of other provisions of the recordkeeping rule itself.

⁵ United States Equal Employment Opportunity Commission, *EEO Reports and Surveys* (2014). <http://www.eeoc.gov/employers/reporting.cfm>.

⁶ United States Department of Labor Office of Labor-Management Standards, Form LM-2 Labor Organization Annual Report (2014). <http://www.dol.gov/olms/regs/compliance/lm2.htm>.

⁷ Lipscomb HJ, Nolan J, Patterson D, Sticca V, Myers DJ. Safety, incentives, and the reporting of work-related injuries among union carpenters: "you're pretty much screwed if you get hurt at work," (2013). <http://www.ncbi.nlm.nih.gov/pubmed/23109103>.

⁸ *Id.*

⁹ *Id.*

Without the addition of this provision banning employers' disincentive practices and programs, OSHA's goals for its proposed Recordkeeping Rule changes to improve workplace safety and health will not be realized. Employers submitting data showing low injury/illness rates could well be employers with effective practices that discourage workers from reporting injuries and illnesses. When injuries don't get reported, the hazards and hazardous conditions causing them don't get identified or addressed, and workplace health and safety is degraded as a result.

OSHA's proposed standard will substantially increase the amount, types and timeliness of workplace injury and illness data and will allow occupational safety and health researchers to identify emerging workplace hazards on a quarterly basis.

Again, Public Citizen applauds OSHA for its efforts to update badly outdated recordkeeping rules. Nevertheless, we believe that OSHA could significantly strengthen the new standard by banning employers' disincentive practices and programs. We appreciate OSHA's consideration of our comment and look forward to OSHA finalizing and instituting a new recordkeeping standard in a timely fashion.

Sincerely,

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