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OSHA Docket Office
U.S. Department of Labor
Room N-3508
200 Constitution Avenue NW
Washington, D.C. 20210

Docket No. OSHA–2021–0006 Re: Improve Tracking of Workplace Injuries and Illnesses

Dear Docket Officer:

The Association of the Wall and Ceiling Industry (AWCI) is a non-profit construction trade association representing more than 2,400 wall and ceiling industry contractors, manufacturers and suppliers. The association's contractor membership employs tens of thousands of union and open shop wall and ceiling industry construction workers nationwide.

AWCI supports the long-standing requirement for employers to record work-related injuries and illnesses and understands that the data can be useful for establishing injury/illness trends and accompanying worker protection measures. However, the association is concerned about provisions in the proposed rule that would unintentionally and unnecessarily harm construction businesses. AWCI is adamantly opposed to any requirement that would result in public access to any affected company's name and address, and/or signatory executive's name and telephone number. The association is equally opposed to OSHA making any company's injury illness information accessible to the public online.

The preamble to the proposed rule states that public access to establishment-specific, injury and illness data would allow employers, employees, potential employees, employee representatives, customers, potential customers, researchers and the general public to make informed decisions about the workplace safety and health at a given establishment. AWCI believes that affected stakeholders would frequently develop an inaccurate perception regarding an affected establishment's safety and health culture.

The association urges OSHA to rescind all proposed provisions that would establish public access to any establishment's data for the following reasons:

1. Lagging Indicators Are Poor Indicators of Future Safety/Health Performance

Lagging indicators of safety and health performance by themselves, such as OSHA recordable/reportable injury and illness data, have shown to be poor indicators of future safety and health performance. Whereas leading indicators are predictive tools used to identify and eliminate or control risks, lagging indicators present information about what has occurred in the past with no mechanism for accurately predicting what may occur in the future. For years the occupational safety and health community in the United States has been underscoring the need for employers to use leading indicators in lieu of, or at least in conjunction with, lagging indicators to effectively improve workplace safety and health. Stakeholders evaluating an establishment's lagging indicators alone would almost always acquire an inaccurate perception of the establishment's occupational safety and health culture.

2. Small Businesses Would Be Particularly Vulnerable to Stakeholder Misperception

Small businesses would be especially vulnerable to stakeholder misperception, particularly when stakeholders use data from OSHA form 300A to calculate injury and illness incidence rates. Because the formula that OSHA uses is based on 100 full-time workers and the denominator in the equation is the total number of hours worked by all employees, the resulting incidence rates often depict extremely inaccurate perceptions of smaller establishments' safety and health cultures and past safety and health performances. For example, a small employer with a single recordable case whose number of hours worked by all employees is 50,000 would show a recordable cases incidence rate of 4.0 per 100 full-time workers. This rate is well above the BLS industry average for the wall and ceiling portion of the construction industry, and for almost all other construction trades as well. By contrast, a larger employer with a single recordable case whose number of hours worked by all employees is 1,000,000 would show a recordable cases incidence rate of 0.2 per 100 full-time workers. Both employers in this example experienced only a single recordable/reportable injury. The smaller employer may never experience another recordable/reportable injury or illness. However, the larger employer could experience up to 18 additional recordable/reportable injuries or illnesses and still retain an incidence rate that is below 4.0 per 100 full-time workers.

3. Injuries/Illnesses Resulting from Employee Misconduct

Workplace injuries and illnesses occur that are due solely to employee misconduct. When this is the case, an affected employer can effectively establish an affirmative defense against an OSHA citation by showing that:

- Adequate, effective workplace safety and health rules were in place;
- The rules and requirements to obey them had been conveyed to the worker;
- The affected worker received effective, appropriate safety/health training;
- The appropriate PPE, tools and equipment had been provided to the worker;
- There was an effective disciplinary action program in place; and
- The disciplinary action program was being consistently enforced.

However, even when a recordable/reportable injury or illness is due solely to employee misconduct, it must still be recorded and reported resulting in an inaccurate perception of the affected establishment's safety culture.

4. Uncontrollable Recordable/Reportable Injuries/Illnesses

Some recordable/reportable injuries/illnesses are the fault of neither the employer nor the employee. For example, if a worker is stung by a wasp but has no allergic reaction to it, there is no recordable/reportable case. However, if a worker is stung by a wasp, has an allergic reaction and is treated with the prescription drug epinephrine, the case is recordable/reportable. In most cases neither a wasp sting nor an allergic reaction is within the control of an employer or employee. However, stakeholders reviewing an establishment's aggregate injury/illness data would still get an inaccurate perception regarding that establishment's safety culture.

5. Falsified/Misrepresented Injury/Illness Claims

Falsified or misrepresented workplace injury or illness claims result in inaccurate perceptions of establishments' safety cultures. These claims occur in the form of completely false injuries or illnesses, legitimate injuries or illnesses sustained while away from the workplace and legitimate injuries or illnesses sustained at work, but unnecessarily prolonged to avoid returning to the workplace. In every case, the results are erroneous recordkeeping data that conveys inaccurate perceptions of companies' safety cultures to affected stakeholders.

6. Fatality Reporting

Affected employers are required to record and report fatalities that occur in the workplace. However, if it is later determined that a fatality was not work-related, the occurrence is not recordable. AWCIs are unaware of any mechanism or process where an affected employer could instantly rescind the erroneous report from the database, resulting in inaccurate recordkeeping data that would be misleading to stakeholders and extremely harmful to affected establishments.

AWCI urges OSHA to rescind all proposed provisions that would establish public access to any establishment's work-related injury/illness data. The unintended consequences of these provisions, which would grossly mislead affected stakeholders, would

undoubtedly result in extremely safe construction firms losing future business opportunities and potential employees.

AWCI appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact Pete Chaney, director of safety, health and risk management, at chaney@awcl.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Stark". The signature is fluid and cursive, with a prominent initial "M" and a stylized "S" at the end.

Michael F. Stark, CAE
Chief Executive Officer