**DATE:** June 2, 2022

**TO:** PRR, OSH Forum

**FROM:** Helen Cleary

**RE:** Small Business Labor Safety Roundtable (OSHA/MSHA) Meeting Highlights

On May 20, 2022, Bruce Lundegren, Assistant Chief Counsel of the Small Business Association (SBA) Office of Advocacy, hosted a Small Business Labor Safety Roundtable (OSHA/MSHA) meeting on the following topics:

* **OSHA’S Proposed Electronic Injury and Illness Reporting Rule**

*Lee Ann Jillings, director, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor*

* **Recap of OSHA’s Stakeholder Meeting on Heat Injury and Illness Prevention in Indoor and Outdoor Activities**

*Wesley Wheeler, National Director of Safety, National Electrical Contractors Association*

* **Overview of OSHA’s Public Hearing on Occupational Exposure to COVID-19 in Healthcare Settings Standard**
* *Courtney Kner Bishnoi, Vice President, Quality and Programs, American Health Care Association and National Center for Assisted Living*
* *Beeta Lashkari, OSHA Workplace Safety Group, Conn Maciel Carey LLP*
* *Melissa K Peters, Shareholder, Littler Mendelson, P.C.*

The meeting agenda can be found [here](https://phylmar.sharefile.com/d-s724d68c147e84cf59946a9f9b96105a5).

**OSHA’S Proposed Electronic Injury and Illness Reporting Rule**

Lee Ann Jillings is the Directorate of Technical Support and Emergency Management for OSHA. Her presentation can be found [here](https://phylmar.sharefile.com/d-s89c4599e6ae34e7c860fdc23007ad221).

On March 30, 2022, OSHA published a proposed rule to amend federal occupational injury and illness recordkeeping regulation 29 CFR 1904.41. The rule advances the department’s mission to empower workers by increasing transparency in the workforce and improves tracking of workplace injuries and illnesses.

The current regulation requires employers with more than 10 employees to keep records of work-related injuries and illnesses at their establishments and are required to post the Form 300A Annual Summary in their workplace. Employees have a right to access and obtain copies of the OSHA Injury and illness records. Also, establishments with 20-249 employees in certain high-risk industries and establishment with 250 or more employees are required to electronically submit their 300A Summary information, annually, by March 2nd.

Proposed Rule Requirements include the following requirements:

* Establishments with 20+ employees in certain high-hazard industries must electronically submit Form 300A data.
* Establishments with 100+ employees in the highest-hazard industries must submit Form 300 Log, Form 301 Incident Report, and Form 300A data
* Establishments with 250+ employees will no longer be required to electronically submit recordkeeping information if they are not in a high-hazard industry

Purpose of Proposed Rule:

* Expand public access to establishment-specific, case specific information
* Give employers and workers information to make appropriate decisions
* Allow employers to compare their injury and illness data with other establishments
* Identify workplace hazards and reduce injuries and illnesses

Benefits of Proposed Rule:

* Support OSHA’s statutory mission
* Increase OSHA’s ability to identify emerging hazards
* Increase OSHA’s effectiveness and efficiency
* Improve OSHA’s ability to identify the high-risk workplaces
* Improve employers’ ability to prevent workplace injuries and illnesses
* Provide complete information to job seekers
* Improve research on the distribution and determinant of workplace injuries
* Increase public-health information for public health agencies
* Support private sector outreach

OHSA currently estimated the total annual economic cost of implementation of this rule to be $4.3 million. Of this amount, $3.9 million for the public sector and $1.2 million for OSHA to design and build the electronic system. OSHA has estimated the annual cost for affected establishment with 100+ employees to be $81, and that the annual benefits will outweigh the annual costs. OSHA expects 720,000 injury and illness cases to be submitted.

OSHA is proposing to not collect employee names from the Form 300/301 and plans to publish the information only after identifying and removing information that identifies an individual directly.

