



February 6, 2025

Dear Senator:

The Coalition for Workplace Safety (CWS) writes to bring to your attention the regulated community's significant concerns with Senator Josh Hawley's recently released legislative framework altering labor and employment law. While Senator Hawley has not yet released legislative text, the framework appears to include two provisions on workplace safety taken from Senator Markey's Warehouse Worker Protection Act,¹ which CWS opposed in May 2024 in a letter to Congress along with 61 other employer organizations.² The framework also looks to implement failed policies pursued during the Clinton and Biden administrations. Specifically, the framework would prohibit the use of productivity metrics in warehousing and call on the Occupational Safety and Health Administration (OSHA) to issue an ergonomics regulation targeting musculoskeletal disorders (MSDs) in the workplace. These two provisions would slow supply chains, increase inflationary pressures, and add to the regulatory burden and costs facing businesses across the country, which is contrary to President Trump's goals and priorities.³ While Senator Hawley has yet to share text, he is actively recruiting co-sponsors. We urge you to oppose these policies and any legislation that seeks to implement them.

The CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The CWS believes that workplace safety is everyone's concern. Improving safety can only happen when all parties – employers, employees, and OSHA – have a strong working relationship.

The framework includes a provision prohibiting employers in the warehousing industry from using productivity metrics. Productivity metrics, however, provide employers with valuable knowledge about the business. They are often used to ensure the business is operating safely and efficiently, not for nefarious, unusual, or dangerous purposes. Moreover, OSHA's own data shows that warehouses are safe workplaces. Interestingly, Senator Hawley calls out nonunionized, private sector companies in his framework, but other similar but unionized warehouse employers, including the US Postal Service, have worse safety records. In responses to Questions for the Record to the House Subcommittee on Workforce Protections in 2023, OSHA's own data showed that OSHA targeted USPS for the most inspections out of a handful of warehouse employers and had the highest percentage of inspections that resulted in citations under the Occupational Safety and Health (OSH) Act.⁴ The decision to exclude USPS from this provision, as the Warehouse

¹ S. 5208, 118th Congress, Warehouse Worker Protection Act

² Letter to members of the US Senate and House of Representatives opposing Warehouse Worker Protection Act, May 2, 2024, available at <https://workingforsafety.com/blog/cws-urges-congress-to-reject-ill-conceived-warehouse-worker-protection-act/>.

³ Executive Order, "Unleashing Prosperity Through Deregulation Online," available at <https://www.presidency.ucsb.edu/documents/executive-order-unleashing-prosperity-through-deregulation>.

⁴ Questions for the Record for the Honorable Douglas L. Parker, Subcommittee on Workforce Protections Hearing: "Examining the Policies and Priorities of the Occupational Safety and Health Administration," September 27, 2023,



Worker Protection Act did and Senator Hawley's legislation is expected to do, would demonstrate that the authors understand the importance and value of these metrics for the Federal government. Forcing the private sector to abide by this prohibition, on the other hand, needlessly exposes them to burdensome and unworkable standards while depriving them of the insights such metrics provide. This provision will hurt warehouse employers of all sizes and across the entire economy, not just the largest, most well-known companies. Small businesses in particular will be hit especially hard by these changes.

Additionally, the framework hints at plans to regulate ergonomics in the workplace. When OSHA first promulgated an ergonomics regulation a quarter century ago, it was found to be so unworkable that a strong bipartisan majority of Congress invalidated it in the first-ever use of the Congressional Review Act.⁵ This is because ergonomics is a complex and controversial area of workplace safety and health. The science around ergonomics, with regard to what level of exposure to various motions is hazardous, is not settled nor is it a simple task to determine if an employee injury is the result of the workplace or outside activities or circumstances, making it illogical to regulate this as a workplace issue. MSDs are based entirely on subjective symptoms that are not subject to objective verification, and appropriate remedial measures are difficult to determine with any degree of precision. Moreover, an ergonomics regulation would force employers to face significant costs to alter work stations and job duties in accordance with a new standard. OSHA would, therefore, be attempting to regulate a hazard that is not well defined, where the remedies are speculative, and where causation is often the result of multiple factors outside the control of the employer, and this regulation would cost employers billions of dollars to comply, a burden that many small businesses simply cannot absorb. Importantly, OSHA can already cite employers for hazards related to ergonomics and MSDs under the General Duty Clause under the OSH Act, further demonstrating the needlessness of a new ergonomics regulation.

The policies contained in this framework will not achieve the goals Senator Hawley is seeking to achieve. Instead, they will increase red tape, be extremely costly and burdensome to businesses, especially small businesses, and have destructive consequences for the economy. We urge you to reject these policies and any legislation that seeks to implement them.

Sincerely,

Coalition for Workplace Safety

available at https://docs.house.gov/meetings/ED/ED10/20230927/116336/HHRG-118-ED10-20230927-QFR001.pdf?utm_source=substack&utm_medium=email.

⁵ S.J.Res. 6, 107th Congress, A joint resolution providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics.