



AMERICAN PUBLIC HEALTH ASSOCIATION

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**Testimony of Rosemary Sokas, MD
on behalf of the American Public Health Association
“Promoting Safe Workplaces Through Effective and Responsible Recordkeeping
Standards”
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
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Chairman Walberg, Ranking Member Wilson and members of the Subcommittee, my name is Dr. Rosemary Sokas, I’m an occupational medicine physician currently serving as professor and chair of the Department of Human Science at the Georgetown University School of Nursing and Health Studies. I have previously served on faculty in medical schools at the University of Pennsylvania and George Washington University, and at the University of Illinois at Chicago School of Public Health, and have served as Chief Medical Officer at both OSHA and NIOSH. I am currently a member of the governing council of the American Public Health Association (APHA), a diverse community of public health professionals who champion the health of all people and communities. In addition, I serve on the Advisory Board on Toxic Substances and Worker Health which advises the Secretary of Labor regarding its implementation of the Energy Employees’ Occupational Illness Compensation Program Act.

My testimony today will cover 3 key points:

1. APHA supports updates in OSHA’s recordkeeping rule as important steps towards preventing workplace illness and injury and reducing occupational health disparities;
2. APHA supports OSHA’s efforts to improve data accuracy and transparency;

3. APHA supports OSHA's efforts to protect vulnerable workers from retaliation for reporting workplace illness or injury.

On behalf of APHA, I express our strong support for the Occupational Safety and Health Administration's final rule to improve tracking of workplace injuries and illnesses as well as for the updated reporting requirement for severe injuries that has been successfully implemented this past year.¹ The new rules will provide important information to help identify hazardous workplace conditions and prevent future injuries and illnesses. In addition, the new injury tracking rule will help ensure that injury and illness data is complete and accurate.

These regulatory updates require employers to report workplace fatalities, injuries requiring hospitalization, and those resulting in amputation or in loss of an eye to OSHA; and soon will require employers from establishments in certain high-hazard industries with 250 or more employees to provide OSHA electronic information to include the record of injuries and illnesses (300 log), the summary report (300A), and the information on the incident reports (301 form). Establishments in the same high-hazard industries that have between 20 and 249 employees will be required to electronically submit the summary report only. I note that employers have been required to complete and keep these forms since the enactment of the OSH Act. The update also clarifies the employer's responsibility to inform employees of their right to report work-related illness and injury and addresses illegal employer retaliation against workers for reporting a work-related injury or illness. OSHA will make select data elements available to the public, while excluding personally identifiable information.

¹ Occupational Safety and Health Administration website "OSHA's Recordkeeping Rule" <https://www.osha.gov/recordkeeping2014/> [Accessed 5/21/16]

As public health professionals, we understand the critically important role of gathering accurate information to help identify hazards in order to develop and implement better health and safety protections. We further understand the importance of preventing retaliation against workers for reporting work-related illness and injury and to prevent vulnerable workers from experiencing job loss as a result of reporting an injury.

We applaud OSHA efforts to bring injury and illness reporting into the 21st century through an efficient web-based mechanism that allows employers to upload information they are already collecting. Concerns about widespread under-counting of workplace injuries and illnesses have been raised by the academic and public health communities.² The U.S. Government

Accountability Office has issued several reports exploring the issue of under-reporting of injuries in poultry and meatpacking and throughout U.S. industry, and is preparing an updated report.^{3,4}

My experience interviewing workers in poultry processing impressed on me the widespread fear of job loss, and a sense of fatalism among many of the workers – they had grown used to living with pain, experiencing sleep disruption and limitations lifting children or performing routine household tasks; many saw no alternative to working until they were disabled. More recently, NIOSH has conducted a series of Health Hazard Evaluations in poultry processing plants to evaluate risk factors for musculoskeletal injuries. In one report evaluating a Maryland poultry processing plant, fully 34% of the workforce (64/191) met strict case definitions for carpal tunnel

² Spierer EA, Wagner GR. Counting matters: implications of undercounting in the BLS survey of occupational injuries and illnesses. Am J Ind Med. 2014 Oct;57(10):1077-84. doi: 10.1002/ajim.22382.

³ U.S. GAO [Workplace Safety and Health: Safety in the Meat and Poultry Industry, While Improving, Could Be Further Strengthened](#) GAO-05-96: Published: Jan 12, 2005. Publicly Released: Jan 28, 2005. <http://www.gao.gov/products/GAO-05-96> [Accessed 5/21/16]

⁴ U.S. GAO Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data. GAO-10-10: October 2009 [Accessed 5/21/16]

syndrome, while only four cases had been recorded on the employer's OSHA logs during the previous four years. Twenty of the surveyed workers reported work-related illness or injury meeting OSHA criteria for recording in 2013; of these, 18 reported having notified a company representative (supervisor, manager, plant nurse, other). However, only one of these incidents was recorded on the employer's OSHA log during that year.⁵ This level of underreporting of injury cases supports the GAO conclusions that false signals are being sent about work related injuries.

