

1. Over the last several months, Elon Musk's so-called Department of Government Efficiency (DOGE) has listed dozens of Department of Labor (DOL) offices whose leases will be terminated. As far as we know, the offices themselves will be closed.

a. Why do DOL agencies such as the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) need to have offices around the country in the first place?

OSHA and MSHA inspections take place where work is being conducted and it is important that inspectors are able to launch investigations as soon as possible after a worker files a complaint, or a worker is injured or killed.

Closing down offices will mean that it will take longer and cost more money to reach workplaces that need inspections. Closing OSHA and MSHA offices is inefficient, costly and will lead to more worker injuries, illnesses and deaths.

b. What are the consequences for workers if Elon Musk and DOGE shut down OSHA and MSHA offices?

Inspections would be delayed, and the budgets of OSHA and MSHA would be further stressed.

2. In this hearing, we heard criticism of OSHA's proposed rule on heat stress as a "one-size fits-all" rule.

a. Would you say that a heat rule is needed?

Yes. It is long overdue.

b. Why?

c. Can you tell us how this proposed rule would work, and whether it truly is a "one-size-fits-all" rule?

Regulated industries every OSHA standard as a one-size-fits all. The heat proposal is flexible enough to address heat hazards in all workplaces in all parts of the country. Critics claim it doesn't accommodate geographical differences because workers in the south may be more acclimatized than workers in the north. But there is an exception to the acclimatization requirements if a worker is already acclimated. They claim it doesn't account for different humidity levels, but the Heat Index (and Wet-Bulb-Globe method) take humidity into account. They claim that every industry and location needs its own separate standard (e.g. construction v.

agriculture, indoor v. outdoor), but the standard has provisions to take all of this into account. Every industry thinks it's special and wants to be exempted, but the rule is flexible now, and OSHA gathered valuable information during the hearings and comments period to address any issues that may arise in different occupations.

d. Other witnesses appeared to believe that a better version of the standard would be performance-oriented.

i. What are the types of standards (performance, specification, etc.) that OSHA can adopt?

A specification rule lists a number of specific requirements that an employer must meet to be in compliance with the standard.

Performance standards list certain elements that the employer must comply with, and allow the employer to fill in the details about how they would satisfy those elements, and provide detailed documentary proof that they are in compliance.

ii. What considerations inform the choice of type?

Complexity, effectiveness, feasibility, and ability to enforce. The most well-known performance standard is the Process Safety Management standard which regulated the safety of chemical facilities. Because of the many different facilities in operation and the extreme complexity of running those facilities, it would have been impossible for OSHA to issue a specification standard that applied to all chemical facilities. Instead, the PSM standard lists 13 elements (e.g. Process Hazard information, mechanical integrity, employee participation, etc), and the employers must show that they have a program that satisfies each of these elements.

For example, because almost every chemical facility is unique, Process Hazard Information section requires employers to “document that equipment complies with recognized and generally accepted good engineering practices.”

This type of complex documentation is typical of performance-based standards and is an enormously burdensome amount of work for employers (especially small employers), much more than simply complying with a specification standard that tells employers exactly what they must do to protect workers and be in compliance with the standard.

Consequently, small and medium sized employers generally prefer specification standards to performance-based standards.

iii. How do you respond to the suggestion of other witnesses in the hearing that a performance standard would be effective and preferable for preventing heat stress?

The basic elements of a heat standard are universally recognized: water, shade, heat, acclimatization, training and emergency response. And there is abundant scientific evidence, detailed in OSHA's preamble, concerning how much rest and water is necessary to protect workers, and how frequently they must be accessed.

But the business community wants to leave it up to individual employers how to provide these elements: the amount of water, the frequency of rests, the amount of acclimatization, etc., although the requirements of the OSHA standard are scientifically based and feasible to implement.

Advocates of a performance-based approach do not say how OSHA will determine whether employers are in compliance with the elements of the standard. They say compliance should be based on the "outcome" of whatever program the employer implements, of if the program is working," without defining what "outcome" or "working" means. If "outcome" or "working" mean no heat illnesses, that means that OSHA would only be able to act after a worker becomes ill or dies. The goal of OSHA standard is to protect workers before they get hurt.

3. Last year, OSHA finalized a rule that would simply clarify that workers, under the Occupational Safety and Health Act of 1970, have the opportunity, just like their employers, to authorize a representative to accompany an OSHA inspector during physical workplace inspections, or "walkarounds."

a. What are the benefits of allowing both worker and employer representatives to accompany walkarounds?

There are several reasons that the OSHA Act requires employers to either allow walkaround representatives or consult with workers. First, workplaces can be complex, and workers (or representatives) may be able to provide OSHA with the information and insight to conduct a thorough inspection. Workers or their representatives may know, for example, which process was operating the day of the incident, and are not operating during the inspection.

Second, some workers are not comfortable talking to government officials because they may fear retaliation from their employer. A walkaround representative can help shield workers from exposure to retaliation.

