

WRITTEN TESTIMONY OF MELISSA K. PETERS¹
BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON EDUCATION AND WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
HEARING ON
“BUILDING A SAFER FUTURE: PRIVATE SECTOR STRATEGIES
FOR EMERGING SAFETY ISSUES.”

May 13, 2026

I. Introduction and Witness Background

Chairman Mackenzie, Ranking Member Omar, and distinguished Members of the Subcommittee, I respectfully submit this written statement for the record of the hearing entitled “Building a Safer Future: Private Sector Strategies for Emerging Safety Issues.”

My name is Melissa K. Peters. I am a shareholder in the San Francisco office of Ogletree Deakins Nash Smoak & Stewart, P.C., where I am a member of the firm’s national workplace safety and health practice and a member of its OSHA practice steering committee. I defend employers in inspections and enforcement proceedings under the federal Occupational Safety and Health Act and its state-plan equivalents, advise on compliance program design, conduct privileged internal investigations following fatalities and catastrophic incidents, and litigate before the Occupational Safety and Health Review Commission and its state-plan equivalents. My clients range in industry from manufacturing to education and vary in size from small businesses to large corporations. I represent agricultural producers, oil and gas companies, regional hospital systems, construction firms, universities, and retailers.

Before entering private practice, I served as a staff attorney with the California Division of Occupational Safety and Health (Cal/OSHA) for over six years, prosecuting serious, willful, and repeat citations across numerous industries against employers of all sizes. Having sat at both counsel tables, I have seen the system work well, and I have also seen it fail. That experience leaves me with respect for the agency’s mission, an appreciation of the practical limits of enforcement, and a belief that the most durable improvements in worker safety come from clear rules, well-designed cooperative programs, and genuine engagement among regulators, employers, and workers. I appear in my individual capacity. The views expressed are my own and do not represent that of any client, coalition, or my firm.

In 1910, my great-grandfather immigrated to America from Lithuania and found work in the anthracite coal mines in Eastern Pennsylvania. He worked as a foreman in the mines until his death on October 15,

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1945, when the mine he was working in collapsed. Preparing this testimony brought me back to the importance of this work and what we are discussing here today. Workplace safety impacts workers and their families, including my own family, for generations. Safe workplaces should be more than a goal; they should be an achievable reality for as many employers as possible.

My outlook is one of cautious optimism. I believe most employers in the United States take worker safety seriously, invest in it, and want to do the right thing. When I was at Cal/OSHA, I prosecuted citations against a hospital located in South Los Angeles that was operated by a religious order. Given its location and the type of care it provided, including a trauma center and emergency department, it was a critical service provider to an underserved population in that area of the city. I trust the hospital wanted to protect their workers and did everything they could with the limited resources they had to keep their workers safe. I made this determination not from a gut feeling or high-level assessment, but from reviewing the evidence in the inspection file, discussing the case in-depth with the inspector, and engaging with opposing counsel and certain members of hospital management over the course of a year. But the hospital's efforts were not enough. They continued to have safety issues and continued to receive citations for the same alleged workplace violence violations, repeatedly. The hospital was slated for closure due to financial difficulties during the pandemic but was acquired by a large healthcare company and remains in operation today.

Now that I am a defense attorney, I think about that hospital a lot. What could have been done differently to help that employer achieve a safe workplace? Was issuing them the same citations over and over helping them create a better safety program, or was it pulling from a budget that could have been allocated to purchase additional security cameras or a metal detector? How do we achieve the balance between protecting workers and helping employers create and maintain safe workplaces? It is not a secret that workplace safety is impacted by C-suite decisions every day. What I have learned from working with employers in my current practice is that while resources are important, a solid safety culture comes down to management and employees looking out for each other. When I think about my great-grandfather, my hope is that the company he worked for did its best to keep its employees safe, despite the lack of safety standards at that time, and that he worked alongside friends who looked out for him as much as he looked out for the employees on his crew.

My position is that authentic employer stakeholder input is a necessary component of effective workplace safety, and to that end, I will discuss two distinct issues: (1) regulatory gaps that arise when innovation outpaces rulemaking; and (2) the unintended consequences that arise when prescriptive standards designed for a single industry are imposed across the economy.

