

Greetings Chairpersons Nelson and Snyder, and the members of the Subcommittee on Workers' Compensation and Worker Protection.

I'm Dr. John Michael Mulroy, assistant professor in the Department of Safety Sciences at Indiana University of Pennsylvania. I am the Program Director for Pennsylvania OSHA Consultation, the sole agency within Commonwealth since 1983 providing no-cost, OSHA compliance assistance to private sector employers through a \$2.2 million annual grant. This grant is 90% funded by federal Occupational Safety & Health Administration (OSHA) and 10% by the Pennsylvania Bureau of Workers Compensation, satisfying the Commonwealth's obligation for its 21(d) cooperative agreement promulgated under 29 CFR 1908.1.

I received a PhD in occupational safety and health from IUP and a master's degree in environmental management from Duquesne University. I am a board-certified occupational safety and health professional and a professional member of the American Society of Safety Professionals. My professional career spans 25 years in heavy manufacturing, heavy construction, fossil and wind power generation, loss control, and academia.

The purpose of my testimony is to support House Bill 2860, known as "The Public Sector Worker Safety Data Analysis Act."

To begin, it is important to acknowledge the remarkable similarities between House Bill 2860 and the Final Rule published by OSHA in the Federal Register November 26, 2004. That Final Rule amended the Agency's injury recordkeeping requirements, requiring federal Executive Branch agencies to record and annually report injury and illness events "essentially identical" to those in the private sector.

We meet here today to consider the same of our state-level public sector agencies and employers.

According to OSHA's Final Rule, titled "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements," Executive Branch agencies are required to record and report injury and illness events using the same regulations covering private sector employers. Standardizing recordkeeping across the federal agencies, instead of continuing to use existing federal workers' compensation reporting system would, according to OSHA:

...produce more useful injury and illness records, collect better information about the incidence of occupational injuries and illnesses at the establishment level, create recording and reporting of job-related injuries and illnesses (p. 1).

House Bill 2860 can provide our state-level key decision makers with detailed data and information necessary to identify, evaluate, qualify, quantify, and control highest degrees of severe injury and fatal injury/illness risk present throughout the public sector. Providing our public sector employers and workers the information they need to understand the complex

nature of occupational hazards in their own establishments will measurably reduce costly injuries and occupational illness.

Data collected and analyzed through House Bill 2860 would reveal critical trends in injury and illness experience, as well as substantial residual risk associated with unplanned or non-routine work, problematic or inadequately planned work tasks, faulty or antiquated equipment, and safety and health training deficiencies. With this information now readily available, Pennsylvania public sector employers will be better informed to plan and execute tasks identified as potentially high hazard. Policymakers, and public sector decision makers, can then direct their limited resources to evaluate and control or eliminate those workplace hazards before a worker is injured.

Injury and illness data collected annually by House Bill 2860 will provide state policymakers and public sector employers better detailed data which, as the Department of Safety Sciences testified in detail on May 27, 2021, is not available today using the current workers' compensation system.

Dr. Luz Marin of our Safety Sciences faculty testified before this Subcommittee in 2021 regarding this point; she reported in 2019 there were 101 work-related fatal injury events in Pennsylvania. Of those 101 fatal injuries, 7 were in local government, 12 in state government, and 60 were private sector. However, the employer's classification, either private or public, for 22 of the 101 fatal injuries were marked as "unknown." That is 22%, or 1 in 5, of all fatal injuries in 2019 where we are unsure of the correct employer classification.

Furthermore, the evaluation of the workers' compensation database and the fatal injury data entered by public sector employers in 2019 revealed the "injury cause" for 4 of the 7 fatalities in local government, and 3 of the 12 reported fatal injuries in state government, were found to be classified as "other – miscellaneous, no other causes (NOC)."

In practical terms, 37% of the fatal injuries in Pennsylvania's state and local governments included no discernable or identifiable cause for the fatal injury. That means state agency safety and health leadership cannot develop effective, targeted corrective or preventive action to avoid similar or even identical fatal injury recurrence unless they have direct, firsthand knowledge of each injury event.

Continuing to rely upon the state workers' compensation for recording, reporting, and understanding the mechanism of serious and fatal injuries and illnesses is not the solution. Simply stated, workers' compensation data collection and OSHA injury and illness data collection have two very different end goals.

Analyzing workers' compensation records for severity potential proved difficult, therefore data collection must be improved. Without those changes, compensation-related data will be insufficient to adequately benchmark for comparative purposes and determining if desired safety and health outcomes have been met.

