



# AFL-CIO

AMERICA'S UNIONS

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June 30, 2022

Douglas Parker

Assistant Secretary for Occupational Safety and Health

U.S. Department of Labor

200 Constitution Ave., N.W.

Washington, DC 20210

**Re: OSHA's Proposed Rule on Improve Tracking of Workplace Injuries and Illnesses (Docket No. OSHA-2021-0006; Document ID: OSHA-2021-0006-0006)**

Dear Mr. Parker:

The AFL-CIO, a federation of 57 national unions, representing 12.5 million working people, welcomes the opportunity to comment on OSHA's most recent proposed rule to Improve Tracking of Workplace Injuries and Illnesses. The AFL-CIO has a long-standing history with workplace injury and illness recording and reporting requirements that date back to the Occupational Safety and Health Act, and we have been active throughout the most recent iteration of this rulemaking (i.e., when changes were initially proposed in 2014). The AFL-CIO also participated on the National Academy of Sciences, Engineering and Medicine Committee on Developing a Smarter National Surveillance System for Occupational Safety and Health in the 21st Century, which issued a comprehensive study and recommendations on improving workplace injury and

illness data.<sup>1</sup> In addition to the comments submitted here, we request that OSHA review our previous comments on this topic under the previous docket (OSHA-2013-0023) and make this previous docket part of this current rulemaking record

We support this proposal to expand the electronic injury and illness tracking rule to restore key reporting requirements that were eliminated during the Trump administration. We also urge the agency to address flaws within the proposed rule that would exclude reporting from employers in several important industries, before publishing a stronger, revised final rule.

In 2014, OSHA proposed changes to its recordkeeping regulations to require employers to proactively submit existing injury and illness records to OSHA and to do this electronically—for the first time. Before this, employers were required to keep injury records, but these would not be seen by OSHA unless the agency conducted an inspection, and even then, would not be used as a preventive tool to identify hazards. This new undertaking by OSHA was a major step forward in modernizing the agency and utilizing injury and illness data to prevent future work-related injuries, illnesses and death.

In 2016, OSHA finalized that rule, requiring establishments to electronically submit summary injury and illness data to OSHA, as long as their industries were already subject to OSHA’s recordkeeping regulations. All establishments with 20 or more employees in certain designated NAICS codes were required to electronically submit 300A summary reports. In addition, the rule required all large establishments—those with 250 employees or more, regardless of their NAICS code—to electronically submit not only the 300A summary records but also the detailed injury data (OSHA 300 logs) and individual injury case reports (Form 301) to OSHA. This rule also strengthened anti-retaliation protections for workers by specifically prohibiting employers from discouraging or retaliating against workers for reporting injuries. However, in 2019, under the Trump administration, this rule was weakened to no longer require large establishments with 250 or more employees to submit the detailed injury data from 300 logs or the Form 301 individual reports, but the other recently finalized requirements remained in place. This change made it more difficult for OSHA, employers, unions, workers and public health agencies to identify dangerous working conditions across large establishments and industries.

The current proposed rule open for comment would reinstitute these requirements for large establishments to electronically report all three forms (OSHA 300A summary reports, OSHA 300 logs with detailed injury data, and Form 301 individual injury case reports) and expand the size requirement for those considered “large” establishments under the rule to those with 100 or more employees, rather than 250. However, the proposed rule exempts some of these large establishments (with 250 or more, who currently report) in certain industries from the reporting requirements based on very limited injury and illness data, and even though they are currently already required to record and electronically submit this information under the current rule. Instead, for establishments of 100 or more employees, OSHA now proposes to require the

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<sup>1</sup> National Academy of Sciences, Engineering and Medicine Committee. 2018. Developing a Smarter National Surveillance System for Occupational Safety and Health in the 21st Century. National Academies Press, Washington, DC.

submission of 300A summary forms for only selected establishments listed in Appendix A and the submission of detailed data for only selected establishments in Appendix B. These new exemptions exclude many high-risk industries.