II. Regulatory Lag Is Preventing Innovation and Is Counterproductive to Safety.

OSHA's rulemaking process takes years from initial consideration to final rule, and many proposed standards stall indefinitely. The result is a regulatory floor that reflects the hazards of a prior generation while workers face the hazards of the current one. Meanwhile, the technological tools available to prevent harm have advanced considerably. These tools are commercially available and already deployed by leading employers, yet the regulatory baseline neither requires nor incentivizes their adoption. In some

cases, it actively complicates it through outdated prescriptive language. A timely example of technology outpacing lagging regulation that is putting workers at risk is the lockout/tagout (LOTO) standard.

A. The lockout/tagout standard is frozen in 1989 technology.

OSHA's Control of Hazardous Energy standard, 29 C.F.R. § 1910.147, was promulgated in 1989² and has not been meaningfully updated in more than three decades. To put that in perspective, consider the state of technology in 1989; we were using floppy disks to save our work product, and that year Apple debuted its Macintosh Portable computer, which weighed sixteen pounds. Lockout/tagout serves two purposes: preventing the unexpected energization or start-up of machinery and equipment, and guarding against the release of stored energy. The process requires an employee to perform a prescriptive list of physical steps to disconnect a machine from its power source prior to performing servicing or maintenance activities on machines and equipment. At the time it was created, that step-by-step approach reflected the best practice regarding late 1980s technology. Now it no longer represents the safest or most effective option for modern equipment. Because the state of technology was what it was in 1989, the rule does not allow for the use of control circuitry or electrical systems that command or regulate the actions of machinery or equipment on a separate power circuit. This is because control circuits could get stuck, power on unexpectedly, or otherwise operate unreliably. In contrast, today's engineering controls, including light curtains, safety laser scanners, and safety-rated monitored stops, can detect human presence and bring hazardous motion to a verified safe state in milliseconds, without requiring workers to apply padlocks for every minor task. OSHA acknowledged the gap in a May 2019 Request for Information (RFI) by stating that in some circumstances, control circuit-type devices may be at least as safe as energy-isolating devices.³ Despite this acknowledgement, no rulemaking has followed.

B. The current prohibition on the use of control circuitry creates three concrete problems.

First, it forces antiquated procedures onto inherently safer systems. The electrical system of a modern packaging line guarded by a Category 4 / PLe light curtain can stop in under twenty milliseconds. When an employee is required to employ a full lockout process to clear a jam, it adds time and complexity, which can undermine safety. Second, it discourages capital investment in safer technology, because employers gain no regulatory relief for installing presence-sensing devices, safety-rated control-reliable circuitry, or robotic safe-speed monitoring that already meet or exceed global consensus standards for industrial safety.⁴ Third, it drives noncompliance and workarounds. Workers performing frequent, short-duration tasks routinely bypass cumbersome LOTO sequences. In my experience as an OSHA practitioner both for the government and in private practice, shortcuts are the single largest contributor to LOTO-related injuries and fatalities.

C. Engineering controls outperform procedural controls.

OSHA's published hierarchy of controls places engineering solutions above administrative ones. LOTO is fundamentally administrative. Procedural success depends on the right person putting the right device on

²Control of Hazardous Energy Sources (Lockout/Tagout), Final Rule, 54 Fed. Reg. 36644 (Sept. 1, 1989) (codified at 29 C.F.R. § 1910.147).

³The Control of Hazardous Energy (Lockout/Tagout); Request for Information, 84 Fed. Reg. 22, 756 (May 20, 2019).

⁴ See ANSI/ASSP Z244.1-2024, ANSI B11.0, and ISO 13849-1.

the right energy source at the right time. Modern alternatives, such as trapped-key interlocks and safety-rated monitored stops, remove the human variable. The standard's failure mode is visible in OSHA's enforcement data, as LOTO has made an appearance in OSHA's top ten most frequently cited standards annually for the past ten years.⁵ That is not a sign of an effective standard.

