

TESTIMONY

OF

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THE PENNSYLVANIA AFL-CIO

ON

OSHA PROTECTIONS FOR PUBLIC EMPLOYEES

BEFORE THE

SENATE INTERGOVERNMENTAL OPERATIONS COMMITTEE

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Introduction

Good morning, Senator Tartaglione, Senator Coleman, and members of the Senate Intergovernmental Operations Committee. My name is Angela Ferritto, and I am the President of the Pennsylvania AFL-CIO. I am here today on behalf of our affiliated labor organizations and the 700,000 working members that we represent.

Thank you for the opportunity to present testimony to you today regarding the significance of House Bill 299, which would extend OSHA (Occupational Safety and Health Administration) protections to over 575,000 public employees across the Commonwealth. Currently, public sector employees in Pennsylvania do not receive the same worker protections and workplace safety standards as their counterparts who are often doing the same jobs in the private industry.

It is a fundamental right of all employees to work in an environment that is safe. This legislation would extend OSHA safety rules and enforcement to public employers across the Commonwealth, including all legal political subdivisions, public schools, public transit systems, and non-profit organizations.

History

In 1970, Congress enacted the Occupational Safety and Health Act (OSHA) to ensure there was an enforced standard of workplace conditions for working men and women across the United States. OSHA 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.

Unfortunately, for public sector workers in Pennsylvania, the federal law affords no such protections. Even worse – 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 the construction industry. While private construction workers are protected as a matter of law from working in trenches more than five 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.

OSHA safety and health standards have prevented countless work-related injuries, illnesses, and deaths. It has been a success story. The Occupational Safety and Health Act (OSHA, 1971) is a federal law that only covers private sector workers. Employees for state, county, and municipal governments are not currently protected under OSHA.

According to the National AFL-CIO's 2022 Death on the Jobs Report, workplace hazards collectively disable and kill nearly 125,000 workers each year. This includes over 4750 from traumatic injuries and an estimated 120,000 from occupational diseases. Too many workers remain at serious risk of injury, illness, or death as chemical plant explosions, major fires, construction collapses, infectious disease outbreaks, workplace assaults, and other preventable workplace tragedies continue to occur.

Of the more than 5.8 million workers across Pennsylvania, more than 575,000 workers employed by state and local governments do not have safety and health protections on the job; that's nearly one in ten Pennsylvania workers who enter workplaces every day without the same right to safety that their private sector colleagues have. Over half of U.S. states have passed state laws enacting OSHA style protections for their public workers – Pennsylvania must be the next.

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 many 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

Consider this, a private contractor and a PennDOT worker are injured on a job on the same highway using the same equipment – the private contractor is covered by OSHA and the PennDOT worker is not. Public-sector workers like first responders, PennDOT workers, healthcare workers, and educators serve the public good 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 of 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 difficulties getting answers and closure.

On top of the standard workplace health and safety issues that public sector employees face, we now must factor in the impact that COVID-19 has posed on our unprotected workforce. While we cannot presently know the full impact of the COVID-19 pandemic on workplace health and safety, the preceding years do not bode well for outcomes. We know the challenges faced in Pennsylvania's nursing and residential care homes have been front and center of the pandemic's destructive impact on communities, residents, and workers.

In its previous introductions, public sector OSHA legislation has been called the Jake Schwab Worker Safety Bill. It is named after an Erie Metro Transit Authority mechanic who was tragically killed on the job. Sadly, Jake was not the last public sector worker to be killed or injured on the job. In 2021 when we last spoke on this issue before you, 38-year-old worker Cody Gipprich with the West Berks Water Authority in Reading, Berks County, died in a concrete pit after a pipe burst, while his colleagues and bystanders tried to save him. There have been many workers who have suffered injuries and fatalities on the job in the years between Jake and Chip, but the lack of guaranteed safety and health protections implies that information on these tragic incidents is not recorded or tracked.

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, which is 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 far 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 of 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).

As shameful conditions in school facilities have persisted without comprehensive remediation, facilities' needs have continued to increase. COVID-19 has only exacerbated many of the existing needs within buildings, specifically around air quality and ventilation. The American Society of Civil Engineers in their most recent report gives Pennsylvania's overall school infrastructure a "C-".

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. Many schools have been forced to put Band-Aid fixes on infrastructural issues that need major repairs. In Pennsylvania schools, children have experienced lead poisoning, and some educators and staff are showing the fatal and irreversible impact that asbestos leaves behind.

Pennsylvania workers at state and local government agencies face a disproportionate amount 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.

Additionally, the penalties that states who have adopted their own plans face penalties that are abhorrently weak. According to the National AFL-CIO's 2022 Death on the Jobs Report, the average penalty for a serious violation of an OSHA state plan was \$2,421. The median penalty for killing a worker under a state OSHA plan was just \$5,825. Let that sink in – the median cost of a worker's life has averaged to just under \$6,000 in fines. That is abhorrent. Workers deserve accountability and action, and we owe it to Pennsylvanians across the state – both public AND private sector – to ensure that our laws not only prevent workplace injuries, illnesses, and deaths, but that we level appropriate penalties.

Conclusion

Ensuring that every Pennsylvania worker has safe and healthy working conditions are more important now than ever. We are presented with an opportunity to address some of the unhealthy and unsafe structural issues that many public-sector workers face. President Biden's American Rescue Plan has already allocated hefty infrastructural investments to be apportioned towards the remediation of facilities that would dually address some of the one-time costs associated with implementing public sector OSHA in Pennsylvania.

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 299 will help us to prevent every avoidable catastrophic workplace injury and illness to the best of our abilities. It will hold employers to a uniformed standard for appropriately documenting workplace injuries, illnesses, and deaths in accordance with the same uniformly established standards across the board. And it will assure that Pennsylvania's workers will have access to the safest working conditions possible.

While we fight to ensure that all workers can work in a safe and healthy environment, we also have the skilled labor to ensure that the jobs are done right. By making this much needed investment, we are not only giving public sector workers a fair, safe, and healthy environment to work in for decades to come – we are also helping to stabilize our local economies, our environmental impact, and our children's' futures.

House Bill 299 requires the state and its political subdivisions to provide the same type of protection for the employees of its public sector as the federal government requires for Pennsylvania's private sector employees. The Commonwealth should promote this plan for the development and enforcement of occupational safety and health standards with respect to public employers and employees, in accordance with section 18(b) of the Occupational Safety and Health Act of 1970, and the Secretary of Labor and Industry should be empowered to enact regulations to administer and enforce this act.

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 House Bill 299 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.