



The Graphic Arts Coalition

Representing the Graphic Communications Industries

March 7, 2014

OSHA Docket Office
Docket No. OSHA-2013-0023,
U.S. Department of Labor, Room N2625
200 Constitution Avenue NW.
Washington, DC 20210

Re: Comments on Proposed Revisions to OSHA's "Improve Tracking of Workplace Injury and Illness" Rule, Docket No. OSHA-2013-0023

To whom it may concern:

The Graphic Arts Coalition (GAC) respectfully submits the following comments on the proposed revisions to OSHA's "Improve Tracking of Workplace Injury and Illness" Rule, Docket No. OSHA-2013-0023

Background

As background, the Graphic Arts Coalition is composed of the Printing Industries of America, Specialty Graphic Imaging Association International, Book Manufacturer's Institute, and the Flexographic Technical Association. It represents one of the largest and most viable manufacturing industries in the United States, which ranks number one in terms of establishments and number four for employment.

Currently, there are at least 45,000 facilities employing flexography, screen, lithography, and letterpress processes in North American Industry Classification System primarily in 323 with others found in 322, 326, and 511. The value of goods shipped is over \$159 billion. The graphic communications industry is a prime example of small business involved in manufacturing.

General Comments

The GAC opposes OSHA's proposal to require electronic submittal and subsequent posting of the Injury and Illness records on a public website as described under the proposed revisions and requests that it be withdrawn from further consideration.

There are always unforeseen issues that can come about with this type of proposed change and it doesn't appear that OSHA has fully considered or investigated all of the applicable scenarios or facility operations that will be impacted. While OSHA claims that this is only a change in how records are submitted and that posting the records for public view is no different than current access through the Freedom of Information Act (FOIA). These are only assumptions made by OSHA and do not encompass the actual negative impacts that will occur to a variety of business operations and practices.

As mentioned above, the vast majority of businesses in the printing industry are small businesses. These establishments already use a substantial amount of time to collect the necessary information and organize the injury and illness records to meet the existing compliance requirements.

The electronic submission of such records and public display will not lessen the time taken by a company nor will it improve safety at any given business. The proposal may have the opposite effect because companies will be reluctant to record any injuries or illnesses that are questionable in terms of their recordability.

In some instances, incidents get recorded as a precaution to ensure compliance and later as more information is gained about the incident, the incident can either be removed from Form 300 or modified. OSHA has not provided any provision for the revision and modification of records that are to be submitted as a result of this rule. By not being able to revise submitted records, the published information about a company will not be accurate and can overstate the number of incidents that occurred at the facility.

OSHA also makes the assumption under this proposal that submitting these records electronically and posting them publicly will better allocate OSHA resources and outreach to more companies. This seems highly unlikely since in our experience OSHA cannot reach all of the companies that would be required to submit injury and illness records under this proposal. Simply increasing the number of submittals we believe will not improve OSHA's performance.

OSHA further states that public records will make it easier for employee access. Yet it has been our experience that employee access to injury and illness reporting records are not "denied" or even remotely difficult to obtain when requested. They are simply rarely requested by employees in our industry.

Additionally, it does not appear that the sole purpose of this proposal is to improve data and outreach. The Assistant Secretary of Labor has stated a different purpose of the proposal in a November 2013 interview with EHS Today. In this interview Dr. David Michaels made the comment that "he hopes the posting of injury and illness data will "nudge" more employers into finding and fixing safety and health hazards before injuries occur". This intent echoes the goal of the proposed Injury and Illness Prevention Program which goes beyond the scope and purpose of the injury and illness recordkeeping rule.

Based on the proposal, it appears that OSHA intends to make public the submitted records and to use these records for targeted enforcement purposes. There are workplace incidents that are beyond the control of the employer. By using these records as a "find and fix" tool, the agency makes the incorrect assumption that all injuries and illnesses are preventable. Even those injuries that occur may be due to employee actions that are in defiance of the safety rules or circumstances beyond the control of the employer.

For employers, the injury and illness recordkeeping rule is a requirement to record what has occurred and our industry is currently meeting that requirement. For OSHA to now require an additional burden on these employers for the benefit of OSHA is also beyond the scope of the rules intent.

Accuracy of Records

Many of the inaccuracies that occur with injury and illness records produced by small businesses result from the confusion associated with determining whether or not an incident is "recordable" as well as when previous records are amended. Based on these facts, there is a very high likelihood that under this proposal, inaccurate records would be posted in public view thus presenting an inaccurate and unfair image of a company's safety record.

Despite the fact that the rule requires company executives to certify that they have examined the records, it is based on “reasonably believing” the records are true and accurate. The person preparing these records in a small business is often not a professional safety manager. These individuals may not fully understand how to evaluate certain complicated incidents that fall into a “gray” area and as a result, default to a “best-guess” for the incident as to whether it is recordable which may not result in an accurate decision. This scenario will contribute to the inaccuracy of the publically posted data as well as inaccurate data for use by OSHA.

It is accepted that injury and illness records may require corrections after being prepared due to such factors as new information, changes in medical determinations, and misapplied information. For some employers who are in doubt of an incident and realizing that the information will be publically reported before they have a definitive answer may elect to not record the incident until it is fully determined so as to avoid inaccurate submissions. Therefore, the records that OSHA would require to be submitted and open to the public may not represent all records or represent only the initial recording and not the final accurate entry.

Public Image Concerns

The fact that injury and illness records only list injuries or illnesses with no further explanation, this data by itself can only create a negative image of a company to the public.

