Comments of the AFL-CIO on The Occupational Safety and Health Administration's Proposed Rule on Improve Tracking of Workplace Injuries and Illnesses, Docket No. OSHA - 2013-0023

March 10, 2014

The AFL-CIO, a federation of 56 national unions, representing 12.5 million working people in this country, welcomes the opportunity to present its views on OSHA's proposed rule on Improve Tracking of Workplace Injuries and Illnesses. (78 Fed. Reg., November 8, 2013, pp 67254-83).

The AFL-CIO has a long and deep involvement with the injury recording and reporting requirements under the Occupational Safety and Health Act. The federation advocated for the inclusion of injury and illness recording and reporting requirements in the 1970 statute and participated in the development of the original recordkeeping requirements and the Bureau of Labor Statistics injury and illness statistical programs. Since the early 1970's we have participated in every major initiative to improve the workplace injury recordkeeping and reporting system and workplace injury and illness data including the 1986 National Academy of Sciences Panel on Counting Injuries and Illnesses in the Workplace: Proposals for a Better System, the Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping and the resulting OSHA rulemakings on injury recording and reporting.[1,2] The AFL-CIO is also a major user of the injury and illness data that is collected through the injury recordkeeping and reporting system for policy and research purposes. In particular, we make extensive use of this data in the preparation of our annual report *Death on the Job: The Toll of Neglect. A National and State-by-State Profile of Worker Safety and Health in the United States*, which we have produced since 1992.[3]

We support OSHA's proposed rule that will require employers to electronically report to OSHA injury and illness data that is collected at the workplace and OSHA's plans to make this data publicly available on its website. The collection of this data and its public availability will provide information to workers, employers, the government and researchers on the extent, and for some employers the types, of injuries and illnesses occurring in individual workplaces that will greatly aid efforts to address the hazards and exposures responsible for job injuries, illnesses and deaths.

Our comments below outline in more detail our support for the proposal, why and how the standard must be strengthened to address employer efforts to suppress injury

[1] Counting Injuries and Illnesses in the Workplace: Proposals for a Better System, Panel on Occupational Safety and Health Statistics, National Academy Press, Washington, DC. 1987

[2] Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping: Final Report, The Keystone Center, Colorado, January 31, 1989

[3] The 2013 "Death on the Job" Report can be accessed at: http://www.aflcio.org/Issues/Job-Safety/Death-on-the-Job-Report.

reporting that may arise due to the rule, enterprise-wide reporting and other issues related to the proposed rule.

The Proposed Injury Tracking Rule Builds on the Department of Labor's Decades Long Efforts to Improve and Utilize Workplace Injury and Illness Data for Prevention Purposes.

Complete and accurate recording and reporting of work-related injury and illness data is one of the cornerstones of the OSH Act. The Act includes specific provisions on the work-related injuries and illnesses that must be recorded by employers and directs and authorizes the Secretary of Labor, in cooperation with and Secretary of Health and Human Services, to require the reporting of such information and to develop a program of occupational safety and health statistics. At the Department of Labor, OSHA and the Bureau of Labor Statistics (BLS) have jointly shared these responsibilities, with OSHA focusing on workplace injury recording and reporting and the BLS collecting and producing injury, illness and fatality statistics.

Since the initial implementation of the Act in the 1970's, there have been a series of efforts to improve the system of occupational injury and recording and reporting and the accuracy and completeness and utility of this information for prevention purposes. In the 1980's, in response to Congressional concerns that the injury and illness data collected and statistics generated by the BLS were extremely limited, incomplete and insufficient for prevention purposes, the National Academy of Sciences conducted an in depth review of the injury recording and reporting system. The 1986 NAS panel report recommended significant changes in the data collection and reporting systems, including more extensive reporting of work-related injury and illness data for prevention purposes. The Keystone Dialogue Group on Work-Related Injuries and Illnesses, comprised of representatives of employers, unions, government agencies convened in the late 1980's to examine injury recordkeeping and reporting, also made numerous recommendations on how the system should be improved to provide more accurate, complete and useful information.

In response to these reviews and resulting recommendations, several initiatives were launched to improve the system. These included BLS initiatives to conduct a full census of traumatic workplace fatalities and a new survey to collect and report case and demographic information on serious work-related injuries and illnesses. At OSHA, these recommendations led to the development of the OSHA Data Initiative (ODI) and proposed and then final revisions to OSHA's injury and illness recordkeeping rules (29 CFR 1904.)