How can safety professionals in the public sector effectively help their employers and agency management teams identify severe injury and fatal injury potential, and control that risk if we are unable to identify a cause for 37% of the state's fatalities in 2019? What other critical information is missing from the workers' compensation records which could be utilized by public sector leadership to devise methods to prevent the next fatal injury?

House Bill 2860 improves the quality of public sector injury reporting, and will result in the following advantages:

- Enhanced policymaker and public sector decision maker ability to prevent future occupational injuries and illnesses through strategic allocation of limited resources for safety and health interventions and layers of protection;
- Recorded and reported data will improve workplace specific knowledge about exposures, events, and routine and non-routine jobs, training and competencies, job experience and familiarization, and job planning, all controllable contributing or causal factors which can contribute to additional serious injuries and illnesses;
- On the OSHA Form 301 or equivalent, details regarding the location of the loss incident, the equipment involved, materials, chemicals, or processes utilized at the time, the specific activity performed by the affected worker(s) will be provided;
- The collection of injury data, just as private sector workplaces do today, will use a logical structured sequence ensuring public sector employers focus on problematic work tasks, deficient or unsafe equipment, or gaps in existing voluntary safety and health programs and training;
- High quality recorded and reported injury and illness data expands overall usefulness of that data, guiding public sector employers and agencies to focus their resources on the most serious hazards first;
- The results of annual descriptive, quantitative, and qualitative exploratory analyses will identify trends and patterns involving specific injury and illness types, body part most affected, job classifications which experience high degrees of injuries, tasks and problematic equipment which require advanced safety and health interventions, collaborative risk assessments, and enhanced task planning that consider now known past injury experiences;
- Standardization of definitions regarding injury and illnesses leads to consistent and proactive risk management through public sector worker participation and management leadership, versus the current reactive system of hazard identification following an injury event;
- Improved data and trending will reveal latent management system weaknesses, and prevent future injuries, thereby reducing overall costs associated with public sector case management;

- At each establishment throughout the public sector, inclusion of average number of employees and the total hours worked during the previous calendar year will enable employers and state policy makers to calculate injury and illness incidence rates directly from the posted summaries, and for the first time in Pennsylvania, make injury experience at the individual public sector workplace directly comparable to identical private sector injury and illness experiences;
- Identifies and solves a major gap that has existed for far too many years of inadequate injury detail uploaded to the state workers' compensation system;
- Provides needed resources to identify, evaluate, and actively trend root causes of Pennsylvania's public sector workplace safety and health problems. Then, cost efficient and effective corrective and preventive actions can be devised and implemented resulting in continual improvement of existing public sector safety and health programs;
- Increased awareness and targeted utilization of existing no-cost compliance assistance, such as the Bureau of Workers' Compensation safety and health training programs "PATHS;" and
- House Bill 2860 uses performance-based language and does not specify how individual public sector employers accomplish these recording and reporting objectives, ensuring flexibility to devise establishment-specific process appropriate for individual workplaces.

Data gathered by House Bill 2860 will be utilized qualitatively to develop easy to understand statistics which measure the degree of existing operational risk across the public sector. These metrics can also be used to evaluate success of implemented interventions aimed at reducing injuries and illnesses.

Data collected will be evaluated qualitatively, when, and where possible, to identify at-risk public sector establishments and anticipate those work tasks which create unacceptable level of high hazardousness which can be abated through targeted interventions (for example, applying lockout/tagout during unplanned or non-routine maintenance activities, or providing personal fall arrest systems during breakdown work near unprotected edges).

What data would be required to be recorded and reported through House Bill 2860? Exactly as their private sector counterparts, all public sector employers across the Commonwealth would record, maintain, post, retain, and report work-related fatalities and all work-related non-minor injuries and illnesses on or with the equivalent of federal OSHA 300 Log, 300A summary, and the OSHA 301 injury/illness report forms.

It is important to draw the distinction between the goal of the workers' compensation reporting system and OSHA's recordkeeping process goal. The workers' compensation system is designed to describe the injury or illness, compensate the worker for loss of wages resulting from temporary or permanent disability, and facilitate a return to regular duty. The forms

associated with the workers' compensation reporting system contains few elements useful for assessing public sector operational risk assessment. In contrast, the sole purpose of the OSHA recordkeeping process is, according OSHA.gov, "to help employers, workers, and OSHA evaluate the safety of a workplace, understand industry hazards, and implement worker protections to reduce and eliminate hazards, preventing future workplace injuries and illnesses" (osha.gov, n.d.).

