

September 20, 2023

The Occupational Safety and Health Administration
c/o Assistant Secretary of Labor Douglas Parker
200 Constitution Avenue NW
Washington, DC 20210

Dear Assistant Secretary Parker -

The COVID-19 crisis renewed attention on the ways that work can affect mental health. We write to thank the Occupational Safety and Health Administration (“OSHA”) for the action that it has taken so far to protect workers from mental health hazards and urge the agency to take further steps to fulfill its statutory mandate of ensuring access to safe and healthful working conditions.¹

Specifically, this letter explains that:

1. the prevalence and awareness of mental health problems in the workplace has increased in general and as a result of the COVID-19 crisis;
2. OSHA has the statutory authority and expertise to require employers to protect workers from mental health hazards;
3. OSHA can immediately address mental health hazards by issuing guidance and bringing enforcement actions under the General Duty Clause; and
4. OSHA should consider developing occupational safety and health standards to protect workers from mental health hazards.

1. The prevalence and awareness of mental health problems in the workplace has increased in general and as a result of the COVID-19 crisis.

Mental health issues are prevalent among American workers. Seventy-six percent of workers reported at least one symptom of a mental health condition.² Mental health disorders like depression, anxiety, and post traumatic stress disorder in the workplace can negatively affect productivity, engagement in work, communication with coworkers, and daily functioning.³ Workplace mental health presents equity issues as well. In one study, Black and Latinx respondents experience more symptoms than their white counterparts, and are more likely to have left a previous job for mental health reasons.⁴ Women are more likely to face certain types of work-related mental

¹ 29 U.S.C. § 651(b).

² United States Surgeon General, Framework for Workplace Mental Health & Well-Being 7, (2022), <https://www.hhs.gov/sites/default/files/workplace-mental-health-well-being.pdf>

³ CDC, Mental Health in the Workplace, (Jul. 2018), <https://www.cdc.gov/workplacehealthpromotion/tools-resources/pdfs/WHRC-Mental-Health-and-Stress-in-the-Workplac-Issue-Brief-H.pdf>.

⁴ Jeffrey Pfeffer & Leanne Williams, Mental health in the workplace: The coming revolution, McKinsey Quarterly, (Dec. 8, 2020), <https://www.mckinsey.com/industries/healthcare/our-insights/mental-health-in-the-workplace-the-coming-revolution>.

health issues.⁵ And people with disabilities are several times more likely to experience mental distress than those without.⁶

A New Jersey-based Latinx delivery driver explained how his employer's changing expectations and inflexibility created anxiety among him and his colleagues.⁷ He reported that his "virtually impossible" delivery quotas caused him to skip bathroom breaks and instead "use a disposable container to urinate in the van while hiding from the surveillance camera." His employer also changes his delivery routes frequently: "In the past three months, they have changed [my route] twice. This causes me much stress because it takes several weeks to become familiar with a route, know the rush hours or construction work that might be occurring, how bad they can get in the winter, or when to change lanes to take an exit, which causes delays." His anxiety created by his working conditions also led him to take chances with his physical health:

I try to make at least twenty stops per hour. If by mid-shift I have not made 80 stops, I am driving under tension for the rest of the shift because I know it is impossible for me to complete all stops in the expected timeframe. Sometimes this anxiety costs me more because I may try to make up for that time; inadvertently, I may go over the speed limit, not park safely, go through yellow lights, etc.

"As you might expect," the worker explained, "this stress does not help; it just hampers our productivity."

Another delivery driver explained, "I feel like I'm drowning all day, causing me to drive in unsafe ways to meet the unreasonable expectation[s]."⁸

An Amazon worker, speaking to a reporter after hearing of a suicide at a company warehouse, explained that the work can be "stressful and thankless." He continued, "[n]ot knowing the guy who did that to himself, I can only imagine he couldn't handle the pressure or was having some problems at home. But they [Amazon] work very hard to keep it from us. Pretend like everything's fine here. Nothing to see here."⁹

Mental health hazards exist in numerous industries. Commercial content moderators, for example, encounter troubling experiences on the job that create lasting psychological and emotional distress.¹⁰ Workers at Facebook won a \$52 million settlement in a class action against the company to

⁵ Kelly Greenwood, *How Organizations Can Support Women's Mental Health at Work*, Harvard Business Review, (Mar. 18, 2022), <https://hbr.org/2022/03/how-organizations-can-support-womens-mental-health-at-work>.