We strongly support OSHA’s proposal to reinstate the detailed injury and illness reporting requirements for large establishments and expand this requirement to establishments with 100 or more employees. But in order to ensure the greatest utility of these data and information, OSHA must include all industries currently required to report under the existing injury tracking regulation, not introduce new exemptions, and must finalize this rule quickly. The date of this proposal has already delayed the ability of OSHA to institute final reporting requirements from beginning until at least 2024.

The collection of existing injury and illness data in large establishments and its public availability will make critical information accessible to workers, employers, the government and researchers on the types of injuries and illnesses in individual workplaces that will improve interventions and address worker exposure to hazards and prevent work-related injuries, illnesses and deaths.

**I. Electronic submission of injury and illness records is commonsense, provides valuable and preventive health and safety information, and maintains confidentiality of workers.**

**A. Electronic recordkeeping modernizes OSHA and is a feasible, commonsense action for injury and illness data.**

Employers are already required to record and maintain OSHA 300 logs, individual incidence 301 reports and OSHA 300A summary forms. Requiring large establishments to electronically provide this information to OSHA is commonsense to bring injury and illness recordkeeping into the 21st century and was strongly supported with substantial evidence and extensive public input in the 2016 rule’s docket. The 2018 report by the National Academy of Sciences referenced above also supported OSHA’s efforts to collect detailed electronic records of injury and illnesses data and made recommendations to improve occupational safety and health surveillance under the assumption that the OSHA 300A, 300 and 301 forms would be available for public use. The Government Accountability Office has <sup>2</sup>

Further, since OSHA’s resources are very limited, the agency must maximize the use of existing tools. If records are not electronically submitted to OSHA on a regular basis, injury and illness records that employers are already required to keep would not see the light of day without an OSHA inspection. Based on FY 2021 inspection data, it would take Federal OSHA 236 years to

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<sup>2</sup> United States Government Accountability Office. “Enhancing OSHA’s Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data. Nov. 16, 2009. <https://www.gao.gov/products/gao-10-10>.

inspect every workplace once; even using pre-pandemic FY 2019 data, this figure was 162 years.<sup>3</sup> This means that even OSHA would never see most employers' injury and illness records that should be used for preventing injuries and illnesses and saving lives, and would not make the most of workplace data already at-hand.

**B. Proactive, comprehensive collection of this information will prevent workplace injuries, illnesses and deaths.**

The AFL-CIO has written at length about the value and utility of detailed injury and illness data that is provided by the detailed Form 300 and Form 301. Additionally, the NAS report referenced above made recommendations on ways the public data could be utilized by employers, researchers, government agencies, and workers. To reiterate our previous comments, the collection of detailed injury and illness data from large establishments is useful for both a broad range of purposes and groups of individuals.

The data can be used by OSHA more effectively to target enforcement, compliance assistance and outreach efforts. If OSHA had access to this detailed information during the first years of the COVID-19 pandemic, it could have been used to more effectively target industries and occupations with the highest rates of COVID-19. For example, in the state of Washington, the state's Safety and Health Assessment and Research for Prevention program collected COVID-19 infection and fatality information by industry and its state OSHA plan was able to utilize the information to more effectively target their resources to help employers develop plans to prevent COVID-19 exposures and enforce their state requirements to have a COVID-19 safety plan.

The data are also valuable for hazard identification, control and industry comparisons for workers, worker representatives and employers. Proactive collection and access to this information provides a direct way for workers and their representatives to access data for an establishment, on a corporate-wide basis, and across the industry and it prevents retaliation against workers who request information under 1904.35. These data would also provide employers direct access to detailed injury and illness information to compare their injury records and experience with others in the same industry.

Accessible, detailed data would also provide an invaluable source of information for researchers on safety and health hazards in the workplace. The only detailed injury data available to researchers come from the Survey of Occupational Injuries and Illnesses conducted by the Bureau of Labor Statistics. However, these data are voluntarily reported and only by a sample of employers. Studies have shown that the SOII data have significant limitations and that consistent and representative mandatory reporting would provide a more accurate data source for research on causes of injuries and illnesses and prevention methods to track improvements and emerging issues.