The ODI, initiated in 1995, required the reporting of establishment level injury and illness information from employers in selected high hazard industry sectors. This information has been collected and utilized by OSHA since that time to target inspections under its site specific targeting program. OSHA has also made this information available to the public on its website, initially as downloadable files, and

more recently also in a searchable website. In recent years the ODI has required the reporting of summary injury data from approximately 160,000 firms in high hazard industries in general industry.

The ODI has provided establishment specific information that has been useful for OSHA inspection purposes, helping the agency target it resources to workplaces with higher reported injury rates. Targeting inspections to higher hazard workplaces is critical given the agency's limited inspection resources – about 1,000 federal OSHA inspectors to cover the millions of workplaces under the agency's jurisdiction. This information has also been useful to workers, unions and others as a means to compare the reported injury experiences of different employers, identify worksites that may be particularly hazardous and work to address these safety and health problems.

But the ODI has been quite limited in the number of establishments covered (160,000 establishments), the type of information that is gathered and the timeliness of the data, which have limited the utility of the information. Each year data from only 80,000 establishments, out of the more than 1.5 million establishments required to keep OSHA injury records, is collected under the ODI, with construction and other hazardous industries excluded. Only summary data on injury numbers and rates is collected, there is no case data from the OSHA Form 300 injury log or more detailed data from the Form 301 case reports. And there is a two year lag from the time when the injuries occur and when the data is available for use by OSHA in its inspection programs, meaning that it may no longer reflect current workplace conditions.

The proposed injury reporting and tracking rule builds on and improves OSHA's Data Initiative. The proposal will expand the current injury summary reporting requirements to cover establishments in more industries. In addition, establishments with 250 or more employees will be required to submit quarterly reports of current OSHA 300 injury logs and the Form 301's with the detailed information on these injuries. This information will be submitted electronically, providing more timely and up-to-date information, and be available on OSHA website making it accessible to workers, employers, researchers and others for prevention purposes.

The Injury and Illness Data Collected under the Rule will Greatly Assist Prevention Efforts

Workplace injury and illness data is one of the basic elements that is used in injury prevention efforts, both at individual workplaces, and for addressing safety and health issues at the corporate, state, national and even global level. At the workplace this information is used by employers, workers and unions to identify hazardous jobs, operations and conditions and to address them. Corporations use this information to provide oversight of establishments under their control, the resources and investments needed to ensure safe workplaces and to ensure compliance with regulations and corporate policies. This information is also used to benchmark the performance of firms against other employers in the same industry.

Workers and their unions use this information both at individual worksites and across companies to identify particular problems and address them through collective bargaining or government intervention.

The government relies upon and utilizes injury and illness information to help identify and set priorities for regulations and programs, to target enforcement efforts to industries and workplaces that are hazardous and/or have particular problems and to track overall progress and effectiveness.

And injury and illness data is used by researchers to identify the association between exposure and injury and disease, the degree or risk and the particular populations and groups of workers that may be at increased risk.

As noted above, since the OSH Act was enacted, the availability of job injury and illness data through the BLS statistical programs has greatly expanded to provide more detailed information on the nature and sources of injuries and a more complete count of workplace fatalities. But access to injury and illness data at the workplace and company level remains extremely limited, available only upon request by employees and their representatives at individual workplaces or in summary form from a limited number of establishments under the OSHA Data Initiative.

The proposed injury reporting and tracking rule will greatly expand the availability of injury and illness data from individual workplaces. This information can be used by workers and family members to assess the injury records of particular employers in making employment decisions. It will assist unions in their efforts to collect injury and illness information from employers to assess conditions in individual workplaces and across employers and industries where they represent workers. Many unions already collect this information under their rights of access under the recordkeeping rule. But currently, this information must be requested and collected establishment by establishment, making the collection and analysis of this data difficult and time consuming and hindering prevention efforts.

The proposed reporting and tracking rule will also provide useful and important information to OSHA, particularly for identifying hazards of concern and high hazard workplaces or employers with widespread problems at multiple establishments.

In addition, the reporting and public availability of the information itself can greatly assist in prevention and injury reduction. This type of reporting hopefully will lead to greater corporate attention to workplace safety and health and spur action to address problems and prevent injuries and illnesses.

At the same time, there is a real concern that the reporting requirements may lead some employers to suppress injury reporting as a means to reduce reported injuries. As we discuss below, this very real concern and very real problem must be addressed by OSHA in the final rule by including enforceable provisions to prohibit such actions by employers.

