

TESTIMONY OF

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THE PENNSYLVANIA AFL-CIO

ON

REPORTING STANDARDS IN PENNSYLVANIA

BEFORE THE

HOUSE LABOR AND INDUSTRY SUBCOMMITTEE ON

WORKERS COMPENSATION AND PROTECTION

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Introduction

Good morning, Chairman Nelson, Chairwoman Snyder, and members of the House Labor and Industry Subcommittee on Workers Compensation and Worker Protection. My name is Sarah Hammond, and I am the Legislative Director of the Pennsylvania AFL-CIO. Thank you for the opportunity to present testimony to you today regarding House Bill 2860 – The Public Sector Worker Safety Data Analysis Act. It is a privilege to be here today on behalf of our affiliated labor organizations and the more than 700,000 hardworking union members who we represent.

The Public Sector Worker Safety Data Analysis Act directly addresses the non-existence of reporting requirements and standards for public sector workplace injuries and illnesses throughout Pennsylvania by extending substantially similar reporting requirements and standards presently applicable to private sector employees, to approximately 576,000 public sector workers employed by our Commonwealth and virtually each of its political subdivisions in essentially every vocation and profession imaginable.

House Bill 2860 will require the Department of Labor & Industry to collect OSHA 300 like data from public sector employers in Pennsylvania and require public sector employers to provide the same data that private sector employers already must compile and submit relating to public sector workplace injuries and illnesses. This legislation will ultimately enable the Commonwealth to compare and analyze worker injury, disease, and illness data in both the public and private sectors in order to analyze safety practices and outcomes across similar occupations and industries. That data collection and analysis will, in turn, foster the identification of disparities and target effective policy solutions to those specific areas accordingly.

Simply put – this bill will create a uniform reporting standard for all workplaces that will not only help to identify specific areas of concern to be addressed but will also equip Policy Makers with the data to make those determinations in an informed fashion. This legislation merely extends to public employers the same injury and illness reporting standards that currently are required of the private sector across the Commonwealth.

BACKGROUND – HB 2860

The Public Sector Worker Safety Data Analysis Act provides for public sector worker safety data analysis and directs the Department of Labor & Industry to establish a program to require the reporting and recording of work-related injuries and illnesses of public sector employees in a manner substantially similar to the requirements for private sector employers.

Currently, the majority of public employers fail to use the OSHA 300 injury and illness reporting form which has been used by private sector employers for decades. This form has been required of private sector employers to report job-related injuries and illnesses

to OSHA, to keep a record of those injuries. As matters currently stand in Pennsylvania, we are unable to make any accurate comparison across sectors because the severely limited data voluntarily submitted by public sector employers sits at around 15% – too low for the Department of Labor and Industry to share or make accurate comparisons.

House Bill 2860 will allow the Department of Labor and Industry to collect OSHA 300 based data from public sector employers in Pennsylvania and require public sector employers to provide the same cohort of data that private sector employers already compile. Like small employer exemptions in private industry, small public sector employers would be exempt from reporting. While there would be no penalty for non-participation, the Department of Labor and Industry would be permitted to post a list of public employers who fail or refuse to participate on their website.

This legislation will provide that a public employer request from our Department of Labor & Industry or the U.S. Department of Labor, Bureau of Labor Statistics to respond to the Survey of Occupational Injuries and Illnesses must be the subject of compliance no later than the deadlines specified in the request. The Department of Labor & Industry will publish a list of public sector employers that fail to respond to the survey on a publicly accessible site.

This bill will not appropriate additional money, but rather will allow the Department of Labor and Industry to use a small portion of the money appropriated to them annually in the Workers Compensation "housekeeping" bill – subject to any limitations inserted by the General Assembly. It also allows up to \$1,500,000 appropriated by the General Assembly to the Department of Labor & Industry from the Workmen's Compensation Administration Fund to be used annually for the administration of this act.

Annual reports will be compiled and issued to the governor, chairs, and minority chairs of the Labor and Industry Committee in both chambers of the General Assembly, with a requirement that reports will be published on the Department of Labor & Industry's website for public access.