Unlike the workers' compensation reporting process, an OSHA 301 or equivalent form will ask eighteen questions of the recording employer aimed to identify contributing and causal factors, including:

- What was the employee doing just before the incident occurred?
- What happened?
- What was the injury or illness?
- What object or substance directly harmed the employee?

These are critical details necessary for in-house accident investigative teams and public sector decision makers to identify and categorize injury and illness trends, identify particularly high-hazard tasks or job classifications, and formulate cost effective preventive and corrective actions to prevent injury recurrence.

Concerns regarding excessive costs associated with training state public sector employers and employees on an OSHA equivalent recordkeeping system were determined by federal OSHA to be without basis. In 2004, federal OSHA reported in the Federal Register that costs incurred for Executive Branch federal agencies adopting the recordkeeping system would be insignificant. Because work performed by federal agencies is comparable to work performed by private sector, OSHA had not been made aware of any significant concerns raised by the private sector related to economic resources (Federal Register, 2004) which requires high hazard private sector employers with as few as eleven (11) employees to comply with its recordkeeping requirements. OSHA at this time estimated the direct cost of private sector recordkeeping to be less than \$58.00 for any business, regardless of industry type. For workplaces with less than 20 employees, OSHA cost analysis revealed the average annual cost per establishment was \$31.63. Using the United States Inflation Calculator (www.usinflationcalculator.com), these costs adjusted to 2022 for inflation could be expected to be \$91 annually for employers more than twenty employees, and \$49.70 for workplaces with less than 20 employees.

Further, OSHA (2004) estimated the cost of initial recordkeeping training to be just one hour per person trained. It is important to consider the availability of free resources online to assist with this training effort, including a free, high-quality 17-minute video recordkeeping tutorial on federal OSHA's website (<https://www.osha.gov/recordkeeping/tutorial>). Time required to fulfill the compliance obligation, according to federal OSHA in 2004, is:

- 8 minutes to post the OSHA 300A annual summary by an individual establishment;
- 20 minutes to prepare the annual summary prior to the annual posting;
- 30 minutes to certify the annual summary posting by the highest ranking company official;
- 15 minutes to enter a recordable injury to the OSHA 300 Log; and
- 22 minutes to fill out initial report of injury/illness on the OSHA 301 form.

In practical terms, if a public sector workplace with twenty-five employees has three non-minor injuries in calendar year 2022, the time required to record and report these three injuries would be 2.8 administrative hours.

Committee members may wonder if Pennsylvania's private sector employers struggle complying with the OSHA required recordkeeping regulations. I offer the following data extracted from private sector visits conducted by Pennsylvania OSHA Consultation in support of my professional opinion that no, private sector employers, even the smallest of them, do not struggle with recordkeeping.

During 2019 PA OSHA Consultation safety and health consultants identified 3,994 serious, other-than-serious, and regulatory hazards during 649 visits in private sector workplaces. Of those, only 24 regulatory hazards were identified as non-conformances with the OSHA recordkeeping standards. That is just 0.6% of all hazards identified in one year.

During 2022 the safety and health consultants identified 3,177 serious, other-than-serious, and regulatory hazards during another 584 visits to other small employers. Of those only 56 regulatory hazards were identified as non-conformances with OSHA recordkeeping standards, or 1.8% of all hazards identified.

While opponents may suggest recordkeeping for the public sector is a burden, confusing, overly complicated, or too costly, the data provided above for private sector employers strongly suggests otherwise.

Each public sector employer submitting their establishment's injury and illness data using a secure, state-level internet-based data collection tool would undergo analysis which, at a minimum, would include the calculation of individual public sector workplace injury and illness incidence rates. OSHA's Total Recordable Incident Rate (TRIR) and the Days Away, Restricted or Transferred (DART) rate are the standard measure for safety and health performance across the United States. These two rates for each Pennsylvania public entity would be directly comparable to other similar private or reporting public sector industry's TRIR and DART rates.

This new metric capacity provides an accurate assessment of the overall effectiveness of Pennsylvania public sector safety and health programs, training, hazard identification,

evaluation, and control efforts, and whether additional resources are needed to further reduce unacceptable operational risk.

One potential challenge of House Bill 2860 can be found in Section 8(b)(4), which requires the annual report to include:

An analysis of the reasons for any significant differences in the frequency or severity of work-related injury and illness between public sector occupations and similar private sector occupations.

