

**Comments of the Service Employees International Union (SEIU)  
on OSHA's proposed rule on  
Improve Tracking of Workplace Injuries and Illnesses**

**Docket Number OSHA-2013-0023  
March 10, 2014**

On behalf of the more than two million members of the Service Employees International Union (SEIU), we are writing to express our strong support for OSHA's proposal [Docket No.OSHA-2013-0023] to add requirements for electronic submission of information on occupational injuries and illnesses that employers are already required to keep under OSHA's record-keeping rule. SEIU also strongly supports OSHA's proposed plans to make some of this data available in a public database

SEIU represents workers in three sectors who would benefit from this proposed rule - including more than one million members in health care, including nurses, LPNs, doctors, lab technicians, nursing home workers, and home care workers; 225,000 members in the building cleaning and security industries, including janitors, security officers, superintendents, maintenance workers, window cleaners, and doormen and women; and one million local and state government workers, public school employees, bus drivers, and child care providers. Through its more than 150 local unions, SEIU currently represents workers at approximately 4,000 facilities across the United States. Most of these facilities would be covered by the proposed OSHA rule quarterly reporting requirements, having more than 250 employees and being either private facility or a public facility in a state with an approved OSHA state plan.

SEIU strongly supports the purpose of this rulemaking to improve workplace safety and health through the collection of useful, accessible, establishment specific injury and illness data to which OSHA, unions and the public currently does not have direct, timely, and systematic access. With the information acquired through this proposed rule, employers, employees, Labor unions, the government, and researchers will be better able to identify and abate workplace hazards.

We applaud OSHA's proposal to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under OSHA's current regulations for recording and reporting occupational injuries and illnesses. Electronic collection of these existing records is in line with many recent advances in health data collection made possible by advances in information technology that involve centralized collection and analysis and dissemination of existing data from multiple entities.

The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions for these records. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA or OSHA's designee, employees and their representatives.

Our comments below provide more detail of our support for the proposal.

**The existing recordkeeping rule is inadequate to allow employees and their unions ready access to identify and address risks within the workplace.**

In the preamble to this proposal [67259], OSHA explains:

*Further, while the current access provisions of the regulation provide employees the right to access the information on the Part 1904 recordkeeping forms, evidence shows that few employees exercise this right. During 2,836 inspections conducted between 1996 and 2011 to assess the injury and illness recordkeeping practices of employers, 2,599 of the record keepers interviewed (92%) indicated that employees never requested access to the records required under Part 1904. OSHA believes that employees will access and make use of the data more frequently when the information is available without having to request the information from their employers. Uninhibited access to the information will allow employees to better identify hazards within their own workplace and to take actions to have the hazards abated.*

We agree strongly with OSHA's conclusion. But have additional experience to explain why few workers exercise their rights to injury and illnesses data. In our experience, when our rank and file members and our union representatives request OSHA 300 data, their employer response is disappointingly familiar, especially as worker and union right to this data have existed since the beginning of OSHA more than 40 years ago. More often than not, the initial response is to initially deny their right to the data or demand a reason for the request. If the worker or union representative persists with the request, the employer then provides, several days to a week later, a copy with all of the names redacted or names redacted except for those of our union members. Only if the worker or union representatives persists a third time, will the employer finally provide the data, legally required to be provided by the end of the business day following the request, usually several week later. We know that our experience is not unusual from our discussions with members and staff of other Unions in the United States.

Our experience talking with workers not represented by a union is that generally they are not aware of their rights to this information, or are reluctant to make a request and exposing themselves to retaliation from their supervisor/employer.

To illustrate our comments above, in the past few months, three SEIU local unions have had to file formal complaints with OSHA to gain access to their facility injury and illness logs that legally were to be provided by the end of the next business day. These facilities are:

1. College Hospital Cerritos, in Cerritos, California. SEIU Local unions 121RN and United Healthcare Workers West (UHW) represents most workers at this hospital and made the initial request for the data in August 2013. The Local Union filed a formal complaint in September, and California OSHA recently cited the employer.
2. University of Illinois at Chicago - Medical Center. SEIU Local 73 made their initial data request on December 10, 2013. Our Local only obtained the logs during state-OSHA inspection on February 4, 2014. The inspection was made because of a formal complaint filed by the Local 73. The data is currently being analyzed by the local union and will be used in bargaining for hazard control measures to be implemented as needed.

