



October 14, 2014

Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Re: Comments on OSHA Docket No. OSHA-2013-0023; Improve Tracking of Workplace Injuries and Illnesses, Supplemental Notice of Proposed Rulemaking (79 Fed. Reg. 47605, August 14, 2014)

IPC appreciates the opportunity to comment on OSHA's Supplemental Notice of Proposed Rulemaking (hereafter referred to as supplemental rule) to the Proposed Rule to Improve Tracking of Workplace Injuries and Illnesses (hereafter referred to as the proposed rule). IPC is concerned that the supplemental rulemaking fails to address serious shortcomings with the proposed rule and introduces new issues that, in some cases, contradict existing OSHA policy.

In our 2010 comments on the proposed rule, IPC raised concerns that the proposed rule would have unintended consequences and fail to improve workplace safety. IPC also stated that we do not believe, nor has OSHA provided evidence to demonstrate, that the dissemination of injury and illness information will, by itself, serve to improve workplace safety. Furthermore, OSHA has failed to provide concrete evidence to prove the contrary accurate. IPC urges OSHA to withdrawal the supplemental rulemaking in order to focus resources on ensuring the rule to Improve Tracking of Workplace Injuries and Illnesses actually improves workplace safety.

About IPC

IPC, a global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing, electronics assembly, and suppliers to this industry. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 3,700 member companies, 2,200 of which are located in the U.S. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

OSHA Fails to Substantiate that the Supplemental Rulemaking Will Improve Worker Safety

OSHA has failed to provide evidence that public reporting of injury and illness information will improve workplace safety. OSHA makes unsubstantiated claims regarding the beneficial nature of posting injury and illness data on a public website. For example, OSHA states, "Online



availability of establishment specific injury and illness information will also encourage employees to contribute to improvements in workplace safety/health.” This assumption is not supported by any mechanism that would link the availability of injury data to injury reduction or other employee contributions to workplace safety and/or health. This assumption also does not consider that employees are already involved in incident analysis with employers.

IPC believes companies already have put effective safety and health programs in place that have been successful in preventing many reportable injuries and illnesses. OSHA must recognize that the continued decrease of private sector recordable injuries, as reported annually by the Bureau of Labor Statistics, is an indication that employers have been utilizing employees in their incident analysis and corrective action processes. According to 2013 Bureau of Labor Statistics (BLS) data, overall reports of injuries and illnesses have decreased since 2012. A November 2013 BLS press release¹ on 2012 injury and illness data shows that the private sector injury rate continues a decade long decline. As stated in the press release, “The rate reported for 2012 continues the pattern of statistically significant declines that, with the exception of 2011, occurred annually for the last decade.” The 2012 rate of 3.4 per 100 workers was down from 3.5 in 2011.

The supplemental rulemaking does not provide guidance or protocols regarding disciplinary action for employee failure to report a workplace injury or illness when employers have made the information readily and clearly available. OSHA does not comment on the scenario when employers provide all the necessary information on reporting injuries and illnesses, but an employee does not report the injury or illness. OSHA’s current injury and illness reporting requirements state that injuries or illnesses must be reported 1) immediately, 2) by the end of shift, or 3) within 24 hours. These requirements are communicated to employees through trainings and informational pamphlets. If an employee fails to report an injury or illness, even though all the information is provided to them, the employer should not be held responsible. OSHA should provide guidance on how to address a situation where the employee fails to report the injury or illness despite information being available to them.

Furthermore, OSHA has been unable to establish its claim that employer policies, such as safety incentive policies, post-accident drug testing or disciplinary policies, discourage employees from reporting injury and illnesses. While there were a few statements outlining concerns that such policies might discourage employees from reporting injuries and illnesses, OSHA greatly exaggerates the depth and value of these comments in supporting this supplemental notice.

In previous comments, IPC offered an alternative to quarterly reporting of all injury and illness data in the proposed rule. We encouraged OSHA to require, and make publically available, 300A log data. The summary data will provide stakeholders with useful information. Requiring employers to provide 300A log data will also alleviate OSHA of the responsibility for removing proprietary information.

¹ Bureau of Labor Statistics U.S. Department of Labor. November 7, 2013 News Release. Employer-Reported Workplace Injuries and Illnesses – 2012. <http://www.bls.gov/news.release/pdf/osh.pdf>.



