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November 1, 2025

Submitted via Regulations.gov

David Keeling

Assistant Secretary of Labor for the Occupational Safety and Health Administration
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: OSHA–2025–0041; Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities

Dear Assistant Secretary Keeling:

We are writing on behalf of the 3 million members of the National Education Association (NEA) and the 50 million students we serve. We appreciate the opportunity to submit the following comment in response to the Occupational Safety and Health Administration (OSHA) proposed revised Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities. **The NEA strongly opposes this interpretation and urges OSHA to consider our recommendations.**

NEA, the largest labor union in the country, represents members who work in and around 100,000 public school buildings. Our members include teachers, paraeducators, nurses, bus drivers, security staff, mechanics, custodians, food service workers, HVAC technicians, office professionals, and many other types of educators. Most NEA members work in public schools and institutions of higher education in states with State Plans that cover state and local government employees. Our members also include educators working in private K-12 and higher education institutions and other public employees. We are deeply committed to the health and safety of our members, the students they serve, and the communities in which they live and work.

After reviewing this proposal, we respectfully urge OSHA to consider our strong opposition and not move forward with this rulemaking. OSHA provides no evidence to support the need for this proposal

based on its more than 50 years of enforcement experience.^{1,2} This proposal also defines key terms so loosely that it is not possible for NEA to assess which sectors and how many workers might lose their current OSHA protections. In addition, OSHA's Economic Analysis is incomplete, completely ignoring any discussion of the impact of this proposal on workers' injuries and illnesses and the associated costs. We believe that this revised interpretation of the general duty clause could result in our members losing OSHA protections.

In passing the Occupational Safety and Health Act in 1970, Congress included a provision, known as the general duty clause, requiring that each employer "shall furnish to each of his employees' employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." OSHA has used the clause to protect workers from dangerous conditions that the agency has not addressed through a specific health and safety standard.

This provision was discussed during public hearings and debated by Congress. It was reported that at least 35 States had such provisions in their existing state safety laws and regulations. In addition, existing Federal safety laws also contain similar provisions. The debate on this provision was about the scope of the provision, but not the exemption of some classes of workers from the general duty clause.³ This was consistent with the Congressional intent "... to assure so far as possible every working man and woman in the Nation safe and healthy working conditions"⁴

We urge OSHA to adhere to the original Congressional intent to protect every worker and not pursue this proposal to revise the Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities. Below, we respond to specific language in the proposal and to questions asked by OSHA:

1. In the proposal, proposed section 1975.7(b) contains a non-exhaustive list of sectors with hazards arising from inherently risky activities that are integral to the essential function of a professional or performance-based occupation where the hazard cannot be eliminated without fundamentally altering the activity. In our reading, this language is written so loosely that it may allow employers to request, or OSHA to add, other sectors/jobs to this list beyond those listed in the proposal. The proposal's loose language makes it impossible to calculate the number of workers who would lose OSHA protections. However, we are deeply concerned that the language leaves the door open for far more people than OSHA has estimated.
2. The economic analysis in OSHA's proposal is incomplete in numerous ways. Most importantly, OSHA has provided no analysis of the cost of workers losing their general duty clause protection, but instead only mentions employers. We recommend that OSHA, at a minimum, perform an analysis of the proposal's cost to workers before taking any further action on this proposal.

¹ Lauren McFerran, "Proposed OSHA Rule Is Dangerous for Workers and the Law," *The Regulatory Review*, (August 5, 2025). Retrieved from <https://www.theregreview.org/2025/08/06/mcferran-proposed-osha-rule-is-dangerous-for-workers-and-the-law/>

² Jordan Barab, "Entertainers Deserve No Safety: OSHA Wants to Restrict Use of General Duty Clause," *Confined Space*, (July 3, 2025). Retrieved from <https://jordanbarab.com/confinedspace/2025/07/03/entertainers-deserve-no-safety-osha-restricts-use-of-general-duty-clause/>

³ Bureau of National Affairs (BNA), "The Job Safety and Health Act of 1970," Washington, D.C., 1971, pp. 40-44.

⁴ Bureau of National Affairs (BNA), "The Job Safety and Health Act of 1970," Washington, D.C., 1971, p 93.

3. Many OSHA state plans require employers to have some form of injury and illness prevention plan, which includes hazards not covered by agency regulations.⁵ Requiring those states to exempt certain sectors by adopting this proposal may conflict with state laws.⁶ In addition, some states may have or are adopting safety and health regulations that cover sectors or hazards exempted by this proposal. California has adopted its Labor Code, "Safety in Motion Picture Productions" (Part 13 Sections 9150 through 9161).⁷ If OSHA moves forward with this proposal, which we strongly urge it not to, it should provide a detailed evaluation of its impact on state-plan programs.

We respectfully urge OSHA to consider our opposition to this proposal and not proceed with this rulemaking. Please do not hesitate to contact Eunice Salcedo at esalcedo@nea.org should you have any questions. Thank you for the opportunity to comment.

Sincerely,



Daaiyah Bilal-Threats
Senior Director, Education Policy and Implementation Center
National Education Association

⁵ Occupational Safety and Health Administration, "Safety and Health Programs in the States," (April 2016). Retrieved from https://www.osha.gov/sites/default/files/Safety_and_Health_Programs_in_the_States_White_Paper.pdf

⁶ Kimberlee Perry, "Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities," (September 18, 2025). Retrieved from <https://www.regulations.gov/comment/OSHA-2025-0041-0753>

⁷ California Legislative Information, "Part 13. Safety in Motion Picture Productions [9150 - 9161]," (July 10, 2023). Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=5.&title=&part=13.&chapter=&article=