3. Montefiore Hospital in New York City. On March 7, our Local Union 1199 SEIU filed an OSHA complaint after not obtaining the logs from the employer safety director after a formal request by the local union.

SEIU, through its 150 local unions, currently represents approximately, 2 million workers at 4000 facilities across the United States. Most of these facilities would be covered by the proposed OSHA quarterly reporting rule, having more than 250 employees and either private facilities or public facilities in states with approved OSHA state plans. Our experience is that more than half of our local union representative requests for the OSHA logs are not provided within the required close of the next business day.

SEIU estimates that having access to this data from OSHA in a public database will save our Union at least \$256,000 per year in staff time. To obtain this cost, we conservatively estimate, based on our experience, that each year at least 20% of data requests where we represent workers will not be provided within the current time and that it will require an average of 8 additional hours of staff time to obtain the data. We calculated the per hour cost of union staff time using the OSHA estimated total compensation (wages and benefits) for an employer's Human Resources Specialists of \$40 per hour. This is a good estimate of the cost of the average local union staff. The calculation is:

1 data request/year x 800 facilities (20% of 4,000 requiring additional staff time) x 8 hours average additional staff time x \$40/staff hour = \$256,000 saving in staff cost per year.

**Increased workplace safety will be a benefit of making timely, establishment injury/illness information public and easily available to employees and employee representatives.**

In the preamble to the proposed rule, OSHA cites the benefits that will occur once the rule becomes final. These include "increased workplace safety as a result of making timely, establishment injury/illness information public" and easily available to employees and employee representatives. We strongly agree with OSHA on the benefits of this proposed rule. SEIU, like all unions, use this information both at individual worksites and across companies to identify particular problems and address them through collective bargaining or government intervention. SEIU has found 300 and 301 log data extremely valuable in helping to identify and address major hazards in healthcare work at the facility level and across the industry, including needlesticks, ergonomic injuries from patient handling and workplace violence. For example, the OSHA 300 data obtained by our Local union 121RN mentioned above (from College Hospital Cerritos) revealed clusters of injury to staff related to assaults from patients in certain departments. This information was then used by the 121RN bargaining committee in contract bargaining to gain agreement from the employer to purchase and implement an alarm system for staff to more quickly call for help and we are continuing negotiations over increasing staffing at the facility. Without the 300 data this would not have been possible.

In another example, at a hospital in New York, Our Local 1199SEIU used log data to identify problems with needlesticks in certain departments. These are "privacy cases" and the worker's names are required by OSHA to be redacted. This is just like the data OSHA proposes in the

quarterly reporting. The Local Union discovered that the employer was aware of the problem had decided they could not do anything to prevent these injuries. The Local Union then investigated and identified a lack of proper training and lack of considering safer sharps as required in BBP standard.

There is great value in this data, for our local unions, members and for unorganized workers to identify and abatement hazards.

Too often, employers don't appear to be using this information to identify and abate hazards, as we expect and hope they would. We'd expect that having to report this data would encourage them to use this data more fully. We also believe it would aid OSHA inspectors to be able to review records before the opening conference to aid in their inspection, rather than review the records on-site, as is usually the case now.

Our union and others doing research and policy work, would find this data of great value in comparing across facilities within same employer – helpful in identifying successful intervention at one location that could be replicated to improve conditions at others. In addition, comparing data between different employers would also be of value to identify problems and spread solutions.

### **Feasibility of collecting data electronically from establishments and creating a publicly available searchable database**

First, it is our experience that most of our employers already record this data electronically, although they do not provide to us in that form generally, when we request it, as is our right under the current rules. Our healthcare employers (which usually employ more than 250 worker per facility) routinely submit other sensitive information, including financial, patient and quality data, to Federal agencies, so these proposed rule changes should not be a problem for them.

