

The logo for UNIDOS US, with "UNIDOS" in red and "US" in dark grey.The logo for Texas RioGrande Legal Aid (TRLA), with "TRLA" in large blue letters and "Texas RioGrande Legal Aid" in smaller blue letters below it.The logo for Legal Services Corporation (LSC), with "LSC" in blue and "America's Partner for Equal Justice" in smaller blue text below it, and "LEGAL SERVICES CORPORATION" in very small text at the bottom.

Via Regulations.gov

June 30, 2022

Doug Parker
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Re: Proposed Rule, Improve Tracking of Workplace Injuries and Illnesses (Docket No. OSHA-2021-0006)

Dear Mr. Parker:

Commenters Unidos US, Farmworker Justice, and Texas RioGrande Legal Aid appreciate the opportunity to comment in response to the Occupational Safety and Health Administration's (OSHA's) recent Proposed Rule that would require certain employers to electronically submit data on workplace injuries and illnesses and would require OSHA to publish some of the reported case-specific data. Improve Tracking of Workplace Injuries and Illnesses, 87 Fed. Reg. 18,528 (March 30, 2022) (to be codified at 29 C.F.R. pt. 1904). Collectively, Commenters have significant experience with workplace hazards faced by Latinos and barriers to improving workplace safety.

Unidos US, founded in 1968, is the nation's largest Latino civil rights and advocacy organization. It contributes to a stronger America by working across communities to eliminate barriers and create opportunities for Latinos. Among other things, Unidos US works with our Affiliate Network of nearly 300 community-based organizations to ensure that Latinos have access to safe employment and economic and physical wellbeing.

Farmworker Justice, founded in 1981, is a national organization that advocates on behalf of farmworkers who perform agricultural work in the United States, as well as their families. Farmworker Justice seeks to empower farmworkers to improve their living and working conditions, including their occupational safety and health.

Texas RioGrande Legal Aid, founded in 1970, provides free legal services to the indigent in a 68-county region of south and west Texas, and serves farmworkers throughout Texas, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. The organization has decades of experience advocating on behalf of Latino workers regarding workplace safety.

Commenters support the Proposed Rule and commend OSHA for its focus on improving reporting and data on workplace injuries and illnesses. This comment provides information on five topics.

- First, to help bolster this rulemaking, Commenters provide data on the disproportionate rate of workplace injury and fatality among Latino workers, particularly among farmworkers and construction workers. Improving case-specific reporting of such injuries will improve equitable access to safe working environments for Latino workers.
- Second, Commenters explain that case-specific data will enable them to better direct their resources in ways that will have the most impact on workplace safety.
- Third, to facilitate meaningful analysis of injury and illness data, Commenters urge OSHA to require employers to submit race and ethnicity data on their case-specific reports and for OSHA to publish race and ethnicity data.
- Fourth, Commenters urge OSHA to make the new data available in an accessible, searchable, and sortable format that will enable them to meaningfully analyze patterns and identify needs.
- Finally, Commenters request that OSHA direct enforcement efforts to workplaces frequented by Latinos.

I. The Proposed Rule Will Help Protect Latino Workers, Who Currently Suffer Disproportionate Rates of Workplace Injuries and Fatalities.

Under current rules, employers electronically submit to OSHA only summary information on annual workplace injuries and illnesses (Form 300A). Case-specific information on a particular incident is provided only when there is a fatality, and, even then, detailed information is not available to the public.

The Proposed Rule will improve government oversight and public accountability at workplaces that present extreme hazards to underserved populations, including Latinos. By requiring employers, especially those in the farming and construction industries, to routinely report case-specific data on workplace injuries and illnesses for publication, the Proposed Rule will improve equitable access to safe working conditions.

a. Latinos are overrepresented in industries that face excessively high rates of fatalities from workplace injuries.