⁶ CDC, *The Mental Health of People with Disabilities*, (Accessed: Sept. 18, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/features/mental-health-for-all.html>.

⁷ Worker interview with Jobs with Justice Policy Analyst Amaury Pineda, Ph.D. (May 1, 2023).

⁸ Billy Perrigo, *Exclusive: 'I Feel Like I'm Drowning.' Survey Reveals the Toll of Working For Amazon*, TIME, (Jan. 19, 2023), <https://time.com/6248340/amazon-injuries-survey-labor-osha/>.

⁹ Kate Briquetelet, *Inside the Tragic Suicide at an Amazon Warehouse*, Yahoo!, (Aug. 30, 2022), <https://www.yahoo.com/entertainment/inside-tragic-suicide-amazon-warehouse-085151925.html>.

¹⁰ See generally Steiger, et. al, *The Psychological Well-Being of Content Moderators*, https://crowd.cs.vt.edu/wp-content/uploads/2021/02/CHI21_final__The_Psychological_Well_Being_of_Content_Moderators-2.pdf.

compensate them for mental health issues developed on the job.¹¹ Consistent exposure to violent, offensive, and otherwise disturbing content has been found to cause secondary trauma in these workers.¹² Healthcare workers experienced heightened mental health effects during the COVID-19 pandemic.¹³ The pandemic exacerbated a pre-existing mental health crisis in healthcare work, which was already characterized by demanding and emotionally-charged work, long hours, understaffing, and exposure to illness and death.¹⁴ Childcare workers, first responders, and restaurant workers, also report higher-than-average rates of mental health issues.¹⁵ Firefighters experience repeated exposure to painful experiences and erratic sleep schedules, and commonly face barriers to accessing mental health care.¹⁶ Construction, manufacturing, and warehousing work can combine physically demanding work with long hours, job insecurity, and other mental health risk factors to produce debilitating stress levels.¹⁷

Severe mental health issues can lead to suicide: reported cases of workplace suicides have risen dramatically since the early 2000s.¹⁸ According to the Bureau of Labor Statistics, reported workplace suicides have almost doubled between 2005 and 2019.¹⁹ The largest shares of 2019 deaths were among truck drivers, retail sales supervisors, and military personnel.²⁰ These reported workplace suicides are likely a significant undercount, as work-related deaths that do not occur at work or during work hours can be difficult to attribute to work.²¹ In response to this data gap and to consider prevention strategies, the Centers for Disease Control and Prevention analyzed the nearly

¹¹ Casey Newton, *Half of all Facebook moderators may develop mental health issues*, The Verge, (May 13, 2022), <https://www.theverge.com/interface/2020/5/13/21255994/facebook-content-moderator-lawsuit-settlement-mental-health-issues>.

¹² Julia Shaw, *Content moderators pay a psychological toll to keep social media clean. We should be helping them*, Science Focus, (Nov. 2, 2022), [sciencefocus.com/news/content-moderators-pay-a-psychological-toll-to-keep-social-media-clean-we-should-be-helping-them/](https://www.sciencefocus.com/news/content-moderators-pay-a-psychological-toll-to-keep-social-media-clean-we-should-be-helping-them/).

¹³ Biber, et. al, *Mental health impact on healthcare workers due to the COVID-19 pandemic: a U.S. cross-sectional survey study*, (Dec. 6, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9190450/>.

¹⁴ NIOSH, *Health Worker Mental Health*, (Accessed: Jun. 12, 2023), <https://www.cdc.gov/niosh/newsroom/feature/health-worker-mental-health.html>.