Using only OSHA 300A summary data, it may be difficult to conduct a detailed “analysis” to derive and conclude those specific “reasons for any significant differences.”

To illustrate this concern, if for example NAICS 624310 (vocational rehabilitation services) public sector establishments report their 300A summaries covering the previous year, the data available for “analysis” would only include the following:

- Total hours worked;
- Total number of deaths;
- Total number of cases (injuries or illnesses) with days away from work;
- Total number of cases with job transfer or restriction;
- Total number of other recordable (non-minor) cases;
- Total number of days away from work;
- Total number of days of job transfer or restriction;
- High-level description of the “injury and illness types,” which includes the number of “injuries, skin disorders, respiratory conditions, poisonings, hearing loss, or all other illnesses.”

It may be challenging to satisfy this annual report expectation of identifying specific “reasons” why any individual establishment, or its public sector industry, may have experienced a higher normalized rate of serious injuries compared to similar industry in the private sector.

The OSHA 300A or equivalent summary form provides total hours worked and a high-level synopsis of the types of injury severity, classifying each event as non-minor, days away, or deaths. It also provides a simple tally of all days away or restricted and/or transferred to another job during the previous calendar year, but the 300A will not specify which injury resulted in a specific number of days lost or restricted.

There is certainly sufficient detail found in the OSHA 300A summary to definitively calculate the establishment’s injury and illness incidence rates, and then compile an average incidence rate for an entire group of establishments which may fall under any NAICS or within any one distinct agency within the Commonwealth as the House Bill requires. However, individual, or aggregated 300A summary data alone may be insufficient to meet the expected outcome or deliverable as defined under Section 8(b)(4), which requires detailed descriptive

and statistical exploratory analyses to identify trends or “significant differences” in work-related injury and illness data.

A potential solution may be the Department providing additional injury detail submitted by Pennsylvania public sector employers through the Bureau of Labor Statistics’ “Survey of Occupational Injuries and Illnesses.” This survey collects additional detail beyond the OSHA 300A summary, including:

- Time the employee began work on the day of the injury;
- The time of day the injury occurred;
- A description of what the worker was doing prior to the injury event;
- A description of the part of the body affected by the injury;
- How the body part(s) was affected; and
- A description of the object or substance that directly harmed the employee.

There will need to be a mechanism defined by the Department to provide the SOII data from the BLS directly to the agency performing the detailed descriptive and exploratory analyses with individually identifiable information removed or redacted, or under a non-disclosure agreement, if necessary, as stipulated by Section 6 of House Bill 2860.

Overall, House Bill 2860 mechanisms for public sector recording and reporting will provide ample detail to successfully calculate incidence rates for individual public sector establishments annually. There will be sufficient detail provided in the OSHA 300A summaries to calculate an overall TRIR and DART rate for entire agencies or individual NAICS codes.

In summary, if a subcommittee member should desire to know which agencies or public sector employers have the highest degree of operational risk, or which agencies or public entity’s workers are at the greatest risk of severe injury? Unfortunately, we simply do not know the answer because today we rely on data designed to compensate and return a worker back to full duty, rather than injury and illness records designed to “help employers...evaluate the safety of a workplace...and implement worker protections to reduce and eliminate hazards, preventing future workplace injuries and illnesses” (osha.gov, n.d.).

Pennsylvania’s public sector workers are dying on the job every year, yet the “how,” the “why,” and the “what” can we proactively do to prevent the next serious injury remains unclear.

If this subcommittee moves forward to provide a means to resolve this gap in our knowledge of public sector occupational safety and health risk, safety and health professionals in our public sector can assist their leadership strategize and target the most serious risks fellow public sector employees faced today and will face again tomorrow.

Recordkeeping in the public sector will help us identify, evaluate, and control those hazards with severe injury and fatal injury potential our public sector workers are facing every

day. Public sector leaders need assistance in understanding their respective serious hazards so interventions can be planned and implemented. As Safety Sciences department chair, Dr. Tracey Cekada, testified on May 27, 2021, the collecting and analyzing of workplace injury and illness data leads to strong occupational safety and health interventions, maximizing the impact of those limited resources available and will save worker lives.

Thank you for your attention this morning and allowing me time today to illustrate the overwhelming benefits and a limitation of House Bill 2860.

References:

Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements. 69 Fed. Reg. 68793 – 68805 (November 26, 2004) to be codified at 29 C.F.R. 1960.

Occupational Safety and Health Administration. (n.d.). Retrieved from <https://www.osha.gov/recordkeeping>