These technologies also close the "minor servicing" gap found at § 1910.147(a)(2)(ii), where workers die in the gray zone between quick interventions and full energy isolation. Safety-rated control-reliable circuits, light curtains tied to safe-torque-off drives, and dual-channel monitored interlocks eliminate the gray zone because the machine physically cannot deliver hazardous energy when the gate is open. An additional benefit of these technologies is their automated creation of an audit trail. Networked isolation systems log every authentication, energy-state change, and override attempt by user, timestamp, and location. This information eradicates the guesswork from accident investigations and, instead, provides employers with a definitive record of actions and events. Reliable digital audit data can be utilized in a myriad of ways to meaningfully improve safety design and compliance.

D. The rest of the world has already moved on.

Voluntary consensus standards expressly recognize well-established, alternative methods when a documented risk assessment demonstrates equal or better worker protection.⁶ Federal OSHA's standard does not, leaving U.S. employers caught between a 1989 regulation and 2020s engineering reality. Multinational employers already operate to the higher international bar, leaving the federal floor as the outlier.

E. Recommended reform: additive, not repeal.

OSHA should modernize § 1910.147 to permit performance-based compliance. Where a validated, risk-assessed engineering control achieves an equivalent or higher level of safety than traditional lockout, that control should be allowed to satisfy the standard. OSHA's general requirements for machine guarding standard, 29 C.F.R. § 1910.212, is a performance-based regulation that gives employers the ability to select which guarding methods to employ. The standard provides, "[e]xamples of guarding methods are – barrier guards, two-hand tripping devices, electronic safety devices, etc."⁷ A modernized version of the LOTO standard could draw from this and require a documented risk assessment and controls meeting a specified Performance Level.⁸ There will always be the possibility that electronic systems can fail in ways a physical padlock does not, and loosening prescriptive language invites a race to the bottom. The strongest version of this proposal involves an additive approach rather than a repeal. It is possible to preserve traditional LOTO as a permitted method of compliance, while expressly authorizing validated technological alternatives that meet specified Performance Levels under recognized consensus standards. Under this version, workers gain a higher ceiling without losing the existing floor.

⁵OSHA, Top 10 Most Frequently Cited Standards (annual) at <https://osha.gov/top10citedstandards>; 29 C.F.R. § 1910.147 has appeared on the list annually for over a decade since 2016.

⁶ANSI/ASSP Z244.1-2024, The Control of Hazardous Energy: Lockout, Tagout and Alternative Methods; ISO 13849-1:2023, Safety of Machinery — Prevention of Unexpected Start-Up; ISO 13849-1:2023; CSA Z460:20; EU Machinery Directive 2006/42/EC.

⁷ 29 C.F.R. § 1910.212(a)(1).

⁸ ISO 13849-1:2023.

III. Prescriptive Regulations Applied Out of Context Hinder Rather Than Improve Workplace Safety

California Senate Bill (SB) 553, which went into effect in July 2024 and is codified as California Labor Code § 6401.9, was the response to a 2021 mass shooting that occurred at a railyard in the San Jose legislative district in Northern California. Widespread frustration surrounding Cal/OSHA's stalled efforts to create a general industry workplace violence regulation, partially due to the pandemic, resulted in a statute that imposes workplace violence prevention requirements broadly across all industries. Having worked at Cal/OSHA during the implementation of the healthcare-specific workplace violence prevention regulation, it is patently obvious that most of what is contained in § 6401.9 was modeled after Cal/OSHA's violence prevention in healthcare regulation.⁹ When a standard built to address the unique risks of one industry is imposed across the entire economy, a prescriptive rule that worked in its original setting hinders rather than improves workplace safety. California's general industry, non-healthcare workplace violence prevention statute is the clearest current example.

A. Section 3342 was promulgated for health care; SB 553 lifted its architecture into a wholly different context.

California's healthcare-specific workplace violence prevention regulation, Title 8 California Code of Regulations § 3342, went into effect on April 1, 2017. Its prescriptive elements, including patient-classification systems, alarm devices, engineered security in treatment areas, and post-incident response protocols, were calibrated to those documented exposures. Despite the earnest effort and care that went into drafting § 3342, I have both prosecuted and defended numerous healthcare employers in California who struggled to comply with its requirements. If healthcare employers find it difficult to comply, imagine how challenging it is for general industry employers to successfully implement requirements that were tailored to address hazards experienced by healthcare workers at hospitals and behavioral health facilities. Labor Code § 6401.9, was enacted to address gaps in coverage for non-health-care workers, particularly in retail, transportation, and public-facing services. The bill that emerged extended its reach to nearly all California employers with ten or more employees. Crucially, the substantive requirements of § 6401.9 mirror those found under Cal/OSHA's workplace violence in healthcare regulation by requiring employers to create, implement, and maintain a written Workplace Violence Prevention Plan, a violent-incident log, hazard-identification and correction procedures, training, and recordkeeping.¹⁰ The architecture designed for hospital floors now governs office suites.