¹⁵ Allana Akhtar & Rebecca Aydin, *Some of the jobs most at risk for suicide and depression are the most important to society. Here's a rundown of mental-health risks for doctors, childcare workers, first responders, and more*, Insider, (Nov. 14, 2019), <https://www.businessinsider.com/jobs-with-mental-health-risks-like-suicide-depression-2019-10>.

¹⁶ SAMHSA, *First Responders: Behavior Health Concerns, Emergency Response, and Trauma 5*, (May 2018), <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf>

¹⁷ Fisher Phillips, *FP Manufacturing Snapshot June 2022: Mental Health Takes Toll on Employee Retention*, (Jun. 2, 2022), <https://www.fisherphillips.com/news-insights/fp-manufacturing-snapshot-june-2022-mental-health.html>; Safety+Health, *Survey asks industrial workers about their mental health and support from employers*, (Oct. 18, 2022), <https://www.safetyandhealthmagazine.com/articles/23156-survey-asks-industrial-workers-about-their-mental-health-and-support-from-employers>.

¹⁸ Kayla Follmer & Matt C. Howard, *What Employers Need to Know About Suicide Prevention*, (Jan. 25, 2022), <https://hbr.org/2022/01/what-employers-need-to-know-about-suicide-prevention>.

¹⁹ Bureau of Labor Statistics, *Workplace suicides continued to rise in 2019*, (Sept. 29, 2021), <https://stats.bls.gov/opub/ted/2021/workplace-suicides-continued-to-rise-in-2019.htm>.

²⁰ *Id.*

²¹ Kayla Follmer & Matt C. Howard, *What Employers Need to Know About Suicide Prevention*, (Jan. 25, 2022), <https://hbr.org/2022/01/what-employers-need-to-know-about-suicide-prevention> (noting the rise in reported cases from 180 in 2005 to 307 in 2019 and that the count is likely a dramatic underestimate, as work-related suicides that don't happen at work or during working hours can be difficult to count).

38,000 suicide deaths among working-aged Americans in 2017 by occupation and industry.²² The study found that suicide rates were significantly higher in six particular occupational groups²³ and identified factors that contribute to suicide risk among workers, including: low-skilled work, lower education, lower socioeconomic status, work-related access to lethal means, and job stress associated with poor supervisory and colleague support, low job control, and job insecurity.²⁴

The prevalence and awareness of mental health issues in the workplace have increased due to COVID-19. The number of respondents in the study cited above that reported at least one symptom of a mental health condition increased by 17 percent in just two years.²⁵ Employers took notice as well. Within the same survey sample, 7 in 10 workers reported that their employer was more concerned about the mental health of workers than before the pandemic.²⁶

Research shows that mental health issues among workers are attributable mostly to features and conditions of the work itself, as opposed to individual characteristics of workers.²⁷ Workplace factors that can create or exacerbate mental health conditions include: emotionally draining work, difficulties with work-life balance, lack of recognition, low salaries, long hours, lack of opportunity for advancement, dangerous working environments, harassment, discrimination, and “toxic” workplace cultures that can be disrespectful, non-inclusive, unethical, cutthroat, and abusive.²⁸

Some forms of workplace surveillance can contribute to a constant feeling of “low-grade panic.” A worker named Hibaq described the constant pressure and anxiety that Amazon workers face as a result of grueling and ever-changing expectations, explaining how the stress follows her home:

I feel—and a lot of workers, they feel, even when they’re sleeping—that they’re docking to try and hit their rate. Because they’re worried about next week what’s going to happen; you don’t know what’s going to happen. I don’t know what I finished this week. Next week if I hit the rate, if the rate will change. And managers are watching you and coming to you all the time. You feel like someone is watching you while you are sleeping.²⁹

²² Center for Workplace Mental Health, *Suicide Rates Across Job Categories: CDC Report*, (Accessed: Apr. 13, 2023), <https://workplacementalhealth.org/mental-health-topics/suicide-prevention/suicide-rates-across-job-categories-cdc-report>.