The Supplemental Rulemaking is Duplicative of Existing Requirements

OSHA's supplemental proposal would require employers to 1) inform employees of their right to report injuries and illnesses free from discrimination or retaliation and 2) establish reasonable and not unduly burdensome injury and illness reporting requirements. These requirements are duplicative of existing injury reporting requirements established in 2001 by OSHA in 20 CFR 1904.35² and therefore the supplemental rulemaking should be withdrawn.

In the supplemental rulemaking OSHA speculates that "if employees do not know that the OSH Act protects their right to report an injury or illness, they might be less likely to report an injury or illness to their employers."³ However, employees must already be made aware that they are protected under the Act "against discharge or discrimination for the exercise of their rights under Federal and State law."⁴ Specifically, OSHA requires that employers post *OSHA 3165, Job Safety and Health – It's the law!* This posting clearly states that employees can file a complaint with OSHA within 30 days of retaliation or discrimination by an employer for making a safety or health complaint and employers must comply with the occupational safety and health standards under the OSH Act.

OSHA does not provide evidence or data to suggest that employees are unaware that employers are required to maintain accurate injury and illness records. In fact, given that employers are required to post the 300A Annual Summary of work-related injuries and illnesses, employees very likely fully recognize their employers must record and report injuries and illnesses under OSHA. Further, the OSHA 3165 poster makes clear that employees are protected from discrimination. Employees are already made aware of the need to inform employers of injuries or illnesses and similarly they are informed, in part by the required poster, that they are protected from discrimination.

In the electronics industry many companies follow the Electronic Industry Citizenship Coalition (EICC) Code of Conduct⁵, a set of standards on social, environmental and ethical issues. The EICC Code of Conduct contains language that prohibits any kind of retaliation for reporting concerns or complaints. Furthermore, most companies' human resources policies also restrict retaliation against employees for reporting injuries or illnesses. Although this is not a legislative requirement, it is a prominent practice in the electronics industry that has been proven effective.

Reporting Injuries and Illnesses is a Duty Not a Right

IPC supports the Coalition for Workplace Safety's arguments that employees have a duty, not a right, to report injuries and illnesses. Under the OSH Act, employers and employees each have

² https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12779.

³ 79 Fed. Reg. 47607.

⁴ 29 C.F.R. §§ 1903.2 and 1952.10.

⁵ <http://www.eiccoalition.org/standards/code-of-conduct/>.



responsibilities and rights to achieve a safe and healthy working environment. Pursuant to the OSH Act, employers are “required to comply with occupational safety and health standards promulgated under this Act” and “employees shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.”⁶

Employees have a duty to comply with recordkeeping regulations, including the reporting of work-related injuries and illnesses. It is each employee’s responsibility to report any injury or illness that occurs to him or her, even though no civil penalties are attached for failing to comply. Section 1904.35 of the OSH Act establishes a requirement for the employer to ensure that employees report work-related injuries and illness by setting up a way for employees to promptly report such injuries and illnesses and to inform employees how to report work-related injuries and illnesses. The employee’s dependent responsibility is reporting work-related injuries and illnesses and it is the employee’s duty, not right, to comply with such recordkeeping regulations.

OSHA Makes Incorrect Assumptions about the Burden of Disseminating Information

In the supplemental rulemaking, OSHA grossly underestimates the resources needed to disseminate information and to provide a means for employees to report an injury or illness privately.

OSHA makes the assumption that requiring employers to post signage informing employees of their right to report an injury or illness free of any retaliation would not cost additional funds and would only require 3-5 minutes of the employers’ time to post the sign. OSHA’s fails to account for the cost of developing and printing the signs. Unless OSHA will develop the signs and provide them to the employer for free, the costs for development, printing, or purchasing the sign must be included.

OSHA suggests employers could use a telephonic reporting system for employees to report injuries or illnesses as a low cost option for employees. As telephone hotlines are often operated by third parties, there is a cost associated with having an injury and illness reporting hotline available. Small businesses are unlikely to have a telephone hotline available due to the extra costs. Furthermore, running an internal hotline would be extremely resource intensive and prohibitive.

Conclusion

IPC encourages OSHA to withdrawal the supplemental rulemaking in order to focus resources on ensuring the proposed rule to Improve Tracking of Workplace Injuries and Illnesses actually improves workplace safety. The pure dissemination of injury and illness information will not improve workplace safety. Furthermore, the supplemental rulemaking contradicts existing OSHA policy.

⁶ 29 U.S.C. § 654(b)(1)

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