In 2013, 820 Latinos lost their lives from fatal workplace injuries, a 9% jump from the prior year.¹ The numbers have only worsened since. In 2020, 1,072 Latino workers lost their lives due

¹ Unidos US Blog, *New Data Show More Latino Workers Being Killed on the Job Despite Decline in Fatal Injuries for Overall Workforce* (Apr. 22, 2015), <https://www.unidosus.org/blog/2015/04/22/new-data-show-more-latino-workers-being-killed-on-the-job-despite-decline-in-fatal-injuries-for-overall-workforce/>.

to fatal workplace injuries, including 380 native-born workers and 692 foreign-born workers.²

The problem is largely attributable to two high-risk industries in which Latinos are overrepresented: farm work and construction. Seventy-eight percent of all farmworkers identify as Hispanic.³ Many are also immigrants, with 6 in 10 farmworkers reporting they were born in Mexico and 5% reporting they were born in Central America.⁴ Further, 62% of farmworkers report that Spanish is their primary language, and only 32% report that they speak English “well.”⁵ Among production workers in the construction industry, at least 34% are Hispanic.⁶ About 73% of the 2.8 million Hispanic people working in construction in 2015 were born outside the United States, and nearly 1.7 million (59%) were not U.S. citizens.⁷

Agriculture and construction are particularly high-risk industries. They have the first and third highest rates, respectively, of workplace injuries of any U.S. industry. In 2020, the rate of fatal workplace injury in the “[a]griculture, forestry, fishing, and hunting” category was 21.5 out of 100,000 workers, nearly twice as high as any other occupational category.⁸ In third place, the 2020 rate among “[c]onstruction” workers was 10.2 out of 100,000 workers, more than twice as high as the next highest category (“[t]ransportation and warehousing” had the second highest rate).⁹ From 2000 through 2010, the death rate for heat-related illness among agricultural workers was 35 times higher than the rate for all other industries.¹⁰

The rates of non-fatal injuries can also be staggeringly high in these industries. For example, studies have found that as many as *two-thirds* of dairy farmworkers have been injured on the job

² U.S. Bureau of Lab. Stat., *Census of Occupational Injuries, Fatal work injuries to Hispanic or Latino Workers*, <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/fatal-work-injuries-to-hispanic-or-latino-workers.htm> (last visited June 30, 2022).

³ Amanda Gold et al., *Findings from the National Agricultural Workers Survey (NAWS) 2019-2020: A Demographic and Employment Profile of United States Farmworkers 3* (2022), https://wdr.doleta.gov/research/FullText_Documents/ETAOP2022-16_NAWS_Research_Report_16_508c.pdf.

⁴ *Id.*

⁵ *Id.* at 13.

⁶ Ctr. for Construction Rsch. & Training, *The Construction Chart Book* (6th ed. 2018) at 53, https://www.cpwr.com/wp-content/uploads/publications/The_6th_Edition_Construction_eChart_Book.pdf.

⁷ *Id.*

⁸ U.S. Bureau of Lab. Stat., *Census of Occupational Injuries, Number and Rate of Work Injuries, by Industry Sector, 2020*, <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm> (last visited June 30, 2022) (expand “Show Table”).

⁹ *Id.*

¹⁰ Diane M. Gubernot et al., *Characterizing Occupational Heat-Related Mortality in the United States, 2000-2010: An Analysis Using the Census of Fatal Occupational Injuries Database*, 58 *Am. J. Indus. Med.* 203, 205 (2015), <https://doi.org/10.1002/ajim.22381>.

at least once, and 61% have suffered injuries that required medical attention.¹¹ The severity of injuries is often compounded by the difficulties workers in these industries—especially farmworkers—face seeking and paying for treatment. For example, 16 states currently do not require provision of workers’ compensation benefits to migrant or seasonal farmworkers; several other states limit coverage to certain groups of farmworkers.¹²

b. By improving reporting of workplace injuries, including in industries frequented by Latinos, the Proposed Rule can support equity and improve conditions for an underserved community.

The Proposed Rule is a necessary step to ensuring that Latinos have equitable access to safe working conditions. It should therefore be considered a rule in light of the Administration’s equity goals, as outlined in President Biden’s Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.¹³

Latinos are specifically identified in the Executive Order as an underserved community that has been denied fair, just, and impartial treatment.¹⁴ Many Latino workers also fall into other underserved categories identified in the Executive Order. For example, most farmworkers live and work in rural areas, and nearly a quarter of farmworker families have incomes below the federal poverty line.¹⁵

Many Latinos are also “adversely affected” by “inequality.” For example, many experience serious harm because of our country’s broken immigration system. While most Latino workers are legally authorized to work in the United States, many are in the country on precarious temporary work visas, while others are undocumented. Without permanent legal status, these workers are vulnerable to employer exploitation and abuse. Every time an undocumented or guestworker bravely chooses to speak up about dangerous conditions, she risks retaliation in the form of deportation. One study showed that fear of deportation was a primary reason that dairy workers did not report workplace injuries.¹⁶ In a survey by CDM, 32% of H-2A workers stated

¹¹ Robert Downen, *Two-Thirds of Dairy Workers Have Been Injured at Least Once, Report Finds*, Times Union (July 14, 2017, 11:19 AM), <https://www.timesunion.com/business/article/Nine-out-of-10-state-dairy-workers-fell-less-11278016.php>.

¹² Farmworker Justice, *Workers’ Compensation*, https://www.farmworkerjustice.org/advocacy_program/workers-compensation/ (last visited June 30, 2022) (listing Alabama, Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Dakota, South Carolina, Tennessee, and Texas as not requiring workers’ compensation insurance, and a further eight states with limited coverage).

¹³ Exec. Order No. 13,985, 85 Fed. Reg. 7,009 (Jan. 20, 2021).

¹⁴ *Id.* § 2.

¹⁵ Izaac Ornelas et al., *Findings from the National Agricultural Workers Survey (NAWS) 2017-2018: A Demographic and Employment Profile of United States Farmworkers* 42 (2021), [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS Research Report 14.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2014.pdf).

¹⁶ Amy King Liebman et al., *Immigrant Dairy Workers’ Perceptions of Health and Safety on the Farm in America’s Heartland*. 59 Am. J. Indus. Med. 227, 231 (2016), <https://doi.org/10.1002/ajim.22538>.

that they “did not feel free to quit” in the face of bad working conditions and violations.¹⁷ These fears of retaliation are not unfounded. A 2020 report from the California Department of Industrial Relations Division of Labor Standard Enforcement reported over 300 immigration-related retaliation complaints from workers over a three-year period.¹⁸

Commenters applaud OSHA for taking steps to improve these dangerous and often fatal inequities. OSHA should explain the equity basis for the proposed requirements in any final rule.

II. Case-Specific Data on Workplace Injury and Illness Incidents Will Enable Commenters to Direct Their Workplace Safety Improvement Efforts toward the Biggest Need.

In the Proposed Rule, OSHA seeks information on how electronic availability of case-specific data on workplace injuries and fatalities will improve worker safety and health. 87 Fed. Reg. at 18,543. Commenters intend to use the data to identify specific workplace hazards and direct their resources to areas with the most need in ways that are not available under the current system. That provides one important way that the Proposed Rule will improve health and safety.

Under the current system, employers generally submit only summary data on annual workplace injuries and illnesses. They report case-specific data only if randomly selected to do so or if there has been a fatality. But even that case-specific information is not routinely available to the public. OSHA’s website¹⁹ directs users looking for detailed information to a Bureau of Labor Statistics (BLS) website that provides only aggregated data.²⁰

The available aggregated data is not helpful from the standpoint of organizations like Commenters, who seek to identify specific workplace hazards in order to address those hazards through education or advocacy. For example, under the current system, it is impossible to know how many farmworkers suffer from heat-related illnesses. One available table shows illness and injury data in the crop production industry, but heat-related illnesses are lumped together with other causes under “[e]xposure to harmful substances or environments.”²¹ Another table shows injuries and illnesses caused by “[e]xposure to environmental heat,” but this reflects aggregate data for all private industries.²² A separate table provides data on “[e]xposure to environmental

¹⁷ Mary Bauer & Maria Perales Sanchez, Centro de Los Derechos del Migrante, Inc., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program* 7, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

¹⁸ Cal. Dep’t of Indus. Rels., *2020 Retaliation Complaint Report (Labor Code § 98.75)* 4 (2020), <https://www.dir.ca.gov/dlse/RCILegReport2020.pdf>.

¹⁹ U.S. Dep’t of Lab., OSHA, *Workplace Injury, Illness and Fatality Statistics*, <https://www.osha.gov/data/work> (last visited June 30, 2022).

²⁰ U.S. Bureau of Lab. Stat., *Injuries Illnesses, and Fatalities—Industry Injury and Illness Data* (Nov. 3, 2021), <https://www.bls.gov/iif/oshsum.htm>; U.S. Bureau of Lab. Stat., *Injuries Illnesses, and Fatalities—Case and Demographic Characteristics for Work-related Injuries and Illnesses Involving Days Away from Work* (Nov. 3, 2021), <https://stats.bls.gov/iif/oshcdnew.htm>.

²¹ U.S. Bureau of Lab. Stat., *Injuries Illnesses, and Fatalities—Table R4* (Nov. 3, 2021), https://stats.bls.gov/iif/oshwc/osh/case/cd_r4_2020.htm.

²² U.S. Bureau of Lab. Stat., *Injuries Illnesses, and Fatalities—Table R31* (Nov. 3, 2021), https://stats.bls.gov/iif/oshwc/osh/case/cd_r31_2020.htm.

heat” by industry division, but agriculture is again aggregated with other industries.²³ While searchable databases on the BLS website allow users to search by industry down to six-digit NAICS codes, the classifications for causes of fatalities, injuries, and illnesses are too broad to be meaningful to Commenters.²⁴

While case-specific data for fatalities is sometimes available on the OSHA website, it is impossible to get aggregate data that correlates the cause of death with the industry. For example, one could search for a specific hazard, like “heat,” but would have to separately open each record to view the industry.²⁵ The Census of Fatal Occupational Injuries data available on the BLS website suffers the same flaw—it is not possible to view information on both industry and detailed type of hazard at the same time.²⁶

With case-specific data that would be available under the Proposed Rule—in particular, data that is available in a searchable and sortable format as noted in the next section—Commenters will be able to identify specific workplace hazards and direct their resources to those hazards. For example, if data shows that workers at Florida orange groves routinely suffer one type of injury, but workers at Wisconsin dairy farms routinely suffer a different type of injury, Commenters can target specific employers and employees with educational and training resources to prevent the types of hazards relevant to the workplace. Additionally, Commenters could direct their resources to areas and employers where workers suffer the most serious risks.

Additionally, mandatory reporting and publication of case-specific information will relieve workers of the burden and retaliation risks of reporting employer violations directly to OSHA. As noted above, workers who fear being forced to leave the country are especially reluctant to report violations, which currently impedes OSHA’s enforcement efforts. By placing the case-specific reporting burden on the employer, the Proposed Rule would allow OSHA to take necessary steps to protect workers without subjecting them to additional risks of retaliation.

III. OSHA Should Require Employers to Report Race and Ethnicity Data in Their Case-Specific Reports and Should Publish that Data.

The Proposed Rule would require employers to electronically report information currently maintained on OSHA Forms 300 and 301 and requests information on what case-specific information should be reported electronically and published. 87 Fed. Reg. at 18,545-46. In addition to the information currently maintained on OSHA Forms 300 and 301, Commenters urge OSHA to require employers to electronically report the race and ethnicity of involved employees. Further, OSHA should publish race and ethnicity data alongside the other case-specific information.

²³ U.S. Bureau of Lab. Stat., *Injuries Illnesses, and Fatalities—Table 64* (Nov. 3, 2021), https://stats.bls.gov/iif/oshwc/osh/case/cd_r64_2020.htm.

²⁴ U.S. Bureau of Lab. Stat., *Injuries, Illnesses, and Fatalities—IIF Databases*, <https://www.bls.gov/iif/data.htm> (last visited June 30, 2022).

