

September 27, 2023

The Honorable Kevin Kiley
Chair
Subcommittee on Workforce Protections
House Education and the Workforce Committee
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chair Kiley:

On behalf of the National Retail Federation (NRF), I thank you for calling today's hearing and for your oversight of the Occupational Safety and Health Administration (OSHA). OSHA has become increasingly politicized and is now diverting its time and resources toward attacking specific industries—despite the fact the data shows the agency's resources should be focused elsewhere. This is particularly the case with respect to substantial resources OSHA has dedicated toward investigations of the retail industry's warehousing and distribution centers. OSHA's own data does not justify such an allocation of resources.

The National Retail Federation passionately advocates for the people, brands, policies and ideas that help retail succeed. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring, and communicating the powerful impact retail has on local communities and global economies.

Over the past year, OSHA has repeatedly targeted the warehousing and distribution center industry employers for inspections, sometime conducting repeated investigations of the same facility, even though prior OSHA visits failed to find violations. In June, OSHA launched a National Emphasis Program on Warehousing and Distribution Center Operations (NEP).¹

OSHA's own data strongly suggests that this approach is misguided, and the agency could better protect workers by focusing resources elsewhere. Specifically, the data, including what OSHA cites in the NEP, consistently shows that other industries are more hazardous to workers. OSHA chose to lump together numerous divisions of the retail industry (despite OSHA normally keeping these divisions separated in all other data analysis and considerations) as well as the postal service and couriers and local delivery, which skews the data. Whether this was done intentionally to justify the new NEP is unclear. Regardless, when broken down into its

¹ OSHA, National Emphasis Program on Warehousing and Distribution Center Operations, June 14, 2023, available at https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-026.pdf.

parts, the data clearly does not support a NEP specifically targeting warehousing and distribution centers.

If OSHA has was data driven about its enforcement, it would be focused on industries with higher injuries and illness rates, such as the postal service, nursing care facilities, and food service contractors, rather than warehousing and distribution centers. Nursing care facilities and food service contractors both experienced significant spikes in numerous data categories from 2021 to 2022, while home centers experienced their worst increases in several categories in the same time frame. Postal service in particular has a dismal health and safety record. The postal service is routinely in the top five of industries with the highest number of injuries and illnesses, and in 2022, they experienced spikes in nearly every category of data that OSHA collects. Postal service and couriers and express delivery services both have higher DART rates than warehousing and storage as well.

When considering fatalities in the workplace, numerous other industries have significantly more fatalities year over year than warehousing and storage. Again, the postal service is the industry with either the most or second most fatalities every year. The postal service has had more fatalities than warehousing and storage every year since 2017. In 2022, it had more than three times the fatalities of warehousing and storage. The couriers and express delivery industry has had more fatalities than warehousing and storage every year since 2017. The “highway, bridge, and street construction” and “general freight trucking, long-distance, truckload” categories both have had more fatalities than warehousing and storage every year since at least 2016. The list goes on. Limiting fatalities in the workplace should be the highest priority for OSHA, and clearly numerous industries have enough fatalities that they warrant closer scrutiny. OSHA should set its enforcement priorities to target those industries for improvements.

Yet, despite the data, OSHA conducts inspections and issues citations against warehousing and storage at an alarming rate. From October 2021 to September 2022, the industry was the *second* most commonly targeted industry, despite the data described above showing other industries warrant more attention. For example, warehousing had over two and a half times more inspections and two and a half times the number of citations than the postal service despite their routine safety and health problems. There is a clear disconnect between what the agency does and what the agency’s own data suggest it ought to do.

OSHA routinely asks for more resources during the appropriations process and just recently released a final rule requiring certain employers to submit more injury and illness data to OSHA.² As OSHA itself has said, the agency staff plans to use the collected data to aid the agency in targeting activities, and yet as the data currently shows, OSHA is not using the data it already collects and the resources it already has to inform how it should focus its resources.

² OSHA, Improve Tracking of Workplace Injuries and Illnesses Final Rule (29 CFR Part 1904) (RIN 1218–AD40), July 21, 2023, available at <https://www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf>.

Quite simply, the data OSHA collects does not support its decisions to target warehousing and distribution centers for enhanced enforcement actions. The Committee should inquire as to why agency is so fixated on warehousing and distribution centers in the retail industry, despite a lack of evidence justifying such actions. OSHA's pattern of behavior raises serious questions about how the agency sets its enforcement priorities and whether its focus has strayed from workplace safety in an effort to placate unions that are highly interested in organizing this industry.

Thank you for your attention to this issue. NRF looks forward to working with you and the committee on oversight over this misguided agency. We respectfully request that this letter be made a part of the official record of today's hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "David French". The signature is stylized and cursive.

David French
Senior Vice President
Government Relations