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<sup>3</sup> AFL-CIO. Death on the Job: The Toll of Neglect, 2022. [aflcio.org/reports/death-job-toll-neglect-2022](https://aflcio.org/reports/death-job-toll-neglect-2022).

**C. OSHA should make injury and illness data publicly accessible and at the same time, can ensure personally identifiable information is protected.**

The preamble to the 2016 final rule included a comprehensive review of privacy issues raised by stakeholders in requiring the collection of detailed injury and illness data and the final language was crafted to provide safeguards to protect the release of personally identifiable information (PII). The proposed rule has also considered PII and includes the same safeguards as the 2016 final rule and discusses recent technological developments that increases the agency's ability to manage information. 87 FR 18538-46. Additionally, this information has already been shown by other agencies it can be collected and shared without violating confidentiality, such as by Mine Safety and Health Administration (MSHA). All data provided under the Freedom of Information Act and Form 300 and Form 301 provided to workers and their representatives upon request under 1904.35 provide detailed injury and illness information without releasing PII. The AFL-CIO has written extensively on the preventive measures in place to protect injured workers' privacy and included the forms and protocols MSHA uses to protect PII. *See* OSHA-2013-0023-0288. OSHA should maintain the same privacy safeguards in the rule it issued in 2016, also proposed in this preamble and used by other agencies to protect sensitive information.

**II. OSHA inappropriately proposes to exclude large employers in certain industries from submitting summary and detailed injury and illness data.**

The proposed rule contains two new exclusions that result in further limiting injury and illness data collected from important industries. The final rule must ensure that large establishments provide both summary and detailed injury and illness data so that current and emerging hazards can be identified and addressed by OSHA, researchers and other local and state governments, employers, workers and their representatives.

**A. OSHA must maintain requirements for all large employers to electronically submit summary injury and illness records.**

The first exclusion uses appendix A to exempt both smaller and larger establishments from reporting and will result in there being no injury and illness data collected in high hazard industries that are essential to monitor. This is a deviation from existing requirements which require all establishments with 250 or more employees that are subject to general recordkeeping standards to electronically submit their summary injury data, Form 300A. Those that would be newly exempted include some wholesalers with DART rates above 2.0 per 10,000 workers in 2020 (e.g., NAICS: 4231, 4233, 4235, 423930, 4244, 4248, 4249), home health services, an

industry heavily affected by COVID-19 (NAICS: 6216), and employment services that includes vulnerable temporary workers (NAICS: 5613).<sup>4</sup> The preamble to the proposed rule discusses that applying Appendix A to large establishments of 250 employees or more will result in 2,665 establishments no longer being required to electronically submit data. 87 FR 18536. There is no reason that these establishments should be excluded from a standard they are already subject to and have been complying with. OSHA should at minimum, maintain the requirements for large establishments in these sectors that are already in place.

While some of these industries have not always been identified as high-hazard industries, setting criteria with outdated and limited SOII data will lead to missing valuable information that would capture them as highly hazardous in the future. As we will discuss more in-depth, limiting the data these industries provide the agency would severely limit the ability to track and identify emerging workplace hazards, which can be seen from the current data on respiratory illnesses.

The second exclusion uses Appendix B to exempt detailed data reporting by large establishments in certain industries, which further limits the ability to identify trends among workplace hazards in high risk industries. Appendix B does not include a significant number of large establishments in high-hazard sectors including all of the utility sectors and almost all of the construction industry. Specifically, industries with large establishments that are not included in proposed Appendix B (*i.e.*, therefore exempt) and had total recordable cases of injuries and illness rates 3.5 or higher in 2020 includes logging (1133), water, sewage and other systems (2213), residential building construction (2361), furniture stores (4421), specialty food stores (4452), vending machine operators (4542), direct selling establishments (4543), taxi and limousine services (4853), support activities for rail, road and other transportation (4882, 4884, 4889), local messengers and local delivery (4922), automotive equipment rental and leasing (5321), community food and housing, and emergency and other relief services (6242) and dry cleaning and laundry services (8123). The most recent data show these industries have significant workplace hazards resulting in high rates of injuries and illnesses and should be required to submit the injury data they already are required to collect.