B. Prescriptive standards assume a risk profile that does not exist universally.

Performance-based standards specify the safety outcome and leave the means to the employer, while prescriptive standards dictate the means. Prescriptive standards perform well where the hazard, exposed population, and effective controls are well-characterized and uniform. They falter where the regulated population, environment, and controls are diverse. Workplace violence is the paradigm case. By way of example, Cal. Lab. Code § 6401.9 requires employers to detail how they will alert employees in the event of a violent incident on site. This requirement, which works in a hospital setting where emergency codes

⁹ Cal. Code Regs. Tit. 8, § 3342.

¹⁰ Cal. Lab. Code § 6401.9(b)–(f) (covered employers and exemptions; written Plan; violent-incident log; training; and recordkeeping obligations).

are announced across P.A. systems or via silent alarms installed in every department, is causing non-healthcare employers to scratch their heads. I cannot tell you how many California general industry workplace violence prevention programs I have reviewed that state, “in the event of an incident, employees will be alerted by voice.” It is the perfect example of what happens when prescriptive requirements are inappropriately imposed.

C. Paperwork becomes a substitute for judgment.

In private practice, I see, with regularity, the predictable downstream effect. Small and mid-sized employers, which are the employers least able to absorb compliance overhead, purchase boilerplate workplace violence prevention plan templates, customize them to the best of their ability, struggle to provide their employees with interactive training on the plan and then move on to the next issue. The plans I review are functionally identical across companies in entirely different industries. Site-specific hazards are generic (lack of sufficient lighting, isolated locations) as are incident response protocols (call on-site security, notify 911).

Compliance is achieved in form, but employee safety is not advanced in substance. This is the predictable response to compliance-based regulation, and it is exactly what performance-based regulation was designed to avoid. Safety program enforcement has reached a point where compliance is determined by whether an employer’s written program contains enough, or the correct combination, of the appropriate words as opposed to whether the program contains the required elements. More than once, I have represented employers in citation appeals where the OSHA inspector issued citations for programmatic violations, despite never having read any of the programs incorporated by reference in my client’s overarching safety program. When inspectors are utilizing checklists instead of assessing the contents of a program to determine compliance, the system is not working.

IV. Recommendations

The two issues addressed in this testimony (1) regulatory lag in the face of accelerating safety technology, and (2) the misapplication of industry-specific prescriptive standards across the broader economy, are surface manifestations of a deeper structural problem. Both arise from a default preference for prescriptive rulemaking that fixes a brief moment’s understanding of a hazard into a long-lived regulation, in a system where rulemaking itself routinely takes upwards of a decade. The result is a regulatory floor that is too rigid to keep pace with technology and too broad to reflect the disparateness of the regulated workforce. The recommendations that follow are designed to operate together. Each addresses both issues, and each can be implemented within OSHA’s existing statutory authority under the Occupational Safety and Health Act.

A. Reserve prescription for documented, industry-specific risks.

Performance-based standards, which are goal-focused, leave the means to the employer, while prescriptive standards specify the means for achieving a goal. Federal regulatory practice should reverse the current presumption. Where the regulated population is widely varied and effective controls are evolving, performance-based design lets employers calibrate their programs to the actual hazards they face and lets recent technology satisfy the rule without waiting for OSHA to catch up. Prescription-based

standards should be reserved for circumstances in which the empirical record identifies a specific hazard, a specific exposed population, and a specific set of effective controls. Treating prescription as the exception rather than the rule forecloses the regulatory-lag problem. Performance language ages with technology and prevents issues that arise from cross-industry overreach.

