



Oppose H.J. Res. 83 - Rollback of OSHA Rule Jeopardizes Workplace Safety & Health

Rep. Bradley Byrne introduced **H.J. Res 83**, a Congressional Review Act (CRA) Resolution of Disapproval that would overturn an Occupational Safety and Health Administration (OSHA) rule clarifying that employers have a continuing obligation to record injuries and illnesses, even if they fail to comply with OSHA's recordkeeping requirement at the time the injury occurred. The rule, which went into effect on January 18, 2017, is a direct response to a court decision limiting OSHA to a six-month window to conduct enforcement of employers' illness and injury record keeping violations— a decision that departed dramatically from OSHA's past practice. This rule creates no new compliance or reporting obligations and imposes no new costs; it simply gives OSHA tools to enforce the continuing obligation to record injuries.

By introducing this CRA to strip OSHA of its enforcement authority, while providing no mechanism to fill the enforcement gap, House Republicans are undermining workplace safety and health.

- **H.J. Res 83 harms workplace safety.**
 - Passage of this resolution would allow employers to avoid any penalties for systematic injury underreporting over many years.
 - A consequence is that longstanding workplace hazards that need correction will be masked, making it less likely that employers or employees will take corrective actions, or that OSHA will find the hazards when they do an inspection—leaving workers in danger.
- **H.J. Res 83 undermines OSHA's targeting of hazards.**
 - OSHA is only able to inspect a workplace, on average, once every 140 years, due to its limited resources.
 - OSHA must have reliable injury and illness data to target its scarce resources to those workplaces that present the greatest hazard to workers.
 - By diminishing the reliability of a worksite's injury data – which some employers systematically underreport – OSHA loses the ability to protect the workers from the most significant hazards.
- **H.J. Res 83 erodes confidence in OSHA injury rates as a decision making tool.**
 - Without reliable recordable injury rates, private and public sector officials will not be able to make informed procurement decisions regarding the safety records of contractors and subcontractors.

If the Republicans oppose OSHA's authority to enforce ongoing violations of its injury and illness recordkeeping requirements as a matter of policy, then H.J. Res 83 is simply an ideological attack on OSHA without regard for the consequences to worker safety. However, if the Republicans believe that recordkeeping requirement should be enforceable, as a matter of policy, but OSHA lacks sufficient legal authority for the rule, then the solution is to amend the OSH Act. To date, there has been no hearing to sort

out the legal questions from the policy questions. Instead, this CRA will permanently jeopardize workers' safety and health by blocking this or any substantially similar rule in the future.

ADDITIONAL BACKGROUND:

The Occupational Safety and Health Act (OSH Act) of 1970 authorizes OSHA to prescribe regulations requiring employers to maintain accurate records of work-related deaths, injuries and illnesses--other than minor injuries. Since the first recordkeeping regulations were issued in 1972, OSHA has required employers to record injuries on the "OSHA log" (a form listing each incident) within seven days of the injury, develop a case summary with the details of each incident, post an annual summary of the OSHA log in the workplace, and maintain these records for five years. Since 1972, every Administration has interpreted the employer's obligation to make and maintain accurate records to be ongoing from the date of the injury or illness until the five-year retention period expires.

A 2012 D.C. Circuit Court of Appeals decision (known as *Volks Constructors*) upended this 40-year precedent. The Court held that OSHA did not have the authority to issue a citation for the "occurrence" of a violation that continued beyond the 6-month statute of limitations set forth in the OSH Act, and that OSHA's regulation provided no express continuing obligation. In the *Volks* case, OSHA was not allowed to cite the employer for failing to record 102 injuries and inaccurately recording 67 cases going back over a period of 54 months--well outside the six-month window. Since the *Volks* decision, there has been a 75 percent reduction in recordkeeping violations cited by OSHA. Consequently, injury patterns are not discovered due to underreporting that could go back over many years.