

# Trump approves limit on OSHA's ability to track workplace injuries and deaths

Shelley Connor  
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On April 4, Donald Trump signed into law a joint resolution of Congress that will severely restrict the Occupational Safety and Health Administration (OSHA) in citing and fining employers for habitual disregard of the agency's rules for recording workplace injuries and illnesses.

Enacted under a once little-used procedure called the Congressional Review Act, which allows both houses of Congress to overturn a recently enacted executive branch regulation by simple majority vote, the resolution means that OSHA can no longer impose fines on employers who fail to keep records of worker illnesses and injury for five years required by law.

On March 1, the House of Representatives invoked the CRA to pass H.J. Resolution 83 calling for OSHA's so-called Volks Rule to be overturned. On March 22, the Senate voted 50-48 in favor of the resolution.

The Volks Rule—properly known as Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness—was an amendment to OSHA's record-keeping rules issued by the agency in 2015.

While the law establishing OSHA required employers to keep injury and illness reports for a minimum of five years, the agency was only been allowed to issue citations to companies within six months of a record-keeping violation. This has crippled enforcement, since OSHA might only learn of a failure to keep records years after it occurred.

After a lengthy and unsuccessful legal battle with a construction company doing business as Volks Constructors—hence the informal name of the rule—OSHA issued a rule in 2015, following a judge's directive that this would re-establish the agency's ability to respond to patterns of employer record-

keeping violations.

The promulgation of the rule was repeatedly delayed by challenges from various business groups, and it was only finally accomplished on January 18, 2017, two days before Trump's inauguration. This brought the rule within the purview of the Congressional Review Act, and the Republican leadership in both houses moved quickly to rescind it.

Republican Congressman Bradley Byrne of Alabama, the author of H.J. Resolution 83, characterized the Volks Rule as an “unlawful power grab” by OSHA, claiming that it penalized companies for mere “paperwork errors,” although these involve matters (literally) of life and death in the workplace.

A former OSHA official, former Deputy Assistant Secretary of Labor Jordan Barab, replied that records of injury and illness comprise “essential information” needed for workers and employers to respond to overarching patterns of workplace safety hazards.

Writing on his own web site, he stated, “workplace-specific injury records are only useful if they are complete and accurate,” and pointed out that employers “have an incentive to cheat because high injury numbers can result in increased workers' compensation costs, denial of government contracts, more OSHA inspections and sometimes the loss of monetary bonuses.”

According to Barab, diminishing OSHA's ability to track and respond to patterns of inaccurate record-keeping limits the agency's ability to identify cases of employer malfeasance and fraud. Companies which cheat on record-keeping gain an advantage in government contracting bids over companies with fewer workplace injuries but more accurate records.

The Congressional Review Act (CRA) was part of an anti-regulation bill passed by Congress in 1996 under

the auspices of House Speaker Newt Gingrich, and signed into law by Bill Clinton. It allows Congress to use an expedited legislative process to review regulations issued by government agencies and to overturn them by the passage of a joint resolution. Filibusters are not allowed in the expedited process, and agencies are barred from issuing similar regulations in the future. Prior to Trump's election, the CRA had only been invoked once, in 2001. Since Trump's inauguration, it has already been used 11 times.

Byrne's support for a more "proactive" and "cooperative" OSHA is blatantly disingenuous, as he has also supported Trump's budget proposals, which specifically take aim at OSHA's Harwood Grant program, designed to train workers in hazardous occupations.

The repeal of the Volks Rule, coupled with Trump's budget proposals, will help to render OSHA even less effective than it already is. Despite ultra-right claims of a crippling regulatory regime in America, US businesses actually have greater freedom to kill, maim and sicken workers, pollute the environment and cheat their customers than in most other industrialized countries.

Trump's budgets for infrastructure and other government projects, taken together with the end of OSHA's ability to enforce its workplace injury reporting standards, will ensure that the most flagrantly abusive companies will benefit from the so-called "public-private partnerships" so exalted by the new administration.



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