The goal of OSHA's updated recordkeeping approach is to prevent fatal and non-fatal workplace injuries and illnesses. Transparency helps improve data accuracy, and accurate information will be invaluable for employers, workers and public health researchers and others interested in identifying sources of injury and illness and evaluating the effectiveness of interventions to prevent injury and illness.

Public health professionals working at the state, county and urban levels rely on publicly available data for a variety of community health assessments; unfortunately, they have not had access to workplace illness and injury data, a problem this regulation addresses. Having access to specific, local illness and injury information will help public health departments and other state and local agencies to identify important problems, such as disabling back injuries among workers in particular nursing homes, to provide assistance to employers to identify appropriate solutions, and to evaluate the effectiveness of these solutions. Many worksites already make use of their internal data for quality improvement, with important results. As APHA has described in

⁵ Ramsey JG, Musolin K, Mueller C. Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders Among Employees at a Poultry Processing Plant. NIOSH HHE Report No. 2014-0040-3232. <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf> [Accessed 5/21/16]

several of its policy statements,^{6,7,8} the use of this kind of feedback loop to improve health and safety is essential - “injury/illness prevention programs require accurate data collection to correctly identify hazards and determine whether remediation efforts have been successful.”⁷

We are all familiar with the potential for attempted improvements to backfire, which is why the collection of accurate information is so important. For example, a hospital attempting to reduce needlestick injuries installed new sharps collection equipment in patient rooms that were already crowded with equipment, so the collection boxes were installed at a height too high for most nurses – they couldn’t see when the boxes were full, and got stuck trying to dispose of sharps. Frontline feedback of course is critical here, but in fact the data demonstrating a spike in reported needlesticks first alerted the health and safety team to the problem, prompting root cause analyses that changed protocols for both location and routine collection of the containers. Subsequent data collection confirmed success.

Public health researchers in academia and in public health agencies can use a similar approach to evaluate policy interventions. State regulations addressing safe patient handling can be assessed by comparing baseline and follow-up data across the industry as well as by conducting comparisons with states that don’t have the regulation. Similarly, the information will be

² APHA Policy Statement 201314 Supporting and Sustaining the Practice of Quality Improvement in Public Health <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/09/11/supporting-and-sustaining-the-practice-of-quality-improvement-in-public-health>

⁷ APHA Policy Statement 20138 Support for Workplace Illness and Injury Programs <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/03/support-for-workplace-injury-and-illness-prevention-programs> [Accessed 5/21/16]

⁸ APHA Policy Statement 201513 Improving Availability of and Access to Individual Worker Fatality Data <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/12/13/33/improving-availability-of-and-access-to-individual-worker-fatality-data> [Accessed 5/21/16]

valuable to municipalities that have adapted building codes designed to reduce safety hazards by allowing them to benchmark injury data. Industry associations or academic researchers interested in determining whether the switch to green cleaning practices improves health and safety for workers (through use of less hazardous cleaning agents or microfiber mops) would have access to information about skin and respiratory outcomes as well as other injuries across a large enough population to draw meaningful conclusions.

Equally important, individual employers or their associations will have ready access to reports of injuries that are common within an entire industry, but are not frequent enough to have alerted the individual employers in question. With easy access to these "sentinel case" data across an entire industry or community, employers will now be in a position to learn about these hazards and take action to prevent problems in their own establishments without having to wait for tragedy to strike.

Experience with OSHA's Severe Injury Reporting Program demonstrates the importance of a national approach to collecting more in-depth injury information. Employers now report not only fatalities but hospitalizations, amputations, and loss of an eye directly to OSHA. Because of this, new information offers much more detail than was available through other sources, and does so quickly while a timely investigation by OSHA or the employer is still possible. Grocery stores, which are only rarely inspected by OSHA, emerged unexpectedly as a leading site for amputations; additional available information helped pinpoint problems with both food slicing and meat grinding, leading to timely OSHA outreach and assistance efforts to improve safety,

and further identifying areas where engineering or other research may be needed⁹. As indicated above, a single, sentinel event may serve to alert the industry to an unrecognized hazard. It is important to share that information widely, as air transportation safety specialists do, if the information is to be useful for prevention. The larger dataset that is now possible through OSHA recordkeeping will make it possible to identify and find patterns in rare events, to expand our ability to identify hazards, and evaluate the effectiveness of proposed solutions, as well as to increase our understanding of the patterns of more common injuries and illnesses.

But the information has to be accurate. As Mendeloff and Burns have demonstrated, existing state-level data for non-fatal injuries is deeply suspect, with states experiencing higher workplace fatality rates reporting fewer non-fatal injuries.¹⁰ Because fatality reporting is much more complete and accurate, such findings suggest two things: that some areas of the country experience greater levels of underreporting of non-fatal injuries and illnesses; and that these same areas experience higher fatality rates, possibly as a result of the failure to identify and count the less severe, non-fatal cases.