Questions and Answers

**Q1:** A few issues include privacy and the misuse of data that can make a workplace appear more dangerous than they really are. There are also concerns for industries with falling injuries and illness rate still being included in the reporting rules. Where is this rule different than the rule that was adopted in 2016?

**A1:** One of the rules we are asking for comment on is establishments with 250+ employees, not in a high-risk industry, will no longer be required to electronically submit recordkeeping to OSHA. Other than that, it is going back to what was previously in-place.

**Q2:** With regards to the perceived benefits to the agency, have you thought about how the benefits already exist under the rule with the 300A data?

**A2:** We are looking at this as being additional and insightful information that could help the agency improve availability and transparency. We are taking steps to make sure the information we receive will be respected. It is described in the preamble.

**Q3:** Will this data be used for inspection targeting?

**A3:** We are in the process of looking at potential revisions to our construction targeting model.

**Q4:** Is OSHA planning to publish employer-specific information for the employers who are required to submit just the 300A Form?

**A4:** We post the information that is submitted now for the annual submission. That would be something good to comment on.

**Q5:** How does OSHA intend to conceptualize situations when people are just looking at a number?

**A5:** That’s a long-standing issue. It is useful data, and we use it to gain insights of what is going on within an industry.

**Q5:** I was surprised to see the OSHA cost estimate at $81.00 per employer who has to submit 300 and 301 data in addition to the 300A. Can you speak to how that number was calculated? I thought it was a typo. Most of my clients are talking about an entire new FTE – this is an extraordinary number.

**A5:** I’m not one of the economists but that is our estimate. Because they already have things in play, these are additional data sets.

**Q6:** Did the agency quantify the cost for employers with fewer than 100 employees but greater than 20?

**A6:** I don’t know that off hand, I will follow up on that.

**Recap of OSHA’s Stakeholder Meeting on Heat Injury and Illness Prevention in Indoor and Outdoor Activities**

Mr. Wesley Wheeler is the National Director of Safety for the National Electrical Contractors Association. His presentation can be found [here](https://phylmar.sharefile.com/d-sc1664f1dcc174ced8eee89ea7b268d95).

Recent Timeline for OSHA Heat Related Activities:

* September 20, 2021 – US DOL announces enhanced, expanded measures to protect workers from hazards of heat
* October 27, 2021 - OSHA Publishes ANPRM for Heat injury and Illness Prevention in Outdoor and Indoor Work Settings
* April 1, 2022 – OSHA launches NEP
* May 3, 2022 – Stakeholder meeting

OSHA NEP on Outdoor and Indoor Heat Hazards:

* The first nationwide enforcement mechanism for OSHA to inspect workplaces involves no new regulations as OSHA enforcement uses existing statutes
* Encourage employers to protect workers from heat hazards by providing access to water, rest, shade, and adequate training
* Implement an acclimatization process and procedures
* Established heat priority days
* OSHA to conduct programmed inspections in targeted high-risk industries
* Inspection Procedures include:
* Observations
* Records Review
* Interviews
* Heat Program
* Weather Conditions

Currently, there is no specific heat standard in place so the General Duty Clause (Section 5(a)(1) of the OSH Act will be utilized. Other NEP citations could include:

* Recordkeeping (20 CFR 1904)
* PPE (29 CFR 1910.132 and 1926.28)
* Sanitation and Proper Drinking Water (29 CFR’s 1910, 1915, 1917, 1918, 1926, 1928)
* Medical Services and First Aid (29 CFR 1910.151 and 1926.23)
* Safety and Health Programs (29 CFR 1926.21 and 1926.20)
* Training

Performance versus Prescriptive Regulations:

* Many commenters recommended that OSHA take the performance route for these future regulations
* Prescriptive to include fixed temperature limits, predetermined breaks, and fixed acclimatized programs
* Employers should be able to provide selective safety controls that are appropriate for the environmental and job conditions that are encountered
* Predetermined break schedules and rigid acclimatized schedules are problematic for utility work