The Information Must be Publicly Available and Accessible

A number of industry groups and others have argued that the injury and illness data collected from individual employers should be treated as confidential information and that releasing this information will be detrimental to employers, safety and health and violate workers' privacy. The AFL-CIO strongly disagrees.

The type of information that OSHA is collecting has been available to workers and their representatives since the passage of the Act. Under OSHA recordkeeping rules, employers are required to annually post summary information on injury and illness in the workplace, and copies of the complete OSHA log and case specific information on the cause of the injury from the Form 301 must be made available upon request. Certain personal information has been treated as private and may be withheld from disclosure, but most of the information has no confidential status. Similarly, workplace injury logs collected by OSHA in its inspection process are subject to public disclosure under the Freedom of Information Act, as is the establishment level injury and illness information that is collected by OSHA under the OSHA Data Initiative. As noted above, the ODI establishment level injury information has been posted on OSHA website for years and more recently has been accessible through a searchable data base.

At the Mine Safety and Health Administration (MSHA), OSHA's sister agency responsible for safety and health in mining, there has been a requirement for decades under 30 CFR Part 50 for mine operators to report detailed case data for every injury and illness to MSHA within a 10 day period. The data is required to be reported to MSHA using MSHA's Form 7000-1 which may be reported to MSHA manually or electronically through a secure website. The data base containing that detailed information on every individual mining injury since 1983 is available to be downloaded and searched on the government's data portal, www.data.gov (http://catalog.data.gov/dataset/accident-injuries-data-set). Injury and illness information collected by OSHA must be similarly available.

The AFL-CIO agrees that there may be certain information related to workers privacy that should not be released through a public website. This includes the details of certain cases that have privacy concerns that already are allowed to be withheld from entry on the log under 1904.29(b)(6)-(9), the names of employees and other personal identifiers that may be included on the Form 301s. The rule as proposed makes provisions to exempt this information from broad public disclosure and for keeping this information private.

For the information to be useful for safety and health purposes, it must not only be publicly available, but accessible for a variety of uses by employers, workers, unions, researchers, government agencies and others. To this end, it is important that the information not only be accessible through a searchable web page with limited search terms, it must be available for download so it can be fully searched, analyzed, manipulated and utilized. According to the proposal and other information OSHA has

provided on the rule, this is the approach that the agency intends to take and one that the AFL-CIO strongly supports.

In the interest of making workplace injury and illness data more accessible and useable, the AFL-CIO also urges OSHA to include a requirement in the final rule that employers who keep or report their injury records electronically be required to provide workplace access to the covered records (Log 300, Form 300A and Form 301's) in an electronic format to employees and their representatives. While employees and their representatives currently have a right to receive copies of this information upon request, there is no requirement that the information be provided in electronic format. It is the experience of many unions that some employers refuse to provide workers and unions access to OSHA injury and illness records in an electronic format even when the information is kept in this manner. Instead, they provide only handwritten copies or pdfs of files making it difficult to analyze the information for injury prevention purposes. This injury reporting and tracking rule should address this problem and make information that is maintained by an employer in an electronic format available to workers and their representatives in an electronic searchable file.

The Final Rule Must Include Prohibitions on Policies, Practices and Programs that Discourage Reporting of Workplace Injuries and Retaliation Against Workers Who Report Injuries and Illnesses

The AFL-CIO fully supports the proposed reporting of work-related injuries and illnesses. At the same time we have real concerns that in response to the rule, some employers may try to suppress the reporting of work-related injuries as a means to keep their reported injuries low. Indeed at the OSHA public meeting on the proposed rule, a number of employer groups and other witnesses including the American College of Occupational and Environmental Medicine expressed a similar concern.[4]

Employer efforts to keep reported injury rates low may include practices and programs that discipline workers, including termination, for work-related injuries or incentive programs that award prizes for low injury rates. As OSHA is well aware such programs and practices are already utilized by some employers as has been documented by the GAO, congressional committees and researchers in numerous reports and studies.[5,6,7] In response to such practices in 2012, OSHA issued a memorandum outlining its policy on how such programs and practices may violate the section 11(c) anti-discrimination