In addition to California's general industry workplace violence statute, OSHA's pending heat standard is a perfect example of issues that arise when regulators elevate form over function. Rather than one-size-fits-all prescriptive dictates, should OSHA proceed with a heat standard, it should be performance-based to allow individual employers, who understand their own workplaces better than anyone, to implement protocols tailored to the hazards encountered by their employees. In this way, the standard will encourage employers to implement measures that can evolve with advancing technologies.

B. Consider a regulatory exception acknowledging multiple paths towards safety as compliant.

Where prescriptive standards remain in force, employers should be allowed to satisfy them by demonstrating that an alternative engineering or administrative control achieves equivalent or greater protection. This is the approach already taken in certain federal regulations and adopted internationally.¹¹ Coupled with broader incorporation by reference of consensus standards developed by organizations that focus on safety and best practices,¹² alternative means provisions allow the regulatory floor to absorb technological progress without each new technology triggering a fresh round of rulemaking. They also permit industry-specific calibration. In this way, a construction company, a packaging plant, and a data center can each meet the same performance level through controls suited to their own operations.

This could be achieved through a documented risk assessment submitted to and reviewed by OSHA. Further, this option should operate not solely as an affirmative defense for employers but should fall on OSHA to establish that the alternative controls are ineffective.

C. Create a channel where employers and other stakeholders can assist with identifying outdated prescriptive standards.

Prescriptive OSHA standards should be subject to mandatory periodic review on a defined cycle to determine whether their requirements remain consistent with current technology, consensus standards, and injury and fatality data. OSHA's LOTO standard¹³ underscores the need for regulations to keep pace with the equipment and processes they govern. The same review should ask, for each cross-industry standard, whether its scope continues to match the empirical record of risk or, alternatively, whether the rule should be narrowed or replaced with a performance-based alternative.

¹¹ 29 C.F.R. § 1910.212 and adopted internationally under ANSI/ASSP Z244.1-2024, The Control of Hazardous Energy: Lockout, Tagout and Alternative Methods; ISO 13849-1:2023, Safety of Machinery — Prevention of Unexpected Start-Up; CSA Z460:20; EU Machinery Directive 2006/42/EC.

¹² American National Standards Institute (ANSI), American Society of Safety Professionals (ASSP), American Society of Mechanical Engineers (ASME), National Fire Protection Association (NFPA), and International Organization for Standardization (ISO).

¹³ 29 C.F. R. § 1910.147.

D. Establish a regulatory pilot and variance program for emerging safety technologies.

OSHA's existing variance authority under Section 6(d) of the OSH Act is the right legal architecture but is rarely used at scale. The current variance process is too slow and resultantly eliminates this as an option for many employers. A modernized pilot program comparable in spirit to OSHA's Voluntary Protection Programs that is designed for technology adoption would allow employers utilizing validated emerging controls, such as presence-sensing systems or AI-driven hazard detection, to operate under tailored compliance terms while contributing data back to the agency. Pilots both accelerate the diffusion of safer technology and generate the empirical record OSHA needs to decide whether, when, and how to convert successful pilots into amended standards. They also provide an evidence base for deciding whether new prescriptive rules are warranted, or whether existing performance-based authorities are sufficient.

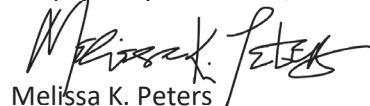
V. Conclusion

The American workplace of 2026 looks fundamentally different compared to the workplace that existed in 1970. The hazards that dominate today's injury and fatality data were not the central concerns of the original Act. The private sector has, in many respects, moved ahead of the regulatory framework. The opportunity for this Subcommittee is to recognize what is and is not working, harmonize what is fragmented, modernize what is outdated, and avoid imposing prescriptive requirements that would freeze in place practices that should continue to evolve.

Employers are not standing still. The role of Congress and OSHA is not to stand in for that work, but to support it with clear rules where rules are needed, with industry-specific regulations tailored to the recognized consensus standards where they exist, with cooperative programs that reward good actors, and with restraint about expanding enforcement into areas where the law has not yet caught up to the technology. A balance that is protective, principled, and practical is what will give employers the flexibility to keep workers safe through innovation.

Thank you for the opportunity to contribute to this record. I look forward to supporting your efforts as you consider thoughtful legislative action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melissa K. Peters".

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