## **B. Setting reporting criteria based on BLS data is ineffective and limiting.**

The agency determined these exclusions based on previous injury and illness data collected by BLS. Appendix A includes industries that had injury and illness rates that resulted in days away from work, restriction, or job transfer (DART) higher than 2.0 per 100,000 workers as a three-year average from 2011 to 2013. Appendix B includes industries that had a total recordable injury and illness rate higher than 3.5 per 100,000 workers as a three-year average from 2017 to 2019. From the examples provided, it is clear that relying on SOII data, even recent three year

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<sup>4</sup> OSHA-2021-0006-0003; U.S. Department of Labor, Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, 2020.

averages, is not an effective way to ensure high-hazard industries are captured consistently in the data for effective use of it.

Furthermore, relying on these data to create exclusion criteria ignores the known limitations of current workplace injury and illnesses data. Over the last decade, studies have documented that the BLS injury and illness survey fails to capture an estimated 33-69% of work-related injuries.<sup>5,6,7,8</sup> Some of the undercount has been attributed to injuries and illnesses excluded from the BLS survey's scope and the design of the survey.<sup>9</sup> BLS has recognized the limitations of their data and has launched pilot programs to improve completeness and accuracy of its injury and illness statistics, but this work is ongoing and this issue remains a significant limitation. Consistent mandatory reporting directly to OSHA should be used to improve workplace health and safety statistics, not be influenced by the issues that are currently plaguing other workplace injury and illnesses data sources.

### **C. Detailed injury and illness data can be utilized to protect workers by identifying emerging hazards.**

The detailed injury and illness information provided through OSHA's Form 300 and 301 are critical to identifying how and why workplace injuries and exposures occur through descriptions of the incident. This information, while helpful to evaluate all workplace hazards, is particularly useful to identify and assess emerging hazards. These data could have been utilized in the first years of the COVID-19 pandemic to not only identify COVID-19 infections in the workplace, but to determine how exposures occurred in the workplace, just like any other hazard. From a review of the most recent OSHA 300A summary data for 2021 that is publically available, there are a number of respiratory illnesses occurring in workplaces across industries such as health care, food processing, retail and transit. Detailed information from OSHA Forms 300 and 301 could have been used to identify where effective mitigation measures were necessary to reduce exposures, and could have been incorporated into agency guidance, enforceable standards, and enforcement initiatives, and used to inform employer and union COVID-19 safety plans. Without

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<sup>5</sup> Boden, L.I., and A. Ozonoff. "Capture-Recapture Estimates of Nonfatal Workplace Injuries and Illnesses." *Annals of Epidemiology* 18, No. 6. 2008. Available at [10.1016/j.annepidem.2007.11.003](https://doi.org/10.1016/j.annepidem.2007.11.003).

<sup>6</sup> Rosenman, K.D., A. Kalush, M.J. Reilly, et al. "How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System?" *Journal of Occupational and Environmental Medicine* 48, No. 4, 357-67. April 2006. Available at [10.1097/01.jom.0000205864.81970.63](https://doi.org/10.1097/01.jom.0000205864.81970.63).

<sup>7</sup> Davis, L., K. Grattan, S. Tak, et al. "Use of Multiple Data Sources for Surveillance of Work-Related Amputations in Massachusetts, Comparisons with Official Estimates and Implications for National Surveillance." *American Journal of Industrial Medicine* 57, No. 10. April 29, 2014. Available at [10.1002/ajim.22327](https://doi.org/10.1002/ajim.22327).

<sup>8</sup> Wuellner, S., and D. Bonauto. "Injury Classification Agreement in Linked Bureau of Labor Statistics and Workers' Compensation Data." *American Journal of Industrial Medicine* 57, No. 10. Dec. 17, 2013. Available at [10.1002/ajim.22289](https://doi.org/10.1002/ajim.22289).

