

**Honorable Tim Walberg**

Chairman  
Subcommittee on Workforce Protections  
2176 Rayburn House Office Building  
Washington, DC 20515

**Honorable Frederica S. Wilson**

Ranking Member  
Subcommittee on Workforce Protections  
2101 Rayburn House Office Building  
Washington, DC 20515

May 23<sup>rd</sup>, 2016

Dear Chairman Walberg and Ranking Member Wilson,

For nearly fifteen years, the Transparency Policy Project, based at the Harvard Kennedy School's Ash Center for Democratic Governance and Innovation, has analyzed domestic and international efforts to reduce risks to the public using transparency.<sup>1</sup> Our work has identified the conditions that make transparency systems effective and sustainable. We have learned that the effectiveness of transparency as a tool to regulate risks often depends on the relevance and quality of the data, as well as when, where and in what format it is disclosed.<sup>2</sup> In that regard, we believe that the US Department of Labor's Occupational Safety and Health Administration (OSHA) final rule revising OSHA's regulation on Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904) is an important step in fostering greater transparency surrounding workforce injury and illness rates. We believe the new rule (Improve Tracking of Workplace Injuries and Illnesses) will benefit not only employees but employers, regulators and the public at large. In the interest of transparency, we note that David Weil, now Administrator of the Wage and Hour Division, served as co-director of the Transparency Policy Project before he joined the Department of Labor in 2014.

American workplaces are much safer than they used to be, but the important work of keeping workers safe is far from over. In 2014 alone, employers reported nearly 3 million nonfatal injuries and illnesses, while over 4,800 workers were killed on the job. This new transparency rule to improve the tracking of injuries and illnesses requires establishments with 250 and more employees and smaller establishments in certain high-risk industries, from manufacturing to grocery stores, to electronically disclose injury and illness data to OSHA – information they are already required to collect and make available to employees and OSHA. OSHA will make some of these data publicly available, in de-identified format to protect employees' privacy, on its website.

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<sup>1</sup> To access our findings and publications visit [www.transparencypolicy.net](http://www.transparencypolicy.net).

<sup>2</sup> Archon Fung, Mary Graham, and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge; New York: Cambridge University Press, 2007.

This rule has been thoughtfully and narrowly crafted. It is important to note that this new rule does not require employers to collect new data. It merely requires them to report electronically once per year. The costs of the new rule appear modest, compared to the benefits we describe below. In response to concerns raised that the new rule would create incentives for under-reporting and result in adverse actions for employees, OSHA has strengthened anti-retaliation protections for employees.

With this new rule, OSHA harnesses the power of transparency to improve safety in the workplace. The disclosure of injury and illness data is likely to influence the behavior of employers, employees, unions, health and safety administrators, laying the ground for a more systemic approach to workplace safety. We believe this new rule has the potential to help both workers and employers maintain safer workplaces.

First, employers will be able to compare their performance to that of competitors across their industry. Disparities among companies with similar characteristics will allow employers to learn about gaps in their safety systems and introduce corrective measures, or seek assistance from OSHA to improve safety. Other companies in the supply chain, such as buyers, more informed by this new workforce safety data, may demand higher safety levels or threaten to switch to safer suppliers -- amplifying the incentives and the competitive dimension of workplace safety. Investors and insurers are also likely to use the data to question workplace safety practices and pressure management for meaningful safety improvements.

Research shows that well-designed transparency interventions can prompt industry to reduce certain risks. For example, hospitals have learned about safety gaps and adopted corrective measures after being asked to publicly report information on overall hospital quality.<sup>3</sup> The disclosure of hazardous chemicals' information has prompted many employers to switch to safer chemicals as a way to protect their workers.<sup>4</sup> When firms were asked to disclose the amount of toxic pollutants they release into the environment, under EPA's Toxics Release Inventory, investors and clients paid attention, prompting some companies to cut emissions.<sup>5</sup>

Second, employees can benefit from the new disclosure requirements by using this new data to evaluate their workplaces' safety, to compare injury rates among similar workplaces, and to advocate for safety improvements.

Third, employee organizations will have a way to target their actions by comparing workplace safety performance across industry and focusing on facilities that pose a higher risk to employees. Further, retrospective analysis of data will identify establishments that have made progress and ones that require pressure to improve safety standards.

Fourth, health and safety administrators will be able to use these data to improve their safety efforts by targeting inspections and assisting establishments in their safety improvement actions, important steps to improve injuries and illness prevention.

Finally, the technology industry, advocacy groups, journalists and researchers could use the data in ways that contribute to improving workplace safety. Technologists may be able to repackage the

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<sup>3</sup> Dana B. Mukamel, Simon F. Haeder, and David L. Weimer. "Top-Down and Bottom-Up Approaches to Health Care Quality: The Impacts of Regulation and Report Cards," *Annual Review of Public Health*, Vol. 35, 2014, pp. 477-497.

<sup>4</sup> General Accounting Office. *Occupational Safety & Health: Employers' Experiences in Complying with the Hazard Communication Standard. Briefing Report to Congressional Requesters*. GAO/HRD-92-63BR. Washington, DC: General Accounting Office, 1992.

<sup>5</sup> James Hamilton. *Regulation Through Revelation: The Origin, Politics, and Impacts of the Toxics Release Inventory Program*. New York: Cambridge University Press, 2005.

data and build websites and apps to allow comparison and to single out worst and best performance, stimulating workplace safety competition. Journalists are increasingly using data sets to strengthen their reporting. These data savvy reporters could use the new information on injuries and illnesses to bring broader public attention to workplace hazards. Researchers could use the data to identify trends, learn about hidden or new risks, and draw lessons from industries and establishments that excel in safety.

We anticipate that the new data disclosed by OSHA will stimulate action from multiple fronts – employers, employees, workplace safety agencies, journalists, and civic organizations– and contribute to making American workplaces safer.

Sincerely,

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