

Testimony before the Employment and Workplace Subcommittee of the Senate Health, Education, Labor and Pensions Committee “Introducing Meaningful Incentives for Safe Workplaces and Meaningful Roles for Victims and Families”

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I would like to thank Chair Senator Murray and Ranking Member Senator Isakson for caring enough to hold this hearing and for the honor of being invited to represent the family member victims of workplace tragedies.

When a loved one is injured or dies on the job families do not know where to turn for answers. Families have a special need to understand the death because grief persists and is unresolved unless all available information about the circumstances of the work-related fatality or injury is shared in a timely manner. It is like homicide, whether the incident was voluntary or involuntary, the family strives to find out certain information. Simple questions like: Did my son suffer? Was my dad alone when he passed? How did my sister die? Has it happened before in other workplaces? Can we keep it from happening again? Why was this allowed to happen?

Families may be told how the investigation process will work, but this information often comes at a time when you cannot understand it. When family members get to a place in their grief where they need information about the status of the investigation the standard information is repeated and they are dismissed from further participation. The most typical response from the agency is that they can't disclose any information until the investigation is finished. (On the OSHA side that is about 6 months, as required by statute; on the MSHA side it can be much longer.) It is rarely explained to family members that employers have extensive settlement and appeal opportunities which can make the case drag on for years. When this happens, family members' long wait for answers goes on and on. Until the case is closed, and it becomes a final order of the OSH Review Commission, the details and documents assembled by the Labor Department are off limits to family members.

Even when an accident investigation case file is closed, family members may still have to fight to obtain all the written records in the case file. Being shut-out of the investigation process breeds resentment, distrust and compounds their grief, especially in those circumstances when families learn that company workers and co-workers know more about their loved one's death because they were participants in OSHA's investigation. For many family members, it seems like everyone else at the worksites knows more about what happened than they do even though this information may not be factual. Family member victims should be given the opportunity to participate in the investigation process throughout the entire process.

Currently, the investigation involves DOL staff (OSHA, MSHA, and SOL) representatives of the company and their attorneys and experts, and if there is a union at the site, a representative of the workers may also participate. So if there is no union or the union chooses to have no representation then there is no one that can speak on the behalf of workers killed, injured or

made ill by exposures at work. Families can often have substantial factual information that could impact the case such as prior problems with hazards involved in the incident.

Now before I go any further I want to dismiss the myth that family member victims of workplace deaths are money hungry. Time and time again I hear “well at least the families are taken care of” or that families are all driven by greed. Nothing could be further from the truth. In fact, in some States the burial allowance provided under workers’ compensation barely cover today’s funeral expenses. That’s a real slap in the family’s face; not only did they have a loved one ripped out of their lives but they have to fit the bill too.

Families cannot sue the employer; some may get involved in third party lawsuits but this is rare. When private civil action is taken we often can’t learn of the end result because gag orders are imposed. There is absolutely no way for families to secure compensation through participating in the OSHA investigation process. The only thing families have (and want) to gain is the knowledge that they fought for the rights truth and justice of their loved one when they are no longer able to, and that they may be able to keep another worker from suffering harm and another family from unbearable loss and grief.

After speaking with dozens and dozens of families from across the country and with concerned employers, these are the changes that we think need to be made:

1. The average OSHA fine is \$900.03 for a serious violation. OSHA fines need to be raised so that they serve as a deterrent against poor safety records.
2. As important as raising the fines are the collection of the penalties. OSHA fails to collect almost half of the fines imposed meaning these employers know it is cheaper to risk killing someone at work than to address the immediate danger.
3. An advisory committee should be appointed by the Secretary of Labor to be comprised of family members, injured or ill workers, or other worker safety advocates. The advisory committee would serve as a conduit between family member victims and the Department of Labor. The group would share their first-hand experience with OSHA, MSHA and SOL officials, and make recommendations from the family member’s point of view for a H&S regulatory system that focuses on prevention.
4. Families want to have full party status in these legal proceedings by:
 - a. Having a designated representative to act on their behalf that will be notified of all meetings, phone calls, hearings or other communications involving the accident investigation team and the employer.
 - b. The representative should be given the opportunity to participate in these events, recommend names of individuals to be interviewed and any pertinent information that may help with the investigation. Because many times Families have information that OSHA will never gain otherwise. Such as the employers past history with deaths injuries and safety conditions.
 - c. Have access to all documents gathered and produced as part of the accident investigation; including records prepared by first responders, state and federal officials and all fees related to the production of documents should be waived for family members.

Now on a final note: Concerns from employers echo a common theme. Employers want to feel free to call OSHA when they have questions and be directed to materials and training without the fear of being audited and fined for the very reason they are asking for help. They want real guidance and if they are truly interested in keeping our families safe and I believe many are, they need to have this option.

I have inserted the family bill of right which covers most of this and has examples of what some families have had to deal with during this time.