OSHA

First signed into law in 1970, the Occupational Safety and Health Act broadly and appropriately expanded the federal government's role in keeping workers safer and implemented effective control measures to diminish preventable injury, disease and death in the workplace.

For public sector workers in Pennsylvania, the federal law affords no such protections. Allow me to repeat that, **FOR PUBLIC SECTOR WORKERS IN PENNSYLVANIA, THE FEDERAL LAW AFFORDS NO SUCH PROTECTIONS.** Even worse, as we've noted, Pennsylvania's public workers do not have comparable required protections and safety

guidelines in place, which means public employees face serious – and deadly – workplace hazards with no mandatory oversight.

Pennsylvania has no official OSHA-approved "state plan" for occupational health and safety. As a result, most private-sector Pennsylvanians fall exclusively under federal OSHA control. Public workers (Commonwealth, county, public school district, municipal and county authority, law enforcement, first responder, public transportation, first responder, fire and rescue and municipal employees) are not covered by federal OSHA, but they derive some protections from Pennsylvania's General Safety Law (Act 174). This means however that there are no consistent OSHA-comparable trainings, data collection or reporting standards relating to the public sector.

A directly comparable example of disparities between private and public sector workers can be seen in construction industry. While private construction workers are protected as a matter of law from working in trenches more than 5 feet deep without shoring protections against collapses and cave-ins, public sector workers in comparable jobs are often compelled to work in even deeper trenches without these modest protections. This is perfectly legal; and, because of this basic failure of essential public policy protection, public sector workers in these same occupations die in their effort to earn a living.

While data is spotty in Pennsylvania, national statistics do show a disparity in injury and illness rates between public and private sector workers generally. According to an AFL-CIO analysis of Bureau of Labor Statistics data, state and local public sector employers reported an injury rate of 4.6 per 100 workers in 2019, compared to a rate of 2.8 per 100 workers in the private sector. While any workplace injury or illness is unacceptable, this particular statistic is staggering.

Workplace Injuries and Illnesses are Underreported and Costly – AFL-CIO 2022 Death on the Jobs Report*

*The public sector data included in the National AFL-CIO 2022 Death on the Job Report reflects data collected and submitted from states that have adopted public sector OSHA and related reporting standards.

Nonfatal Injuries and Illnesses

According to the AFL-CIO 2022 Death on the Jobs Report, in 2020, nearly 3.2 million workers across all industries, including state and local government, suffered work-related injuries and illnesses that were reported by employers, with 2.7 million injuries and illnesses reported in private industry. In 2020, state and local public sector employers reported an injury rate of 3.9 per 100 workers, 44% higher than the reported rate of 2.7 per 100 among private sector workers.

Due to limitations in the current injury reporting system and widespread underreporting of workplace injuries, this number understates the dimension of the problem. The true toll is estimated to be two to three times greater—or 5.4 million to 8.1 million injuries and illnesses a year. Moreover, public employers are not required to report to the Bureau of Labor Statistics; its Survey of Occupational Injuries and Illnesses is voluntary.

The number of reported illnesses in private industry, including COVID-19, more than quadrupled in 2020 to 544,600 illnesses, compared with 127,200 in 2019. This plainly is not a true count of occupational based COVID-19 infections. However, studies have not been done to determine the number of cases of all work-related illnesses, and recently, work-related COVID-19, have been missed by the survey. This estimate is likely much greater given other documentation throughout the pandemic.

Cost of Occupational Injuries and Deaths

The cost of occupational injuries and deaths in the United States is staggering; it is estimated at \$176 billion to \$352 billion annually, according to two recent studies. The 2021 Workplace Safety Index, published by private insurer Liberty Mutual Insurance, estimated the cost of the most disabling workplace injuries to employers at more than \$58 billion a year—more than \$1 billion per week. This analysis, based on 2018 data from Liberty Mutual, the Bureau of Labor Statistics, and the National Academy of Social Insurance, estimated direct costs to employers (medical and lost- wage payments) of injuries resulting in cases involving five or more days of lost time. If indirect costs also are considered, the overall costs are exponentially higher.

