May 13, 2022

Douglas L. Parker
Assistant Secretary for Occupational Safety and Health
Occupational Safety and Health Administration
United States Department of Labor

AIHA Comments on OSHA's Notice of Proposed Rulemaking on the Tracking of Workplace Injuries and Illnesses
Agency/Docket Number: OSHA-2021-0006
RIN: 1218-AD40

Dear Assistant Secretary Parker:

AIHA, the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety (OEHS), appreciates the opportunity to provide feedback on OSHA’s notice of proposed rulemaking (NOPR) on updating its occupational injury and illness recordkeeping regulation. Below are our comments, which we hope you find useful.

1. Is Total Case Rate (TCR) the most appropriate incidence rate to use for proposed appendix B to subpart E, or would the Days Away Restricted or Transferred (DART) rate be more appropriate?
   The TCR is the most appropriate rate to use. All incident rate metrics suffer from inaccuracy due to a lack of understanding of complex and intricately nuanced recording rules. The TCR is the most widely used and least misunderstood of these measures in the United States. The DART rate is much more difficult. One other candidate, cases with days away, is perhaps the most intuitive metric and most closely (though not exactly) aligned with workers’ compensation systems.

2. Is 100 or more employees the appropriate size criterion for the proposed requirement to electronically submit data from the OSHA Form 300, 301, and 300A? Would a different size criterion be more appropriate?
   There should be an analysis of the impact of any company size selected to report electronically. There are at least two considerations here: (1) The number of responses that will be received if the threshold is lowered to 100 (there is also a question of whether OSHA can manage an associated increase in reports); and (2) Most companies in the U.S. are small businesses and new regulations such as this can have an indirect impact on them. Will companies of this size have the capability and IT expertise to participate in electronic...
reporting? OSHA should conduct a thorough analysis before imposing new reporting requirements on small businesses.

3. Is it appropriate for OSHA to remove the requirement for establishments with 250 or more employees, in industries not included in appendix A, to submit the information from their OSHA Form 300A?
Yes, but only if OSHA has the infrastructure to support the increase in the number of reports that OSHA would receive.

4. Are there electronic interface features that would help users electronically submit part 1904 data, particularly for case data from the OSHA Form 300 and Form 301 and for establishments that submit using batch files? For example, would it be helpful for OSHA to provide a forms package or software application that exports the required files into a submission-ready format?
OSHA should consider providing software with recordkeeping logic to enable the completion of data forms and automatic generation of logs for posting and reporting. (It would be especially helpful if OSHA worked with insurance companies to provide a joint OSHA/workers’ compensation interface for each state.) Employers struggle with interpreting recordkeeping requirements, and a user interface could include interpretation logic as well as assist in paperwork completion. As it stands, employers must deal with double paperwork requirements for data entry and for reporting to OSHA.

5. What features could OSHA provide to help establishments determine which submission requirements apply to their establishment?
Built-in error checks for key data problems would be helpful. The usefulness of current reporting data is greatly limited by accuracy problems. For example, the 2020 data for NAICS codes in the 331500 industry series contain five entries with more than 150,000 hours worked per employee. In one case, an employer with 150 employees reported working 24 million hours. On the other hand, there were a couple of anomalies in the opposite direction, including an employer with 27 employees who reported a total of only 40 hours worked for the entire year, less than two hours per employee. The result of these obvious errors is that the average hours for the industry were 3,713 per worker, almost double the expected number. Any benchmarking or conclusions based on the distorted data for this industry are of limited usefulness. OSHA should consider adding some editing features that would highlight potential errors.

10. What criteria should OSHA use to determine whether the sensitivity of automated systems to identify and remove information that reasonably identifies individuals directly is sufficient for OSHA to make the data available to the general public?
If the personally identifiable information (PII) is not submitted, there would be no reason to have an automated system capable of removing the sensitive portions of the information. A unique identifier could be auto-generated by the system instead of utilizing PII.
11. What processes could OSHA establish to remove inadvertently-published information that reasonably identifies individuals directly as soon as OSHA became aware of the information that reasonably identifies individuals directly? OSHA should have internal data quality checks in place that would catch any unintended release of personal health or other identifiers.

12. OSHA is proposing not to collect employee names under proposed § 1904.41(a)(2) and (b)(9), consistent with worker privacy concerns expressed in public comments during previous rulemakings. The electronic forms that OSHA provides should be designed to automatically exclude personal identifiers with an option to include the fields if required. The import side of the electronic form data could also block the importation of these fields.

14. In addition to the automated methods for coding text-based data discussed above, what additional automated methods exist to code text-based data? Automated methods to analyze text-based responses are very difficult to develop due to the variation of words and writing styles used around the United States. It would be more cost-effective to expand the use of checkboxes and radio buttons to assist in interpreting and extracting data from text responses.

15. What are some ways that employers could use the collected data to improve the safety and health of their workplaces? Benchmarking against other employers is an important management tool for understanding and improving occupational safety and health programs. However, unless data quality is improved (see response to question 5 above) this tool will be of limited value.

16. What are some ways that employees could use the collected data to improve the safety and health of their workplaces? Under a Total Worker Health model, injury data about specific tasks, operations, job titles, and industries could be used for worker training and education.

17. What are some ways that federal and state agencies could use the collected data to improve workplace safety and health? With the limited resources available to most federal and state worker health and safety programs, targeted programs will provide the most benefit for workers and companies. These data will provide information so that priorities can be set and outcome trends monitored.

18. What are some ways that researchers could use the collected data to improve workplace safety and health? Researchers require a stable data source to conduct studies that depend on unbiased, complete data sets. By collecting and making the data available to researchers, stratified analyses with sufficient power can be conducted that will make the results more generalizable to specific workers and industries.
19. What are some ways that workplace safety consultants could use the collected data to improve workplace safety and health?
The value that workplace safety consultants can bring to a company or industry will be directly related to the availability of high-quality data. Companies that engage consultants depend on the consultant to be fully informed of the inherent risks of specific operations, tasks, and industries so that the recommendations for improvement and correction are based on evidence.

20. What are some ways that members of the public and other stakeholders, such as job-seekers, could use the collected data to improve workplace safety and health?
Job seekers can review company data and inquire about specific health and safety practices or culture during interviews. The data would allow candidates to be “informed consumers” and encourage transparency.

21. Are there potential negative consequences to the collection of this data that OSHA has not considered here?
Data related to personal injury can be combined with other readily available data from newspapers, community “gossip”, etc., and then used to identify the affected individuals. Once identified, the individuals could be harassed or encouraged to file lawsuits or additional claims against employers.

Conclusion and next steps
AIHA thanks you for the opportunity to provide feedback on OSHA’s notice of proposed rulemaking on updating its occupational injury and illness recordkeeping regulation. We look forward to our continued work together, helping protect the health and safety of all workers.
If you have any questions on these comments or other matters, please contact me at mames@aiha.org or (703) 846-0730.

Sincerely,

Mark Ames
Director, Government Relations
AIHA

About AIHA
AIHA is the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety in the workplace and community. Founded in 1939, we support our members with our expertise, networks, comprehensive education programs, and other products and services that help them maintain the highest professional and competency standards. More than half of AIHA’s nearly 8,500 members are Certified Industrial Hygienists and many hold other professional
designations. AIHA serves as a resource for those employed across the public and private sectors as well as to the communities in which they work. For more information, please visit www.aiha.org.