²³ Construction and extraction; installation, maintenance and repair; arts, design, entertainment, sports, and media; farming, fishing, and forestry; transportation and material moving; and building and grounds cleaning and maintenance. *Id.*

²⁴ *Id.*

²⁵ United States Surgeon General, *Framework for Workplace Mental Health & Well-Being 7*, (2022), <https://www.hhs.gov/sites/default/files/workplace-mental-health-well-being.pdf> (hereinafter “SG Report”).

²⁶ *Id.*

²⁷ See NIOSH, *STRESS...At Work*, (1999), <https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>; Mental Health in the Workplace, CDC (Jul. 2018), <https://www.cdc.gov/workplacehealthpromotion/tools-resources/pdfs/WHRC-Mental-Health-and-Stress-in-the-Workplac-Issue-Brief-H.pdf>.

²⁸ SG Report at 6.

²⁹ Daniel A. Hanley & Sally Hubbard, *Eyes Everywhere: Amazon’s Surveillance Infrastructure and Revitalizing Worker Power 10*, (Sept. 2020), <https://www.openmarketsinstitute.org/publications/eyes-everywhere-amazons-surveillance-infrastructure-and-revitalizing-worker-power>

2. OSHA has the statutory authority and expertise to require employers to protect workers from mental health hazards.

Millions of Americans face work-based hazards to their mental health. Although OSHA has more regulatory experience with creating standards to protect workers' physical safety and health, the agency's grant of authority from Congress includes the power to protect workers' mental health from workplace hazards as well.

a. Mental health is a commonly-recognized component of "safety and health."

American and international agencies recognize the connectedness between mental health and worker safety and health. The National Institute for Occupational Safety and Health's ("NIOSH") and the Centers for Disease Control and Prevention's ("CDC") extensive research on mental health and job strain reflect this connection.³⁰ NIOSH's Total Worker Health ("TWH") agenda, for instance, offers employers suggestions for how to design "work and employment conditions in a way that will prioritize safety and improve physical *and psychological* outcomes."³¹ The fundamental elements of TWH emphasize the importance of employer leadership, implementation of workplace controls, and ensuring worker engagement and privacy.³² As discussed in more detail below, the U.S. Surgeon General issued a 2022 report outlining his "Framework for Workplace Mental Health & Well-Being." The World Health Organization, too, has issued guidance on mental health as a component of worker safety and health.³³ The Australian workplace regulator updated its workhealth and safety regulations to require employers to manage psychological risks in the workplace.³⁴

Other areas of work-related law also acknowledge that mental health is an important part of worker safety and health. All states' workers' compensation systems recognize "physical-mental" cases where job-related physical trauma leads to a mental disorder, many states recognize "mental-physical" cases where job-related mental stress causes a physical disability, and an increasing number of states recognize "mental-mental" cases where work-related stress causes a mental disability.³⁵ For example, both Virginia and Washington, D.C.'s workers' compensation systems recognize "emotional injuries" – with or without accompanying physical manifestations of injury –

³⁰ See, e.g., NIOSH, *STRESS...At Work*, (1999),

<https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>; Mental Health in the Workplace, CDC (Jul. 2018),

<https://www.cdc.gov/workplacehealthpromotion/tools-resources/pdfs/WHRC-Mental-Health-and-Stress-in-the-Workplac-Issue-Brief-H.pdf>.

³¹ NIOSH, What Is Total Worker Health?, (Accessed Mar. 28. 2023), <https://www.cdc.gov/niosh/twh/totalhealth.html> (emphasis added).

³² NIOSH, Fundamentals of Total Worker Health Approaches, (2017),

https://www.cdc.gov/niosh/docs/2017-112/pdfs/2017_112.pdf?id=10.26616/NIOSH PUB2017112.

³³ World Health Organization, Guidelines on mental health at work, (Sept. 28, 2022), <https://www.who.int/publications/i/item/9789240053052>.

³⁴ Sam Nichols, et. al, *A new code means employers need to protect workers' mental health. But will it work?*, ABC, (Apr. 20, 2023), <https://www.abc.net.au/news/2023-04-21/how-psychosocial-workplace-hazards-can-impact-mental-health/102224278>.