According to the 2022 Death on Job report, based on calculations used in the Liberty Mutual Safety Index, the data indicates that businesses pay between \$176 billion and \$352 billion annually in direct and indirect (overtime, training and lost productivity) costs on workers' compensation losses for the most disabling injuries and indirect costs are estimated to be two to five times direct costs.

It is important to note that the Safety Index excludes a large number of injury cases (those resulting in less than five days of lost time for example). In addition, Liberty Mutual bases its cost estimates on the Bureau of Labor Statistics injury data. Thus, all problems of underreporting in the Bureau of Labor Statistics system apply to the Liberty Mutual cost estimates with equal force.

A 2011 comprehensive study examined a broad range of data sources, including data from the Bureau of Labor Statistics, the Centers for Disease Control and Prevention (CDC), the National Council on Compensation Insurance and the Healthcare Cost and Utilization Project, to determine the cost of fatal and nonfatal occupational injuries and illnesses for 2007. This study estimated the medical and indirect productivity costs of workplace injuries and illnesses at \$250 billion annually ... more than the cost of cancer in this country.

A follow-up analysis found that workers' compensation covered only 21% of these costs, with 13% borne by private health insurance, 11% by the federal government and 5% by state and local governments. Fifty percent of the costs were borne by workers and their family members.

A 2015 report by OSHA—*Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job*—outlined how work-related injuries have devastating impacts on workers and their families. According to the report, workers who are injured on the job suffer extraordinary economic loss. Even after receiving statutorily limited workers' compensation benefits, injured workers' incomes are, on average, nearly \$31,000 lower over 10 years than had they not suffered a work-related injury.

Aging Workers

Workers 65 and older have 2.5 times the risk of dying on the job than all workers, with a fatality rate of 8.6 per 100,000 workers in 2020. Workers ages 55–64 also are at increased risk, with a fatality rate of 4.4 per 100,000 workers. In 2020, 38% of all fatalities (1,727 deaths) occurred in workers ages 55 years and older, with 676 of these deaths occurring in workers ages 65 years and older. People are working longer, and in only seven years, by 2030, all baby boomers will be 66 years of age and older, and one in four workers will be 65 years and older.

Urgent Need / Worker Fatality

As we have made clear, public-sector workers are not endowed with the same basic workplace safety rights and protections as their private sector counterparts under federal OSHA standards. The federal enactment determined that public sector employers would fall under the jurisdiction of the state, and, in Pennsylvania, we have not adopted a comparable set of OSHA standards or reporting requirements for injuries, illnesses, and deaths resulting from accidents on the job.

Consider this, on the same highway, using the same equipment, a private contractor and a public sector worker are injured on the job – the private contractor employee is covered by OSHA, and the public worker is not. Public-sector workers, like first responders, public road workers, public transit workers, healthcare workers and educators, serve our public good, without the private sector required protections, while experiencing higher rates of injury, illness, and fatality.

According to the National AFL-CIO's 2019 Death on the Job Report, state and local public-sector employees are 64% more likely to be injured on the job than private-sector workers. Public sector workers face higher rates of workplace violence in comparison to workers in the private sector, with an incidence rate 745% higher for state employees and 535% higher for local government workers. When fatalities occur, due to the lack of reporting requirements and regulatory protections, families are often left with unanswered questions and face serious difficulty getting answers and closure.

Public Industry Impact Review

According to the National AFL-CIO's Annual Death on the Jobs report, in 2016, state and local public-sector employers reported an injury rate of 4.7 per 100 workers, significantly higher than the reported rate of 2.9 per 100 among private-sector workers.

Certain health care and protective service occupations have incidence rates for injury and illness cases leading to days away from work that startlingly exceed their private-sector counterparts. These include psychiatric aides, psychiatric technicians, firefighters, emergency medical technicians and paramedics, nursing assistants, police and sheriff's patrol officers, licensed practical and licensed vocational nurses and registered nurses. The incidence rate for psychiatric aides in state government in 2017 (1,160.7 cases per 10,000 full-time workers) was more than seven times greater than the incidence rate for all state government workers (143.8 cases).

