



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. Box 44000 • Olympia, Washington 98504-4000

October 31, 2025

via electronic submission: <https://www.regulations.gov>

Amanda Wood Laihow
Acting Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5641
Washington, DC 20210

RE: Notice of Proposed Rulemaking Concerning OSHA-2025-0041, General Duty Clause: Limitation for Inherently Risky Professional Activities

Dear Acting Assistant Secretary Laihow,

The Washington State Department of Labor & Industries (L&I) submits these comments to the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) in response to Notices of Proposed Rulemaking (NPRM) regarding proposed changes to the General Duty Clause enforcement. L&I opposes the adoption of the proposed rule.

The General Duty Clause is a critical element of the Occupational Safety and Health Act (OSH Act), requiring “each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”¹ As discussed in the background of the NPRM, OSHA is proposing to codify an interpretation of the OSH Act's General Duty Clause provision consistent with dissent in *SeaWorld of Florida, LLC v. Perez*, 748 F.3d 1202 (D.C. Cir. 2014) asserting OSHA lacks authority to enforce the General Duty Clause over inherent employment risks. The proposed rule would limit the application of the General Duty Clause to hazards arising from “inherently risky employment activities” that are “integral to the essential function of a professional or performance-based occupation”.

As a threshold matter, the interpretation of statutes is a judicial function. Agency interpretative rules are not binding on the courts nor are agency interpretations afforded deference by the court.²

There is a long history of case law on General Duty Clause and the heightened burden on OSHA to establish when employers have violated this duty. Under the case law, OSHA is already required to consider an industry-specific analysis as to both the existence and control of recognized hazard, requiring the “Secretary must prove that a reasonably prudent employer

¹ 29 USC §654(a)(1).

² *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97, 132 (2015); *Loper Bright Enterprises v Raimondo*, 603 U.S. 369, 385 (2024).

familiar with the circumstances of the industry would have protected against the hazard in the manner specified by the Secretary's citation.”³

Whether a work condition poses a recognized hazard is a question of fact.⁴ The proposed rule shifts the analysis under this longstanding framework. The focus would now be on whether the employment is “inherently risky” and if the hazard is “integral” and not a fact-specific analysis of whether the hazard is preventable and whether a “reasonably prudent employer familiar with the circumstances of the industry” would have taken corrective actions.

Despite the broad contention supporting the proposed interpretative rule that OSHA lacks Congress’s “implicit grant of authority” to “regulate and re-make some undefined swath of America's sports and entertainment behemoth”, the proposal conditions the exemption on an employer’s “reasonable efforts that do not alter the nature of the activity to control the hazards”. This provision also creates ambiguity as to an employer’s duty and OSHA’s authority where a “reasonable effort” was *not* made.

The proposed rule creates an overly broad and ambiguous carve out from OSH Act protections. The ambiguity of the proposed rule, including the non-exhaustive list of applicable industries, will result in significant uncertainty. Furthermore, OSHA jurisdiction over employers under the General Duty Clause is not an isolated question, rather it is interwoven with employee rights under the OSH Act, including the right to be free from discrimination and the right to refuse dangerous work. The consequences flowing from these uncertainties harm workers and erode the protections provided under the OSH Act.

The purpose of the OSH Act is “to assure as far as possible every working person in the Nation safe and healthful working conditions”⁵. The proposed rule impermissibly weakens these protections. We urge OSHA to withdraw the proposal.

Sincerely,



Joel Sacks
Director

cc: Craig Blackwood, Assistant Director, L&I Division of Occupational Safety and Health

³ *SeaWorld of Fla., LLC v. Perez*, 748 F.3d 1202, 1207 (D.C. Cir. 2014), citing *R. Willson & Sons, Inc. v. OSHRC*, 698 F.2d 507, 513 (D.C.Cir.1983)

⁴ *Id.*, at 1208 citing *Baroid Div. of NL Indus., Inc. v. OSHRC*, 660 F.2d 439, 446 (10th Cir.1981).

⁵ 29 USC § 654(a)(1).