[4] Comments of Pat O'Connor on Behalf of the American College of Occupational and Environmental Medicine (ACOEM), OSHA Public Meeting on Improve Tracking of Workplace Injuries and Illnesses, January 9, 2014, (TR p. 67).
[5] Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data, GAO-10-10, Oct. 15, 2009, www.gao.gov/new.items/d1010.pdf.
[6] Workplace Safety and Health: Better OSHA Guidance Needed on Safety Incentive Programs:GAO-12-329, April 2012, http://www.gao.gov/products/GAO-12-329
[7]Majority Staff Report, House of Representatives, Committee on Education and Labor. *Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses,* June 2008.

provisions of the Act.[7] And OSHA has taken numerous actions to enforce against employers who have discriminated against workers for reporting injuries and illnesses. For example, in February, the Department of Labor filed suit against AT&T under section 11(c) for numerous cases of terminating workers for reporting injuries. These individual cases were the result of established corporate practices to discipline workers for reporting injuries.

The AFL-CIO applauds OSHA for its enforcement actions under 11(c) for retaliation against workers who report injuries. However, this action is insufficient to address the widespread problems that exist related to injury discipline and discouraging injury reporting. Section 11(c) enforcement applies to individual cases of discrimination, after the fact when a worker has been harmed. The enforcement tools under 11(c) are weak, cumbersome and resource intensive requiring OSHA to file suit in U.S. District Court to enforce the protections.

To address the widespread employer utilization of programs and practices that discourage injury reporting and retaliate against workers for reporting, OSHA must have regulations in place that systemically address the problem and bar these practices.

The AFL-CIO urges OSHA to add provisions to the recordkeeping rule that expressly bars incentive programs, discipline programs or other employer programs, policies or practices that discourage workers from reporting injuries and bars any adverse action against an employee who reports an injury or illness. These provisions need to be included as a regulatory requirement that can be enforced as violations of the rule, in addition to under section 11(c). The failure to include such a prohibition and enforcement mechanism in the final rule has the real potential to lead to increased actions to suppress injury reporting. This will not only hurt workers, it will undermine the integrity of injury and illness data and the prevention goals that the injury tracking rule is trying to achieve.

Comments on Specific Provisions of the Rule and Issues Raised by OSHA

Enterprise-Wide Reporting

OSHA has requested comments on an alternative to the rule (Alternative I) that would add a provision to the rule to require some enterprises with multiple establishments to report injury and illnesses data for those establishments. This would not require employers to combine data across all covered establishments, but rather to have the

[7] Memorandum for Regional Administrators, Whistleblower Managers from Richard E. Fairfax, OSHA Deputy Assistant Secretary, *Employer Safety Incentive and Disincentive Policies and Practices*, March 12, 2012. https://www.osha.gov/as/opa/whistleblowermemo.html.

individual establishment data submitted by the corporate entity, instead of by the individual establishments themselves.

This enterprise-wide approach to reporting will greatly aid in injury and illness prevention efforts, and the AFL-CIO strongly supports the inclusion of such a requirement in the final standard. This corporate-wide approach will help bring corporate level oversight to safety and health activities at the different entities and establishments of the employer. It will also be of great benefit to OSHA, workers, unions and others attempting to address safety and health problems at multiple establishments under the control of the same corporate entity. As was well-documented in a recent report on labor law violators by the Senate Committee on Health, Education and Pensions, current DOL enforcement data does not identify parent companies of inspected establishments, and it is not possible from available data or reporting to identify a corporation that may be responsible for multiple violations at different establishments.[8]

The concept of corporate level responsibility under the OSH Act is well-established. While the majority of OSHA's enforcement efforts are focused at the establishment level, the OSH Act itself and its obligations, including the recordkeeping requirements, apply to employers. For decades, OSHA has utilized corporate-wide settlements as a means to bring about compliance on a corporate-wide basis, and recently OSHA has attempted to utilize this corporate-wide approach in its initial enforcement actions. Under the current Severe Violator Enforcement Program (SVEP), violations at one establishment trigger expansion of oversight to other establishments of the same employer. Enterprise-wide reporting will greatly aid OSHA in its efforts to address safety and health at the corporate level and across the multiple establishments under that employer's control. In a time of limited and possibly declining inspection resources, this type of information and this type of approach are even more important for effective safety and health oversight.

OSHA has also requested comments on the scope of coverage for enterprise-wide reporting. In the draft regulatory text provided in the preamble (78 FR 67270), OSHA has suggested that all enterprises with 5 or more establishments under their control be required to report the summary Form 300A on an annual basis.