<sup>9</sup> Wiatrowski, W.J. "Examining the Completeness of Occupational Injury and Illness Data: An Update on Current Research." *Monthly Labor Review*. June 2014. Available at [BLS.gov/opub/mlr/2014/article/examining-the-completeness-of-occupational-injury-and-illness-data-an-update-on-current-research.htm](https://www.bls.gov/opub/mlr/2014/article/examining-the-completeness-of-occupational-injury-and-illness-data-an-update-on-current-research.htm).

this information, more than two years later, research studies are using the limited fatality and illness data to conclude that individuals with low socioeconomic positions who have been in the workplace with “never remote” jobs are at high risk of exposure.<sup>10</sup> However, as there is no standardized reporting system for COVID-19 across industries, nor detailed injury and illness information reported from large establishments, there continues to be limited information on specific occupations, tasks and circumstances of COVID-19 exposure and would directly drive prevention efforts. OSHA must require large establishments to report detailed injury and illness case information to the agency for use by the government, workers, worker representatives, employers and researchers to identify, understand and control other emerging workplace hazards.

**III. The AFL-CIO recommends OSHA strengthen its proposed requirements to ensure summary and detailed injury and illness data are reported by large establishments and available for use to protect workers.**

The AFL-CIO urges OSHA to require all large establishments with 100 or more employees, currently subject to recordkeeping standards, to electronically report detailed injury and illness information. This would include expanding the current requirement for large establishments with 250 or more employees currently subject to recordkeeping standards to electronically report their OSHA 300A summary form to all establishments with 100 or more employees and the same large establishments to submit the detailed OSHA Forms 300 and 301, as the value of these data has been thoroughly explained by the agency and record of evidence in the 2016 final rule.

This would undo the weakening changes to the injury tracking rule unjustifiably put in place by the Trump administration and provide the agency and the public with the injury and illness data intended under the final rule issued in 2016, providing a richer data source through the inclusion of more types of large establishments. We continue to support establishments with fewer than 100 employees to continue submitting summary injury information.

If OSHA decides not to require detailed reporting for all establishments greater than 100 employees, for the largest establishments (i.e. those with 250 or more employees), we urge the agency to reinstate the same provisions as the 2016 final rule and ensure all large establishments with 250 or more employees submit both summary data and detailed OSHA Forms 300 and 301, with no exclusions based upon industry injury rates. At a minimum, all large establishments with more than 250 or more employees in all industries should be required to submit data from the OSHA 300 log (in addition to the OSHA 300A summary report), which provides critical, useful detailed information such as job title, location of incident and an incident description, and can be provided electronically by employers with minimal burden.

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<sup>10</sup> Pathak, Elizabeth B., Janelle M. Menard, Rebecca B. Garcia, and Jason L. Salemi. 2022. "Joint Effects of Socioeconomic Position, Race/Ethnicity, and Gender on COVID-19 Mortality among Working-Age Adults in the United States" *International Journal of Environmental Research and Public Health* 19, no. 9: 5479. Available at [doi.org/10.3390/ijerph19095479](https://doi.org/10.3390/ijerph19095479).

In conclusion, the AFL-CIO strongly supports OSHA's efforts to reinstate the requirement for large establishments to electronically submit detailed injury and illness data and to make these data that are already collected both publicly available and accessible. We also support OSHA's proposal to expand the definition of a large establishment from 250 or more employees to 100 or more employees, but do not support additional industry exclusions that OSHA newly introduced in this proposal. If OSHA does not collect the data in a proactive manner, it is a lost opportunity to know critical information on workplace injuries and illnesses. We urge the agency to expeditiously issue a final rule so that reporting can begin in 2024 and so that we can use limited resources to prevent workplace injuries and illnesses, and save lives.

Sincerely,

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Safety and Health Director

MK Fletcher, MSPH

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