



PASMA

PUBLIC AGENCY SAFETY MANAGEMENT ASSOCIATION

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January 17, 2014

OSHA Docket Office
Docket No. OSHA-2013-0023
U.S. Department of Labor
Room S-2002
200 Constitution Avenue, NW.
Washington D.C., 20210

Subject: Improve Tracking of Workplace Injuries and Illnesses (RIN No. 1218-AC49)

Dear Sirs;

OSHA recently published proposed rule (RIN 1218-AC49) "Improve Tracking of Workplace Injuries and Illness". According to OSHA, the purpose of this rule is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data. Among other things, the proposed rule would require employers with more than 250 employees to electronically submit their injury and illness information every three months. The Public Agency Safety Management Association-South Chapter (PASMA) represents over 60 public agencies in Southern California. Our members work in municipal and county government agencies, water districts, and other special districts.

Under the background section of the proposed rule it states that this rule will have economic costs of \$11.9 million per year, including \$10.5 million per year to the private sector. The agency also reported that they believed the annual benefits, while unquantified would significantly exceed the annual costs. Among the purported benefits were:

- 1) Better compliance with OSHA's statutory directive to assure safe and healthful working conditions.
- 2) Increased targeting of OSHA consultative and enforcement efforts toward those workplaces which have reported establishment-specific injury/illness information.
- 3) Public access to injury and illness information will encourage employers to maintain and improve workplace safety.
- 4) Public access to injury and illness information will allow potential employees to make more informed decisions about potential places of employment.
- 5) Public access to injury and illness information will allow the public make more informed decisions about current and potential companies with which to do business.
- 6) Public access to injury and illness information will allow researchers to identify patterns that are masked by the aggregation of injury and illness information.

Economic Costs of Quarterly Reporting Grossly Understated

Based on our analysis of the proposed regulation, we believe that OSHA has significantly underestimated the cost of this regulation. OSHA estimates that this rule will have economic costs of \$11.9 million per year, including \$10.5 million per year to the private sector. Based on this information it appears that OSHA estimates that the compliance costs for the Public Sector would be \$1.4 million. OSHA also estimates that there are 38,000 employers with more than 250 employees.

We estimate that in the Public Sector alone, there are 5,000 employers, including Cities, Counties, School Districts, State Agencies, Water Districts, and other public sector employers with more than 250 employees. We estimate that the total compliance costs for the Public Sector (i.e. taxpayers) would be \$19 to \$38 million dollars. One of our member Cities has approximately 2,600 employees and their estimated cost of compliance with this proposed quarterly reporting requirement is \$7,250. This is based on 36 recordkeepers allocating 60 minutes per quarter per employee to verify the accuracy of the required OSHA log information and to log on and electronically submit this information to OSHA. This employer also assumed labor costs of \$50 per hour, which includes benefits. For this employer the total hours per year to comply with this regulation would be 144 multiplied by \$50 per hour resulting in an annual cost of \$7,200. While some Public Sector employers may have fewer employees and establishments that are keeping OSHA 300 logs, others such as County and State Agencies have several thousand employees and the number of recordkeepers and establishments is much larger resulting in higher costs of preparing and submitting data on a quarterly basis.

We believe OSHA's estimate of 10 minutes per person for submitting the information grossly underestimates the total time necessary to prepare and submit this information. Based on the fact this information will be submitted to OSHA for increased targeting of OSHA enforcement efforts, we anticipate that more public and private sector employers will take more time to assure the accuracy of these records prior to electronic submittal.

If we include the private sector which is likely 7-8 times larger than the public sector, the total estimated cost of this regulation increases to between \$152 and \$304 million dollars. This clearly is in excess of \$100 million which would qualify this regulation as an unfunded mandate under the Unfunded Mandates Reform Act of 1995.

Public Shaming of Public and Private Sector Employers and Unintended Consequences

It appears that in an attempt to motivate employers to improve health and safety, and under the guise of transparency, that OSHA is attempting to shame employers as a means to improve workplace safety. We feel this is shortsighted and also will have several unintended consequences. Using OSHA injury and illness rates as a means of comparing employer's safety records has always been problematic.

If we learned anything from the deepwater horizon accident, it was that several of the employers working in the Gulf of Mexico had excellent safety records on paper. Their DART rates were low, their OSHA recordable rates were low, yet there still was a catastrophic event that caused several fatalities and significant damage to the environment and the local economy. If this proposed quarterly reporting rule would have been in effect prior to the Deepwater Horizon incident, it likely would have made little or no difference in their safety and health performance. Prior to this incident their focus was on recordable rates and not on the more significant safety hazards and conditions that resulted in this accident.

In addition, especially in the Public Sector, factors influencing frequency rates are more sensitive to changes in workers' compensation laws which vary from state to state. So a comparison of one public agency in one state to a public agency in another state may not be an accurate comparison.

Our concern is that the unintended consequence of this rule will result in more of a focus on the recordable rates. As employers tend to devote more resources to driving down these rates, the unintended consequence may be that more significant safety problems in workplaces will remain unaddressed resulting in more significant catastrophic events. The OSHA recordable rates alone do not provide context and don't always reveal whether an employer is running a safe operation. This proposed rule is setting employers up for failure and we believe will adversely affect employee health and safety.

Underreporting of Injuries

Another concern we have is that one of the unintended consequences of this regulation is that some employers may not report or may underreport injuries if they know that there may be an increased risk of an inspection. The result is that the data being collected and submitted to OSHA will be flawed and inaccurate based on the expectations of how it will be used.

Conclusion

We appreciate the opportunity to provide information on the proposed rule, "Improved Tracking of Injuries and Illness", and the regulatory impact it will have on public sector employers. We believe that there are more effective ways to improve safety and health performance, and we are concerned about the significant costs and the other unintended consequences that will result if this proposed rule is enacted. We oppose this rule as it is currently written and we urge OSHA to reconsider whether this rule is necessary to improve health and safety in the workplace. If you have any questions please contact me at (714) 765-4399.

Sincerely,



Bill Taylor, CSP

Public Agency Safety Management Association-South Chapter, Legislative and Regulatory Representative

cc: Paula Bouyounes, Public Agency Safety Management Association-South Chapter, President