³⁵ AFL-CIO Comments to OSHA on Occupational Injury and Illness and Reporting Requirements (29 C.F.R. §§ 1904, 1952), (Jul. 3, 1996).

as sufficient to support a workers' compensation claim.³⁶ The workers' compensation system for federal government workers also compensates workers for mental health injuries.³⁷

- b. The OSH Act's text empowers OSHA with broad authority to protect workers against occupational safety and health hazards, especially newly-understood ones like those to mental health.

Congress enacted the Occupational Safety and Health Act ("OSH Act") in 1970 with the express purpose of "assur[ing] so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve [the nation's] human resources...[.]"³⁸ The statute explained thirteen ways in which the new law would achieve this goal, including: "by authorizing [OSHA] to set mandatory occupational safety and health standards"³⁹ and "by providing for the development and promulgation of occupational safety and health standards."⁴⁰ Additionally, the statute imposes a duty on employers to "comply with occupational safety and health standards promulgated under" the statute.⁴¹ The term "occupational safety and health standard" is defined as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."⁴²

In the very first provision of the OSH Act, Congress explained that it found "that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments."⁴³ Notably, Congress did not distinguish here between purely physical injuries and those with a psychological or mental component, nor between injuries resulting from repetitive stress and those from discrete episodes of physical trauma. This language, combined with the emphasis on OSHA's responsibility to ensure "so far as possible" that workers are protected, underscore the breadth of hazards – known and unknown at the time – that Congress contemplated in its grant of authority.

Congress was careful to ensure that OSHA's authority encompassed both worker safety and worker health, emphasizing OSHA's responsibility to investigate and regulate new hazards to both. The Act explained that one purpose was to "discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conduct[] other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety." OSHA's authority to regulate workplace health and safety is thus clear from the statutory text.

³⁶ See *Amisi v. Riverside Reg'l Jail Auth.*, 469 F. Supp. 3d 545, 562 (E.D. Va. 2020); *Howard v. Fed. Express Corp.*, 280 F. Supp. 3d 26, 34 (D.D.C. 2017).

³⁷ Aaron D. Wersing, *Filing Workers' Comp for Stress and Anxiety—What Federal Employees Should Know*, FedLaws, (Aug. 25, 2021), <https://fedemploymentattorneys.com/legal-blog/workers-comp-for-stress-and-anxiety/>.

³⁸ 29 U.S.C. § 651(b).

³⁹ 29 U.S.C. § 651(b)(3).

⁴⁰ 29 U.S.C. § 651(b)(9).

⁴¹ 29 U.S.C. § 654(a)(2).

⁴² 29 U.S.C. § 652(8).

⁴³ 29 U.S.C. § 651(a).

The OSH Act defines “occupational safety and health” somewhat circularly and does not comprehensively define what it means by “safety” and “health.”⁴⁴ When a statute leaves words ambiguous, courts turn to both agencies’ interpretations⁴⁵ and, increasingly, the words’ common meanings.⁴⁶ Merriam Webster defines “safety” as “the condition of being safe from undergoing or causing hurt, injury, or loss” and “health” as “the condition of being sound in body, *mind*, or spirit.”⁴⁷

The Act contemplated “providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience.”⁴⁸ The phrasing of 29 U.S.C. § 651(b)(5) also suggests that Congress meant for OSHA to regulate mental health hazards in the workplace. In fact, the OSH Act made this inclusion explicit when explaining the bounds of Congress’ understanding of occupational safety and health: “the field of occupational safety and health, *including the psychological factors involved...*”⁴⁹ OSHA itself affirmed this interpretation of the same language in its 2001 recordkeeping rule, which stated: “[t]he OSH Act is concerned with both physical and mental injuries and illnesses, and in fact refers to ‘psychological factors’ in the statement of Congressional purpose in section 2 of the Act (29 U.S.C. 651(b)(5)).”⁵⁰

- c. The legislative history of the OSH Act and the industrial context in which OSHA was created suggest that Congress intended for OSHA to protect workers from newly-understood hazards like mental injuries.