APHA members have documented workers from a variety of industries reporting that they receive demerits when they suffer an injury, or public criticism through safety and health investigations that focus on punishing the worker rather than identifying the cause, including threats of firing. Employers with such policies should be focusing instead on the hazard that

⁹ Michaels D. "Year One of OSHA's Severe Injury Reporting Program: An Impact Evaluation" <https://www.osha.gov/injuryreport/2015.pdf> [Accessed 5/21/16]

¹⁰ Mendeloff J and Burns R. States with low non-fatal injury rates have high fatality rates and vice-versa. [Am J Ind Med](#). 2013 May;56(5):509-19. doi: 10.1002/ajim.22047. Epub 2012 Apr 2.

caused the injury rather than blaming their workers being injured. This kind of punitive policy is guaranteed to discourage injury reporting. When management refuses to hear bad news, problems are papered over and fester, and may lead to disastrous outcomes. The poultry processing plant in which I interviewed workers was part of a larger corporation that not only failed to protect its workers, but failed to protect its products, becoming subject to what was at the time the largest beef recall in U.S. history, which led to bankruptcy. In the hospital example above, had the nurses been criticized for carelessness and discouraged from reporting needlesticks, the problem with the disposal boxes would never have been identified.

Instead of suppressing reports of illness or injury, organizations that value safety encourage the reporting of hazards and near-miss events, and reward workers for identifying hazards and solutions. These are the leaders in the American business community, who demonstrate management commitment to sustainability, transparency, and respect, engage frontline workers and their representatives, and benefit from safety professionals who are able to improve safety and health. These organizations want to be able to benchmark their performance against others in the industry, to set themselves higher goals.

As public health professionals, however, we focus on the gaps – workers whose employers do not have the skills or the values to promote safety and health, low-wage, high risk workers who sustain disproportionate injury and illness rates. Our job is to identify and reduce these disparities, and inaccurate information is an enormous stumbling block.

During OSHA's comment period, APHA urged OSHA to recognize and discourage attempts to systematically suppress injury and illness reporting and to provide clear guidance. We are pleased that the regulation takes a preventive approach to addressing this concern and believe these provisions are integral to the success of the rule and enormously important for the most vulnerable workers.

Because this information is so important, we would like to highlight challenges that result in under-reporting.

We remain concerned that many practices, policies, and programs present in workplaces today discourage workers from reporting injuries, illnesses, incidents, and accidents, obscuring the hazards that cause and contribute to injuries and illnesses. We note that suppressed reporting has occurred through aggressive return-to-work policies in which workers have been driven to work on the day of surgery or the day after, when still on narcotic medication for analgesia, in order to reduce the employer's DART rate of disabling illnesses and injuries. Or, in other instances, the systematic attribution of non-work related noise exposure as the sole cause of noise-induced hearing loss among workers in manufacturing settings has resulted in complete under-reporting of noise-induced hearing loss.

However, the retaliation that results in job loss or fear of job loss is the most harmful. Jobs are important not only for the health of society but for the health of the individual; research in the U.S. and elsewhere has demonstrated increased mortality from heart attacks, suicide and other causes associated with episodes of unemployment. Low wage, high risk workers in particular

fear job loss. Work-related illness and injury has long-term health and economic consequences, and research confirms that workers experience increased job loss following a work-related injury. Dr. Hester Lipscomb and others studied unionized carpenters and found surprising levels of fear in the construction industry.¹¹ Comments from interviewed workers included:

“With my company, people are afraid to report injuries even when they get hurt because they will lose their jobs. Not immediately, but in like 2 or 3 months when it blows over, you’re fired.”

“It was common knowledge at [XX construction] that most foremen and safety would push you to go to the hospital under your own insurance.”

“From experience with many companies, if you get hurt you’re looking for a new job. We do not report injuries because we’re threatened with discipline most of the time.”

As a practicing occupational health physician, I frequently encountered patients who refused to have their employer notified of a workplace injury, creating an ethical dilemma – medical ethics dictate that the patient has the autonomy to determine their course of care, and I would respect that, although I would worry about the others in the same workplace, and would try to explain that OSHA had protections for them in place. This updated rule gives OSHA a must needed

¹¹ Lipscomb HJ, Nolan J, Patterson D, Sticca V, Myers DJ. Safety, incentives, and the reporting of work-related injuries among union carpenters: "you're pretty much screwed if you get hurt at work". *Am J Ind Med.* 2013 Apr;56(4):389-99. doi: 10.1002/ajim.22128. Epub 2012 Oct 25.

enforcement tool to protect workers- especially low wage workers -- from illegal discrimination and retaliation and to address systematic policies and practices that result in such discrimination or discourage reporting. The record of the rule is replete with examples of workers being fired and retaliated against when reporting an injury, clearly underscoring the inadequacy of current protections. We applaud the language in OSHA's new rule that addresses illegal employer retaliation against workers for reporting a work-related injury or illness. It should pre-empt the situations my patients encountered and is essential if we are to expect accurate reporting.

In conclusion, OSHA's new rule will make workplaces safer and will save lives.