OSHA inspectors may not speak the language of some workers, or workers may not trust the translators that OSHA or the employer provides.

These are among the many reasons that the OSHA Act requires employer input from workers or their representatives.

b. The final rule also clarifies who workers can authorize as their representatives, which includes other workers or a person with relevant language skills. How would this clarification help workers contribute to improving their workplace?

See above.

c. One of the objections to the walkaround rule is that this will be exploited for union organizing.

i. Can you describe for us what actually happens during a walkaround?

During a walkaround, the OSHA inspector views the area where an incident occurs, and if there are chemicals involved, may also take samples for later analysis. The inspector attempts to identify what operations were occurring when an incident or exposure occurred, who was exposed to the hazards and how the processes operate.

ii. Would a union representative be able to have one-on-one organizing conversations during these walkarounds?

Neither a union representative, nor any other walkaround representative would have any opportunity to conduct any kind of organizing activities during an inspection. The OSHA inspector has total control over the conduct of an inspection and can terminate the inspection or expel anyone who is disrupting the inspection or conducting any inappropriate activities like organizing. Union organizing during OSHA inspections does not exist, never has existed and cannot exist. It is a red herring.

4. The Trump Administration's Project 2025 agenda would eliminate rules that keep children out of hazardous jobs. What are some of the health and safety risks to which children would be exposed in these jobs, which include handling radioactive substances, roofing, and logging.

Operating hazardous machinery, working at heights on roofs, working with toxic chemicals or radioactive substances are activities that young people should not be doing and are currently forbidden by law. They are not old or mature enough to understand the hazards they are exposed to, or their rights under the law, nor would they generally have the capacity to challenge their employers for exposing them to hazards.

5. Over the last two and a half decades, black lung disease among working and former coal miners is returning with vengeance. One of the reasons for this rise is that miners are increasingly breathing in silica dust, which is about 20 times more toxic than coal dust and speeds up the destruction of miners' lungs.

a. During your time at OSHA, which regulates workplaces other than mines, you helped to develop a silica standard. Why was it so important to reduce exposure to silica dust?

Exposure to silica dust can cause cancer and serious lung disease. Preventing exposure is feasible and protects lives.

b. Last year, the Biden Administration published a silica standard for the nation's mines. Do the reasons you explained for regulating silica in other workplaces also apply to the nation's mines?

The reasons for regulating silica in construction, foundries and other general industry occupations are the same for the mines. Except that exposure in mines is far more hazardous because of the confined environment and mixture with coal dust.

c. Just last month, MSHA announced a four-month delay in enforcement because of the staff firings at the National Institute for Occupational Safety and Health (NIOSH), which implements elements of the MSHA silica standard. What are the consequences of delayed enforcement?

The consequences of this delay will mean that more miners will be exposed to hazardous, life-threatening levels of silica dust that could have been prevented if the standard was being enforced.

6. One of the witnesses raised concerns about the length of time that OSHA has spent without producing a vertical standard on tree care.

a. What does it mean to have a vertical standard for an industry or occupation?

A vertical standard covers hazards in an entire industry. In other words, instead of applying separate fall protection, electrical protection, machinery guarding and

other standards to the tree care occupation, a single standard would cover all hazards in that industry.

**b. Do you agree that a vertical standard is needed for the tree care industry?
Why or why not?**

Tree care is an extremely dangerous occupation, and OSHA has no comprehensive standard that covers all of the hazards facing tree care workers. Even though many existing OSHA standards apply to tree care work, OSHA has had legal problems applying general standards to tree care. So, I would agree that a vertical tree-care standard is needed.

c. How long does it take OSHA to produce such a standard?

The Government Accountability Office issued a report in 2010 estimating that it takes 7 years to issue an OSHA standard. That time has lengthened since that time. It took OSHA twenty years to issue its silica and beryllium standards, for example.

d. What factors influence that timing?

There are a number of factors that influence the timing of standards. Due to various legal requirements and Executive Orders, OSHA's regulatory process is extremely lengthy and burdensome. OSHA's budget is one major factor. OSHA's budget for standards has dwindled steadily over the past decades and the Trump administration is proposing a 24% cut for FY 2026 which will make it impossible for the agency to issue any standards in a short period of time. Finally, Republican administrations rarely issue major OSHA health or safety standards despite the fact that they save workers' lives.

7. Please explain OSHA's policy regarding assessing instance-by-instance penalties.

"Instance-by-instance" (IBI) citations are a tool OSHA can use to significantly increase penalties in particularly "egregious" situations -- e.g. multiple deaths due to clear employer negligence, especially when the employer has a long history of OSHA violations.

For example, if 10 employees are put at risk due to a violation of a standard, instead of one violation (which is OSHA's normal policy), OSHA can issue ten separate violations -- one for each endangered employee.

For a willful violation, instead of a single \$160,000 willful violation, the agency would issue 10 willful violations (one for each exposed worker) for a total of \$1.6 million.