A tumultuous time in economic history produced the conditions for OSHA’s creation. The 1960s brought with them the beginning of deindustrialization and the mobilization for war in Vietnam. This created intense demands on labor, resulting in longer hours and increasingly dangerous working conditions.⁵¹ Dangers included epidemics among workers and economic and technical factors that produced a sharp increase in industrial accidents.⁵²

There were also novel and emerging threats to workers that eventually prompted legislative action. The post-war era saw the increasing production and use of new chemicals and pesticides. A Public Health Service report in 1965 estimated that a “new chemical entered the workplace every 20 minutes” and that new evidence “showed a strong link between cancer and the workplace.”⁵³

Congress recognized this context during its deliberations surrounding the OSH Act’s passage. An examination of the Congressional record makes clear that Congress established OSHA because the

⁴⁴ 29 U.S.C. § 652(8).

⁴⁵ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

⁴⁶ See generally John Calhoun, *Measuring the Fortress: Explaining Trends in Supreme Court and Circuit Court Dictionary Use*, 124 Yale L.J. 484 (2014).

⁴⁷ Merriam-Webster Dictionary, (Accessed: Feb. 28, 2023), <https://www.merriam-webster.com> (emphasis added); see also Webster’s New International Dictionary of the English Language 993 (1910), <https://catalog.hathitrust.org/Record/100913326> (defining “health” as “[s]tate of being hale, sound, or whole, in body, mind or soul”).

⁴⁸ *Id.* § 651(b)(7).

⁴⁹ *Id.* § 651(b)(5) (emphasis added).

⁵⁰ OSHA, *Occupational Injury and Illness Recording and Reporting Requirements*, 66 Fed. Reg. 5916 (Jan. 19, 2001).

⁵¹ David Rosner & Gerald Markowitz, *A Short History of Occupational Safety and Health In the United States*, *Am. J. Public Health* 110(5): 622–628, (May 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144431/>.

⁵² Charles Noble, *Liberalism at Work: The Rise and Fall of OSHA* 40, Temple University Press, (1986), <https://doi.org/10.2307/j.ctvn5tvk1>.

⁵³ Brooke E. Lierman, “to Assure Safe and Healthful Working Conditions’: Taking Lessons from Labor Unions to Fulfill Osha’s Promises, 12 *Loy. J. Pub. Int. L* 1, 4 (2010).

field of occupational safety and health was changing quickly. Congress decided that it needed to empower a federal agency with the authority to keep up with changes in the organization of work and establish rules to protect workers. As the Congressional report explained, “technological advances and new processes in american [sic] industry have brought numerous new hazards to the workplace.”⁵⁴ New “processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with.”⁵⁵

The Chairman of the Senate Committee on Labor and Public Welfare agreed that OSHA must develop a regulatory regime that incorporates new dangers to worker safety and health as they emerge:

Not only are occupational diseases which first came to light at the beginning of the Industrial Revolution still undermining the health of workers, but new substances, new processes, and new sources of energy are presenting health problems of ever-increasing complexity.⁵⁶

Taken in the context of its legislative history and of the events leading up to its passage, it is clear that the OSH Act was designed to protect workers from emerging, newly-understood threats to worker safety and health. Mental health can be fairly considered as one of those newly-understood threats, as society and government only began to recognize mental well-being as a health issue in the 20th century.⁵⁷

d. Occupational mental health hazards fall within OSHA’s sphere of expertise, and OSHA itself has publicly recognized this to a limited extent.

Regulation and enforcement about mental health hazards fall within OSHA’s “sphere of expertise.”⁵⁸ OSHA’s previous activity related to mental health, including employer guidance, record-keeping regulations, and substantive safety and health standards, reveals the extent to which protecting workers’ mental health would be in its wheelhouse. As OSHA Administrator Doug Parker recently explained, “[s]tress is a major determinant of both mental and physical health issues and impacts workplace health and safety.”⁵⁹

OSHA maintains a webpage focused on workplace stress, which includes limited guidance for employers, training resources, and resources for employees.⁶⁰ Additionally, OSHA has highlighted the disproportionate rates of suicide among construction workers: according to the CDC, the suicide rate for workers in construction is four times higher than that of people in the general population.⁶¹ In response to this stubborn and tragic problem, OSHA urged an industry-wide “stand-down” in

⁵⁴ S. Rep. 91-1282 (1970).