Facing the nonexistence of Public Sector OSHA regulations, public employees that work in these facilities are stripped of the standard workplace protections that are provided to others through OSHA – leaving them to work, every single day, in dangerous conditions that expose them to deadly toxins and contaminants, with little support and less recourse.

Pennsylvania workers at state and local government agencies face a disproportionate dimension of workplace safety incidents and illnesses. The numbers relating to workplace violence and musculoskeletal disorders (MSDs) are particularly alarming. Workplace violence events disproportionately occur among public employees. The incidence rate of injuries caused by workplace violence was more than 861% higher for state government workers (36.5 per 10,000 workers) than the rate for private industry workers (3.8). The incidence rate of violence for local government workers (21.8 per 10,000 workers) was 474% higher than for private industry workers. In 2016, the incidence rate for state government workers was 40.3 MSDs per 10,000 full-time workers, 37% higher than the private industry rate (29.4). The incidence rate for local government workers was 44.7 MSDs per 10,000 full-time workers, 52% higher than the private-sector rate.

State correctional officers and local sheriff's patrol officers continue to be at great risk of work-related injuries and illnesses. Correctional officers experienced 17% of the total state government cases of injuries and illnesses in 2016, with an incidence rate of 450.8 cases per 10,000 workers. Sheriff's patrol officers experienced 15% of all cases of the total local government cases of injuries and illnesses in 2016, with an incidence rate of 515.9 cases per 10,000 workers.

Reporting Process

Pennsylvania's private sector has reporting standards in place for workplace injuries and illnesses, with guidelines on who and what is included, as well as the timeframe for submitting reports. The standards for private sector workers on injury reporting is largely unchallenged because we know that when catastrophic illnesses and injuries occur, it is our due diligence as employers and as Unions representing workers, to make sure that they are accounted for.

There is no acceptable excuse for public sector workers who perform the same jobs – without any similar requirement for training, let alone reporting of such injuries, in an already potentially more dangerous environment – to not to be appropriately accounted for so that these injuries can be prevented in the future. The data collected should be publicly available, without fear of retaliation for survivors and their colleagues.

Under this proposed legislation, the protections accruing to public employees may be obvious. That public employers stand to gain may not be as clear. It is constructive to understand the advantages of this bill for employers as well. Injuries, illnesses, and deaths in the workplace are costly in financial as well as in human terms. Employers lose countless hours of productivity to illness and injuries that a safe workplace could easily reduce; investments in training and skills development are lost; recruitment and retention of employees is compromised. In complying with the appropriate reporting through OSHA 300 forms required by this bill, the necessary support can be given to the areas that need it most.

Conclusion

For years, when issues regarding worker and workplace safety and protections have arisen, time and time again, stakeholders and legislators on all sides of the issue and political aisle have had one consistent and unified response – *we need to see the data; we do not currently have the necessary comparable data available*. This piece of legislation will not only rectify that direct potential concern that has been repeatedly expressed and it does so with a solution that the General Assembly has required. The Public Sector Worker Safety Data Analysis Act is that solution – crafted from stakeholder feedback and through extensive work with the Department at Chairman Nelson's lead – and now is the time.

It is a fundamental right of all employees to work in an environment that is safe ... or at least as safe as possible. Public sector workers in Pennsylvania must not continue to be regarded as second-class workers to their private sector peers – and they must not be treated as such. House Bill 2860 will ensure that every workplace catastrophic injury and illness is documented appropriately and in accordance to the same uniformly established standards across the board.

Ensuring that every Pennsylvania worker has safe and healthy working conditions is more important now than ever. On behalf of the over 700,000 working people and the hundreds of thousands more in their families represented by the affiliated unions of the

Pennsylvania AFL-CIO who want nothing more than for their loved ones to return home at the conclusion of a hard day's work, we wholeheartedly support Representative Nelson's House Bill 2860, and strongly encourage you to do so on behalf of public sector workers across our state including those who live and work in each of your districts back home. Thank you.