The original IBI policy was created by the George H.W. Bush administration. It can be highly effective in issuing large penalties against large companies (a few in the millions of dollars), but was only able to be used for willful violations.

The Biden administration [expanded](#) that policy from just applying to "willful" violations, to also apply to certain "serious" violations "when application of the IBI citation policy is necessary to achieve deterrence."

The revised policy would apply to "*high-gravity serious* violations specific to falls, trenching, machine guarding, respiratory protection, permit required confined spaces, lockout tagout, and other-than-serious violations specific to recordkeeping, provided certain factors were present."

You can read the entire policy [here](#).

(Gravity is a function of the *severity* of the injury or illness which could result from the alleged violation, combined with the *probability* that an injury or illness could occur as a result of the alleged violation.)

8. One of the witnesses sketched a hypothetical scenario in which the instance-by-instance penalty approach might be applied if the proposed heat standard were a final rule. In its essential details, the hypothetical involved a small employer required to provide water under the rule. An OSHA inspector arrives, finds that the supplied water is no longer available at a sufficient amount to meet the workers' needs, and is told by the employer that nobody informed him. The water that remains is also not sufficiently cool.

In the witness's scenario, the employer with 10 employees would be assessed 20 times the amount of the civil monetary penalty for running out of water, despite not being told of the insufficiency of the supply, and not having sufficiently cool water. How do you respond to this hypothetical? ¹

The witness (Ms. Felicia Watson) was describing an imaginary scenario that would not be possible under current law. In her imagination, OSHA would now be able to apply the revised

¹ The witness actually described a scenario in which the water had run out and was not cool enough, but the witness did not explain how the OSHA inspector would have measured the temperature of the non-existent water. This summary is an attempt to add coherence that was missing during the hearing itself.

IBI policy to all "serious" violations -- for example where an employer who ran out of water could then be vulnerable not just to a serious violation, but to an instance-by-instance penalty totaling in the tens or hundreds of thousands of dollars.

This would not be possible under OSHA's current IBI policy for several reasons:

- The IBI policy only applies when there are "a significant number of serious violations." If running out of water was the only violation (or one of only a few violations), the IBI policy would not apply.
- The IBI policy only applies when "the violation cannot be abated by a single method of abatement." If the only violation was lack of water, the IBI policy would not apply because the problem (lack of water) could be abated by a single method: providing water.
- Running out of water is not included in OSHA's list of violations subject to the IBI policy: "*high-gravity serious* violations specific to falls, trenching, machine guarding, respiratory protection, permit required confined spaces, lockout tagout..."

The nickname for the IBI policy is the "egregious" policy, because it only applies in rare, *egregious* situations, not just when there is a "normal" serious (or even willful) violation of a standard.

Heat is not one of the hazards listed under the new IBI policy. But even if the heat standard were issued and then added to the list of covered violations, if the violation didn't result in one or more fatalities or high number of serious heat-related illnesses, and/or the employer did not have a long history of similar violations, it is highly unlikely that OSHA could apply it in this case. This is a classic example of a Red Herring.

9. To follow up on your colloquy with Rep. Grothman during the hearing, please address the following:

a. How would you characterize the safety and health risks faced by farmworkers?

Workers in the agriculture, forestry, fishing, and hunting industry had one of the highest fatal injury rates. The fatality rate for these industries in 2023 was 24.4 deaths per 100,000 workers, compared with 3.5 for all industry, according to the Bureau of Labor Statistics.

Transportation incidents were the leading cause of death for these farmers and farm workers. Other leading causes were violence by other persons *or animals* and contact with objects and equipment as well as work-related lung diseases, noise-

induced hearing loss, skin diseases, and certain cancers associated with chemical use and prolonged sun exposure. In 2014, An estimated 4,000 youth were injured while working on a farm.

b. What recourse do farmworkers have if they encounter safety and health hazards on the job but OSHA is forbidden by an appropriations rider from even so much as setting foot on the farm?

Farm workers on small farms have no legal recourse, unlike workers on larger farms or most other workplaces in the country. They cannot call for an OSHA inspection, even if they are asked to work in imminently dangerous situations, or if one of their co-workers was killed on the job.

They can refuse to work, risk getting fired, or do the dangerous job and hope for the best. But OSHA couldn't support those efforts and workers are faced with "job blackmail:" your job or your life. Workers on small farms are generally not represented by unions so they can't even file a grievance if they are faced with a life-threatening situation.

10. Rep. Kiley referred to a Biden-era rulemaking as a "vaccine mandate." Did the Biden Administration's OSHA issue any "vaccine mandate"?

No, the Biden administration did not issue a "vaccine mandate." The rule did *not* mandate that all (or any) employees receive the COVID vaccine. The rule stated that employees could "choose either to be fully vaccinated against COVID-19 **or** provide proof of regular testing for COVID-19."

It was therefore not a vaccine mandate, but rather a test mandate for those workers who chose not to be vaccinated.