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OSHA Docket Office
Docket No. OSHA-2013-0023
Room N-3653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted Electronically Via: *https://www.regulations.gov/*

Re: Proposed Amendment to the Improved Tracking of Workplace Injuries and Illnesses Rule
Docket Number: OSHA-2013-0023
RIN Number: 1218-AD17

Acting Assistant Secretary Sweatt:

We welcome the opportunity to comment on the proposed rule to amend OHSA's recordkeeping requirements at 29 CFR Part 1904 to alter injury reporting requirements for establishments with more than 250 employees. We believe that the existing final rule, known as the Improved Tracking of Workplace Injuries and Illnesses Rule, issued in May 2016 (81 FR 29624) should remain unchanged for the reasons set forth below.

The Utility Workers Union of America represents more than 50,000 workers in the electric, gas and water utility sectors. Our members maintain and operate utility infrastructure throughout the United States and are exposed to workplace hazards at establishments of many sizes, including those with over 250 employees. It is our position that allowing large employers to conceal their injury records will serve only to leave at-risk workers less informed as to potential workplace hazards and will have no appreciable benefit for worker privacy – an issue that, in our estimation does not currently exist.

OSHA's 2016 Final Rule Improved Health and Safety for Workers

The Administration's 2016 Improve Tracking of Workplace Injuries and Illnesses Rule represented a positive leap forward for OSHA's mission to ensure workplace safety by providing workers, employers, public health officials, researchers, and the public access to significantly more, and higher quality, data describing the nature and amounts of workplace accidents, injuries, and illnesses. In doing so, it empowered each of these communities both to gain a greater understanding of the threats to safety that were present and to better grapple with finding solutions to prevent them from occurring. Prior to this rule, there was no systematic method for accessing such data in a timely, direct manner, leaving much information unusable for achieving OSHA's institutional mission of safeguarding workers' health.

The greater detail required of employers with over 250 workers on OSHA Forms 300 and 301 creates transparency for an issue that benefits from public scrutiny and, most importantly, expressly does so without requiring information that would reveal an individual worker's identity. Reversing this rule would serve only to hide valuable data, while doing nothing to further worker privacy, which is already protected.

Detailed Injury and Illness Reporting Does Not Threaten Worker Privacy

The 2016 injury reporting rule was designed expressly to protect worker privacy. No individual worker data is required to be reported. Rather, specific direction was provided by OSHA to employers NOT to include any such identifying information. Further, any such information mistakenly reported was to be removed from the data by OSHA and not made public, so prescriptive was the 2016 directive.

Further, there is nothing to prevent OSHA, were any such data to be present, from withholding it in response to a FOIA request. Indeed, FOIA information is routinely redacted by agencies for the express purpose of protecting personal privacy, classified secrets, proprietary data, and other non-public information. It is the purpose of a FOIA request simply to access *publicly available* information, not *all* information. In any event, this point is mostly moot since, as noted above, personally identifiable information is not requested by OSHA's 2016 rule and would be expunged by OSHA were any such to be provided.

There is nothing unique is collecting detailed public health information while protecting personal identity. The Mine Safety and Health Administration, for example, as well as other federal, state, and private entities routinely collect injury, illness, health and medical information while maintaining strict confidentiality protocols that still allow the data to be used for the purpose of protecting worker and public health. There is no discernible reason why OSHA data reporting should present a special case in this regard, particularly as the reporting requirements seek no such data in the first instance.

Detailed Injury and Illness Data Assists in Identifying Workplace Hazards

Identifying and preventing workplace injuries and illnesses is the institutional mission of OSHA. Higher quality data, that is more accessible and transparent, aids that mission. In prioritizing its enforcement resources, for example, OSHA would be much better equipped to do so given greater detail on the types and extents of risks present in American workplaces. Knowing more about why and how frequently certain injuries and illnesses occur make it possible to hone in on those of greatest concern.

Workers and their representatives, by having access to this detailed information are better equipped to compare and contrast accidents and illnesses across facilities to understand where certain best practices exist, and where such practices should be introduced. Lacking access to detailed data makes it nearly impossible to become aware of both good and bad examples of safe workplaces, and more difficult to improve safety where necessary.

Public health officials, with more detailed data, can identify and get ahead of emerging patterns of illness and injury, employers would be able to benchmark their performance against companies, and health and safety researchers are better equipped to study the causes of illness and injury and recommend preventive measures – all of which are gauged toward fulfilling the underlying institutional mission of OHSA to safeguard workplace safety.

OSHA's 2016 Final Injury Tracking Rule Should be Maintained

All of the provisions of the 2016 Injury Tracking Rule are supported by worker organizations including summary reporting, detailed reporting, and anti-retaliation protections. Each is important in its own way and should be preserved.

Rolling back the Rule simply by stating that certain reporting requirements may be perceived as onerous overlooks the original rulemaking process into which all parties provided input. These perceptions were already balanced against the benefits of more detailed reporting in the process of creating the 2016 rule. The benefits of worker safety and health having been judged to be better served by more – and more accessible – data, such benefits should not now be removed without showing new reasons for doing so, reasons that were not previously considered, and which represent actual issues, not issues such as worker privacy which, as previously discussed do not exist as they were intentionally addressed and guarded against in the original rulemaking.

We thank you for the opportunity to provide public comment, and urge that action be taken to the fullest extent necessary, in order to protect workers by maintaining the current final rule in its existing form without amendment.

Sincerely,

John 'Scotty' MacNeill
National Safety Director
Utility Workers Union of America, AFL-CIO