²⁵ U.S. Dep’t of Lab., OSHA, *Fatality Inspection Data*, <https://www.osha.gov/fatalities> (last visited June 30, 2022).

²⁶ U.S. Bureau of Lab. Stat., *Injuries, Illnesses, and Fatalities—Census of Fatal Occupational Injuries (CFOI) – Current* (Dec. 16, 2021), <https://stats.bls.gov/iif/oshcfoi1.htm>.

Under the current system, OSHA does not collect or publish race and ethnicity data on case-specific incidents. Further, as the Proposed Rule notes, BLS collection of race and ethnicity data for certain workplace incidents is voluntary, resulting in missing data on 40% of reported cases. 87 Fed. Reg. at 18,532. The lack of information limits Commenters’ knowledge of disparities affecting Latinos and our ability to eliminate them.

While available data shows that Latinos face disparities, as discussed above, the information is incomplete and non-specific. Reliable and complete case-specific race and ethnicity data would give Commenters and others far superior information on the needs of the populations we serve. It would allow Commenters to analyze patterns, identify needs that may differ based on context, and help illuminate how to direct limited resources. Additionally, it would increase transparency around workplace safety disparities for specific populations.

IV. OSHA Should Publish Case-Specific Workplace Injury and Fatality Data in a Manner that is Accessible, Searchable, and Sortable.

The Proposed Rule seeks input on what technological features it should provide when it publishes case-specific data. 87 Fed. Reg. at 18,547. OSHA should publish the data in a way that is accessible, searchable, and sortable using a greater level of detail than is currently available.

As explained in the previous section, Commenters need to be able to identify specific hazards. For example, if Commenters knew how many farmworker deaths and injuries were caused by farm vehicles, Commenters would know whether to target farm vehicles in their efforts to improve workplace safety. The data should be available in a way that allows the public to search for injuries and deaths among workers in specific industries—including by six-digit NAICS codes—and then to refine that data by type of hazard down to the most detailed subcategories of event, exposure, or source, and then to sort by other relevant fields such as location, employer, race, and ethnicity.

OSHA could provide these features in ways that are technologically advanced or rather simple. For example, OSHA could publish the data on its own searchable and sortable web database that would allow users to download their search results as spreadsheets or “csv” files. It could also make the data (or subsets of the data) available on an “application programming interface” (API) that users could use to create their own searchable applications,²⁷ or in a downloadable “csv” or “xlsx” spreadsheet that users could search and sort themselves.²⁸ The key is that the data should be well-organized, sufficiently detailed, and available to the public.

Additionally, OSHA should make the data available in multiple languages, including Spanish. This will ensure that Spanish-speaking Latinos themselves have access to the information.

²⁷ See, e.g., openGSA, *GSA API Directory*, <https://open.gsa.gov/api/> (last visited June 30, 2022).

²⁸ As an example of this, the Department of Labor makes certain information on work visas available by “xlsx” spreadsheets. U.S. Dep’t of Lab., Emp. & Training Admin., *Performance Data*, <https://www.dol.gov/agencies/eta/foreign-labor/performance> (last visited June 30, 2022).

V. OSHA Should Direct Enforcement Efforts toward Workplace Fatalities Among Latino Workers and Farmworkers.

Finally, in order to protect especially vulnerable Latino workers, OSHA should use the case-specific information that would be collected under the Proposed Rule to engage in greater and more effective enforcement of safety violations in industries frequented by Latinos, including in farming and construction industries. OSHA should routinely analyze the case-specific data to identify systemic violations, bring enforcement actions against violators, and seek aggressive fines sufficient to provide a deterrent effect. OSHA should pay special attention to any employers that have particularly high rates of worker injury or fatality, such as dairy farmers and construction companies.

* * *

Commenters appreciate the opportunity to comment and provide recommendations in this matter and would be happy to provide further information, if requested. If you have any questions or would like to discuss the information in this comment, please contact Samara Spence, Senior Counsel at Democracy Forward, at 202-701-1785 or sspence@democracyforward.org.

Respectfully submitted,

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