The data compiled must be in a database that can be readily searched by facility,/ employer /industry to allow for greatest use and value. We believe that electronic reporting of case level occupational injury data to OSHA by employers is feasible. Similar databases exist within Federal and State Agencies and in the private sector. We are aware of several databases that OSHA could evaluate and learn from, such as:

California Environmental Reporting System (CERS)

Effective January 1, 2013, regulated businesses are required by law to submit business information electronically through the California Environmental Reporting System (CERS). Cal/EPA will also create a public access website that will allow access to the information collected from businesses and local governments. Details can be found at their website at: <http://calepa.ca.gov/cupa/>

## CMS QualityNet

Established by the Centers for Medicare & Medicaid Services (CMS), QualityNet provides healthcare data reporting tools and applications used by healthcare providers and others. QualityNet is the only CMS-approved website for secure communications and healthcare quality data exchange between: quality improvement organizations (QIOs), hospitals, physician offices, nursing homes, end stage renal disease (ESRD) networks and facilities, and data vendors. The goal of QualityNet is to help improve the quality of health care for Medicare beneficiaries by providing for the safe, efficient exchange of information regarding their care. Details can be found at their website at: <http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/index.html?redirect=/EHRIncentivePrograms/01Overview.asp#TopOfPage/>

## EPA Toxic Release Inventory (TRI)

As of January 2014, EPA is requiring approximately 20,000 facilities to submit TRI reporting forms to EPA electronically via the Internet. Details can be found at their website at: <http://www2.epa.gov/toxics-release-inventory-tri-program/electronic-reporting-toxics-release-inventory-data-final-rule>

SEIU supports OSHA's decision that certain information related to workers privacy that should not be available on 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 300s and 301s.

In the interest of making workplace injury and illness data more accessible and useable, SEIU requests 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 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 our union that most employers do not 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.

## **Prohibitions on Policies, Practices and Programs that Discourage Reporting of Workplace Injuries and Retaliation Against Workers Who Report Injuries and Illnesses**

Based on our experience, SEIU has 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. 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. 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.

We request that OSHA 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.

### **Enterprise-Wide Reporting**

OSHA has requested comments on 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 individual establishment data submitted by the corporate entity, instead of by the individual establishments themselves.

This enterprise-wide approach would greatly aid in injury and illness prevention efforts, and the SEIU strongly supports 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.

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. We believe that the 5 establishment threshold for corporate-wide reporting is appropriate. We also believe 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.

### **Submission of Reports**

SEIU supports the proposal requirement for annual electronic reporting for smaller employers (20 or more) for summary data and quarterly reporting for employers of 250 or more employees for injury logs and 301 data.

### **Phase In**

SEIU believes that large employers (those greater than 250) should be able to meet requirement for mandatory electronic reporting of summary data and 300 log data once OSHA provides the software/web portal. We believe that it would be reasonable to allow some phase in for mandatory electronic reporting by smaller employers of no more than two years.

We would also support a phase in the requirement for larger employers (greater than 250) to submit 301 data to allow sufficient time for OSHA to complete a system/approach to scrubbing data to ensure worker confidentiality.

### **Scope of coverage**

SEIU supports the proposal requirement for reporting by all establishments of 250 or more employees (not tied to injury rate criteria). However, we believe 250 employees should be the maximum. We would support a phased in lowering of this number over several years to 100 employees as electronic reporting becomes even more routine and as the workforce continues to fragment into smaller units, as many expect.

### **Three-Step Process for Reporting**

SEIU supports the proposed approach which we believe will be good for capturing higher hazard industries and establishments. The rule already has different requirements for different size employers. OSHA should keep this rule as simple as possible. Changing criteria through phase in would only complicate the implementation of the rule.

### **Narrowing Reporting**

SEIU supports the proposed approach. The current approach is a better means for capturing higher hazard industries and establishments. Lowering the threshold to industries with a DART rate of greater than/equal to 2.0 would reduce the number of smaller establishments covered by about 100,000 and the number of larger establishments covered by 16,000.

### **Criteria/list of covered industries be updated annually or remain the same?**

We believe that updating the criteria/list every three years is sufficient.

### **Quality Assurance and Accuracy of Information**

Because of real concerns that the rule could result in some employers to try to suppress injury reports as a way to lower reported injuries, SEIU believes 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. Such prohibitions must be backed up by strong enforcement. We urge OSHA to 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.

Comments by Mark Catlin, Occupational Health and Safety Director, SEIU