The AFL-CIO believes that the 5 establishment threshold for corporate-wide reporting is appropriate. However, for such enterprises, reporting of the smallest establishments under an employer's control may not be necessary at least on a routine basis. In the preliminary economic analysis, OSHA's has provided estimates of the scope of coverage for different thresholds of establishment size employment for corporate level reporting (78 FR 67278). Setting the establishment size cut-off at 20 or more employees for enterprise-wide reporting would not extend the coverage of the rule to additional establishments, but simply require employers to report the required summary data at

[8] Majority Committee Staff Report, United States Senate Health Education, Labor and Pensions Committee. *Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk.* December 11, 2013.

the corporate level. Setting the establishment size threshold at one or more employees (the same as coverage under the recordkeeping requirements for employers with 10 or more employees) would cover 584,662 establishments, adding 361,070 establishments to the scope of the reporting rule. A third alternative of covering establishments with more than 11 or more employees under the enterprise-wide recording provisions would cover 291,425 establishments, extending reporting coverage to an additional 67,833 establishments.

The AFL-CIO believes that a size threshold of 11 employees for establishment coverage for enterprise wide reporting is appropriate. Given that OSHA already uses an 11 employee threshold for employers covered by the recordkeeping rule, using a similar size threshold for establishments covered by the enterprise-wide reporting requirements makes sense. This threshold will provide useful additional information to corporate officials and to OSHA for injury prevention purposes, while excluding the smallest size establishments from the reporting requirements.

Scope of Coverage

The proposal requires that establishments of 20 or more employees in industries with higher than average DART injury rates electronically report the summary information from the Log 300s annually to OSHA and that all establishments of 250 or more employees, provide quarterly reports of the Log 300 and Form 301 individual case data in addition to the annual summary reports. In addition, the proposal provides OSHA the authority to require the reporting of other data on a targeted basis.

The AFL-CIO believes that scope of coverage and the requirements for "smaller" establishments is appropriate. The 20 employee threshold for reporting of summary injury information is the same as that currently employed in the ODI. The only difference under the proposal is that it covers more industries and it requires electronic reporting.

The AFL-CIO also supports the proposal for more detailed and frequent reporting for larger establishments of 250 or more employees. Under the proposal, 38,000 establishments would be required to report more detailed injury and illness data on a quarterly basis, which OSHA estimates would annually capture information on 890,000 injuries and illnesses. OSHA has requested comments whether the threshold for reporting should be lowered to establishments of 100 employees or raised to establishments of 500 employees. The AFL-CIO believes that the 250 employee cut-off should be the maximum cut-off for such reporting. We encourage the agency to examine the effect of lowering the establishment threshold to 200 employees to determine and assess the additional information that would be captured by such as change, particularly information from higher hazard industries that are of greater concern.

OSHA has also requested comments on narrowing the scope of covered industries subject to reporting by using a 4 digit DART rate to identify hazardous industries as opposed to the proposal that utilizes a 2 digit level to determine coverage for

agriculture, utilities, construction, manufacturing and whole trade and a 4 digit level for other industry sectors. Specifically OSHA has asked whether the rule should utilize a threshold of a DART rate of 2.0/100 or 3.0/100 DART rate at the 4 digit industry level.

According to the data provided by OSHA in the preamble, both of these alternative thresholds would significantly reduce the coverage of the rule, reducing the number of establishments covered to 335,000 (DART rate of 2.0) or 152,000 (DART rate of 3.0).

The AFL-CIO believes these thresholds are too restrictive and limited. Indeed, according to the preamble, employing a DART threshold of 3.0 would cover fewer establishments (152,000) than are covered under the current ODI (160,000). The current ODI has employed a combination of 2 digit and 4 digit thresholds similar to the proposed rule.[9] There is no reason to change this approach.

Mandatory Electronic Reporting

As proposed, the rule requires that all employers report information to OSHA in an electronic format. OSHA has requested comment on whether employers should be given the option of mandatory reporting.

The AFL-CIO strongly supports the electronic reporting requirement. This type of reporting will not only facilitate the collection and timely access and use of information, it will facilitate employers' transition to electronic recordkeeping in the workplace, making evaluation of workplace injury data much easier for employers.

The AFL-CIO points out that DOL requirements for mandatory electronic reporting are not new. DOL has required unions to electronically report extensive financial information under the Labor Management Reporting-Disclosure Act (LMRDA) since 2004.[10] This information must be filed annually using software and forms provided by DOL. These reports are then posted on the DOL website in a searchable data base. (http://kcerds.dol-esa.gov/query/getOrgQry.do) If unions can report this kind of information electronically, surely employers can do the same for workplace injury and illness data.