⁵⁵ *Id.*

⁵⁶ *Indus. Union Dep’t, AFL-CIO v. Hodgson*, 499 F.2d 467, 470 (D.C. Cir. 1974).

⁵⁷ Mental Health America, *Our History*, (Accessed: Apr. 24, 2023), <https://www.mhanational.org/our-history>.

⁵⁸ *National Federation of Independent Businesses v. OSHA*, 142 S. Ct. 661, 665 (2022).

⁵⁹ Safety+Health, *Workplace stress and mental health: OSHA launches webpage*, (Nov. 16, 2022),

<https://www.safetyandhealthmagazine.com/articles/23265-workplace-stress-and-mental-health-osha-launches-webpage>.

⁶⁰ OSHA, *Workplace Stress: Make Work Better - Mental Health Matters*, (Accessed: Mar. 30, 2023),

<https://www.osha.gov/workplace-stress>.

⁶¹ EHS Today, *Regulatory Update: OSHA Aims to Prevent Construction Industry Suicides*, (Sept. 5, 2022),

<https://www.ehstoday.com/construction/article/21250223/regulatory-update-osha-aims-to-prevent-construction-industry-suicides>.

2021 that coincided with National Suicide Prevention Month.⁶² In addition, OSHA maintains a webpage with suicide prevention resources for employers and employees in the construction industry, as well as a video message about suicide prevention from Assistant Secretary Parker.⁶³

In 2001, OSHA issued new record-keeping regulations mandating that employers keep track of work-related mental health injury and illness. In its final rule, which requires that employers record and report workplace mental injuries for which employees provide a doctor's note vouching that the injury is work-related, OSHA noted that it had "required the recording of [mental health] illnesses since the inception of the OSH Act" and collecting the information is crucial to "assess[ing] occupational hazards."⁶⁴

OSHA's substantive safety and health standards also recognize the importance of protecting workers' mental health. The standards regulating hazardous and toxic substances, for example, discuss mental health in two places. First, the standard at 29 C.F.R. § 1910.1020(e)(2)(ii)(D) permits an employer to decline to share with an employee medical information "regarding a specific diagnosis of a ... psychiatric condition," the disclosure of which "could be detrimental to the employee's health," until the employer receives written consent from the employee's designated representative.⁶⁵ An appendix to the same standard discusses the danger of "over-protection" with PPE because it can create "significant worker hazards, such as ... physical and psychological stress," among other harms.⁶⁶ Second, an appendix to OSHA's lead standard also encourages a medical examination of a lead-exposed worker to include consideration of the "behavioral and psychological disturbances" that can result from lead exposure.⁶⁷

- e. Besides being authorized to regulate mental health hazards directly, OSHA can regulate them indirectly, as mental and physical health are inextricably linked.

As previously noted, the OSH Act requires employers to comply with "occupational safety and health standards," which are defined as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."⁶⁸ For the reasons discussed above, we take the position that the "safe and healthful" language and the overall purposes of the OSH Act empower OSHA to regulate hazards to workers' mental health directly. However, even if a court were to find that OSHA has the authority only to regulate hazards to workers' physical health, OSHA could still regulate many practices that cause mental health impacts because of the direct connection between mental and physical and physiological health.

⁶² Safety+Health, *OSHA announces stand-down on preventing construction worker suicides*, (Aug. 25, 2021), <https://www.safetyandhealthmagazine.com/articles/21646-osha-announces-stand-down-on-preventing-construction-worker-suicides>; OSHA, *US Department of Labor, industry leaders, stakeholders call on employers, workers to combat surge in construction worker suicides*, (Sept. 6, 2023), <https://www.osha.gov/news/newsreleases/national/09062022> (describing the stand-down as a "week-long event seeks to raise awareness of unique mental health challenges construction workers face by asking employers to pause work for a moment to share information and resources and urge employees to seek help if needed")

⁶³ OSHA, *Construction Industry: Preventing Suicides*, (Accessed: Mar. 30, 2023), <https://www.osha.gov/preventingsuicides>.