There are several site-specific factors that would need to be considered in order to accurately evaluate the safety record of a company. With only one set of data available it will contribute to unfairly skewing the public image. For example, circumstances that arise outside the control of an employer, an anomaly of incidents, or a spike in the number of employees for a high production season can influence the records negatively for a short period of time before reverting back to normal rates only after the records have been posted. This will allow for a misperception by the public who will not know the complete set of circumstances.

Along these lines, for OSHA to assume that potential employees will be able to evaluate a company before applying for work based on the publically available injury and illness records will only result in providing these individuals with a false and negative image about the company. Again, these records will be taken out of context and can be easily misinterpreted by the average person who has no other knowledge of the company’s safety culture or operations.

Further, this proposal will sweep in small businesses who are regularly compliant and have good safety programs but that may experience a rare incident and would now be placed under public scrutiny to be unfairly judged and “shammed” by OSHA.

Submittal Options

GAC opposes monthly and quarterly submittal timeframes proposed by OSHA as these would be too burdensome. GAC would consider annual electronic submissions acceptable. However, within this proposal there cannot be an exclusion of paper-based submittals. While electronic communication may be the norm in some industries, it is not the exclusive means for all businesses and OSHA should not mandate a single means of communication or submittal for their convenience. It should be noted that even submitting comments to this very proposal OSHA, and other federal agency proposals, allows the submittal of electronic comment or mailing of written paper copies.

Although OSHA proposes an alternative for a three year phase in period for electronic reporting, this restriction would still not be acceptable as it would again require an exclusive and limited means of communication and/or submittal.

Privacy Concerns

Within a company, even when a name is redacted, it is relatively easy to determine the identify of an employee from injury and illness records which will still include job title, type of injury/illness, location of injury or illness and date it occurred. A concern shared by many employers and employees is that the general public could also just as easily determine an employee's identity or circumstances. The public disclosure of sensitive and confidential business information has been ignored by OSHA and will violate the Freedom of Information Act (FOIA). The FOIA states that public release of personally identifiable information is prohibited. This also gives way to a possible infringement of the Health Insurance Portability and Accountability Act (HIPAA), which also protects the privacy of individually identifiable health information. Due to the fact that it is a work related injury, and generally workman's compensation is involved with medical care, the public list could give enough information for those viewing the list to figure out who the "victim" is/was based on the circumstances. This ability caused by the posting of such records would become a deterrent for employees to report injuries or illnesses in order to avoid public knowledge. This in-action by employees would again be out of the control by the employers even though they would bear the responsibility for compliance.

Also, many small businesses consider such information as the number of employees and hours worked to be proprietary information since this too can divulge competitive information regarding an operation, process as well as the security of a company.

Burden Impacts

While it is true that most companies are concerned with protecting its image, the assumption that companies will increase that effort to address the accuracy of the injury and illness records is not correct. For companies that would focus longer on injury and illness records to control their image, the time it would take would be significantly more than what OSHA estimates based on taking a person away from production and operation responsibilities and focusing on the administrative tasks and then returning back to the production and operation tasks.

Smaller firms will also be required to take additional time to research issues related to an incident that is in the "gray" area or forced to hire an outside consultant or professional to evaluate the circumstances and assist with the preparation of records. Again, these are resources a small company does not readily have available.

Having this information so readily available to the public where it has the real potential to inaccurately skew a company's image can eventually cause the company to battle other fronts including competitors, special interest groups, and plaintiff's lawyers more interested in using such information against the company or disparage a company's reputation rather than improving the safety of employees, ultimately distracting the company from daily operations.

Further, it does not appear that OSHA has investigated the full impact on small business with this proposal or engaged an evaluation under the Small Business Regulatory Enforcement Fairness Act (SBREFA). GAC encourages OSHA to take on such efforts to understand the position and impact to small businesses before going forward with such a drastic rule change.

Regarding the cost estimates outlined within the proposal, they do not account for actual activities and efforts that will be required by the employer. These additional costs can include the training of personnel from a paper based system to the electronic system, training personnel to learn the different elements of the new system, costs of adopting to an electronic system to meet the submitting requirement, as well as the actual time associated with collecting and tracking information for the new system.

The time estimates by OSHA with regard to the electronic submission process also does not accurately account for the real time it will take an employer or its staff to review the reports, verify information, ensure accuracy of the data entered, enlist the assistance of knowledgeable opinions as necessary, redacting personal information, and to ensure compliance with all applicable regulatory requirements, all prior to submittal to OSHA.

Further, OSHA neglects to recognize the indirect costs to employers associated with this proposal. These indirect costs can include production delays or stoppage and business lost as a result of meeting the requirements under the proposal or from misinterpreted and mischaracterization of the posted information. There is a higher and more immediate probability of these indirect costs impacting employers than the claimed benefits to OSHA.

Conclusion

GAC believes the proposed requirement for only electronic submission methods and the public posting of the injury and illness records would be an unfair and counter-productive to employer efforts toward safety reporting. This would cause an unjustified distortion of company images and would not contribute any reasonable benefits to industry sectors but would rather create additional burdens and waste government resources.

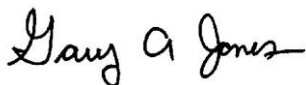
GAC further believes that OSHA already has at its disposal the means and resources to collect the information sought under this proposal without adding additional requirements on small businesses. GAC encourages OSHA to work in a collaborative way with industry to achieve the common goal of safe workplaces.

GAC appreciates the opportunity to submit these comments. If there are any questions or further explanation required, please contact any one of the signatories listed below.

Respectively,



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