To assist smaller employers in reporting workplace injury and illness data electronically, it would helpful for OSHA to provide basic software for workplace injury and illness recordkeeping from which the data can be easily uploaded/reported to OSHA through a secure website as OSHA envisions.

Phasing-In of Reporting Requirements

OSHA has also requested comments on whether there should be a phase-in of the standard's requirements. Specifically the agency has asked whether the requirements

[9] OSHA Directive Number 13-01 (CPL 02), Site Specific Targeting 2012 (SST-12), Effective Date, January 4, 2013, Appendix A, https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-13-01.pdf

[10] Labor Organization Annual Financial Reports, 29 CFR Parts 403 and 408, 68 Fed. Reg. Oct. 9, 2003, p. 58374.

for mandatory electronic reporting should be phased in with establishments of 250 employees allowed to report manually for the first year, and establishments of 20 or more allowed the option of manual reporting for the first three years.

The AFL-CIO believes that establishments of 250 or more employees should be able to report electronically immediately. Smaller establishments may need additional time and the AFL-CIO believes a two year phase-in of this requirement is reasonable.

OSHA has also suggested a phase-in of reporting requirements through a three step process, where the initially the requirements would apply to a smaller universe of establishments, after which the program would be assessed, and possibly expanded to a larger universe.

The AFL-CIO does not support this type of phase-in of the requirements. As outlined above, we believe the current scope of coverage of industries and thresholds proposed by OSHA is generally appropriate, and if anything may need to be expanded for larger establishments (i.e. the establishment size threshold reduced).

However, we do believe that one area where a phase-in could be considered is the reporting of individual case data from the OSHA 301s. The more detailed data in the Form 301s present a greater challenge to the agency in collecting data and evaluating and scrubbing the data to ensure the privacy of workers. It is important that the agency address these potential privacy issues appropriately. Therefore, the AFL-CIO suggests that for larger establishments, that the requirement for the reporting of the Form 301 information go into effect 2 years after the promulgation of the final standard, with the requirements for the reporting of the Form 300A summary data and the Form 300 log injury data going into effect as proposed.

Updating of Injury Information

OSHA has requested comments on whether employers should be obligated to update their submissions to reflect changes in injury classification/information that is recorded on their workplace records. As the proposed rule is designed requiring periodic, rather than real time, reporting of injury and illness information, updating the status of previously reported injuries could be cumbersome and confusing. The AFL-CIO does not believe that updating of past reports to OSHA should be required. Rather, the existing requirement for employers to update workplace injury records should be maintained, and the information reported to OSHA should reflect the status of those injuries at the time the report is made.

Quality Assurance and Accuracy of Information

As discussed above in our comments, there are significant issues with the accuracy and completeness of workplace injury and illness records. Having information publicly available will allow greater scrutiny of employer reports and help improve the accuracy. But there are also real concerns that the rule could result in some employers to try to suppress injury reports as a way to lower reported injuries.

It is the AFL-CIO's view that one of the most important tools to help ensure that injury records reflect the true extent and nature of workplace injuries and illnesses in the workplace is a specific prohibition on employer programs, policies and practices that discourage the reporting of injuries in the recordkeeping rule which we have outlined above.

But such a provision, and other provisions of the recordkeeping rule to be effective, they must be backed up by strong enforcement. Unfortunately, OSHA's current enforcement policy on recordkeeping violations is weak and ineffective. Except in egregious cases, violations of the recordkeeping requirements are treated as a single "other-than-serious" violation, with a maximum penalty of $1,000. This type of enforcement policy sends the wrong message to employers that injury recordkeeping is not important, and violations of these requirements will not be treated seriously by the agency.

The AFL-CIO believes that OSHA must change its enforcement policy on the 1904 recordkeeping regulation to treat some violations such as discrimination against workers who report injuries, policies that discourage reporting of injuries or a pattern of underreporting, as serious or willful violations under the Act. Similarly, OSHA must use the enforcement and penalty provisions under Section 17 (g) to criminally prosecute employers who willfully make false injury and illness reports. Only with an enforcement policy that treats injury reporting as important and significant, will the proposed injury tracking and reporting rule provide data that is complete, accurate and useful for injury and illness prevention.