⁶⁴ OSHA, *Occupational Injury and Illness Recording and Reporting Requirements*, 66 Fed. Reg. 5916, 5919 (Jan. 19, 2001).

⁶⁵ 29 C.F.R. § 1910.1020(e)(2)(ii)(D).

⁶⁶ Appendix C to 29 C.F.R. § 1910.120.

⁶⁷ Appendix C to 29 C.F.R. § 1910.1025.

⁶⁸ 29 U.S.C. §§ 654(a)(2), 652(8).

The physical and physiological impacts of work stress, for example, are well-documented, including by OSHA and NIOSH.⁶⁹ OSHA issued a guidance resource explaining that long-term stress causes physical harms including: heart disease, high blood pressure, muscle pain, headaches, poor sleep, and weight swings.⁷⁰ Prolonged periods of job stress increase the “rate of wear and tear on biological systems.”⁷¹ This can cause fatigue and chronic health problems, including in the cardiovascular system.⁷² In fact, health care expenditures are nearly 50 percent higher for workers who report higher levels of stress.⁷³ A 2020 study of call center workers found that stress was highest among workers who were subject to significant electronic monitoring.⁷⁴ This is similar to the way that OSHA-regulated hazardous chemicals act on the body; prolonged occupational exposure to lead, for example, can also cause “chronic” effects on, among others, the cardiovascular system.⁷⁵ Additionally, workplace stress contributes to higher rates of workplace suicides: reported workplace suicides numbered at 307 in 2019, a 39 percent increase since 2000.⁷⁶

3. OSHA can immediately address mental health hazards by issuing guidance and bringing enforcement actions under the General Duty Clause.

While OSHA begins to accumulate evidence and develops permanent, enforceable standards on workplace mental health hazards, it can take immediate action by issuing guidance and ramping up enforcement.

a. Guidance documents can raise employer and worker awareness of mental health hazards and offer solutions.

Federal agencies can issue non-binding guidance documents relatively quickly, without going through notice-and-comment procedures, to respond to a rapidly changing regulatory landscape.⁷⁷ The other chief advantage to issuing guidance is its ability to send clear signals to agency employees and, most importantly, the regulated community about their obligations under the law.⁷⁸ This avenue is attractive in the OSHA context because of the additional procedural hurdles that the agency faces as

⁶⁹ NIOSH, *STRESS...At Work*, (1999), <https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>; NIOSH, What Is Total Worker Health?, (Accessed Mar. 28, 2023), <https://www.cdc.gov/niosh/twh/totalhealth.html>.

⁷⁰ OSHA, *Long-Term Stress Harms Everyone in the Workplace*, (Accessed: Dec. 15, 2022), https://www.osha.gov/sites/default/files/Long-Term_Stress_Harms_Workplace_Stress_Toolkit_revised_508.pdf.

⁷¹ NIOSH, *STRESS...At Work*, (1999), <https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Virginia Doellgast & Sean O’Brady, ILR School, Cornell U. and Degroot School of Business, McMaster U, Making call center jobs better: The relationship between management practices and worker stress 5, (Jun. 2020), https://www.researchgate.net/publication/344332175_Making_Call_Center_Jobs_Better_The_Relationship_between_Management_Practices_and_Worker_Stress.

⁷⁵ OSHA, Advanced Notice of Proposed Rulemaking - Blood Lead Level for Medical Removal, 87 Fed. Reg. 38343, 38346 (Jun. 28, 2022).

⁷⁶ Michael Sainato, *It’s all preventable’: tackling America’s workplace suicide epidemic*, The Guardian, (May 27, 2022), <https://www.theguardian.com/us-news/2022/may/27/us-workplace-suicide-rates-pandemic>.

⁷⁷ *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020 (D.C. Cir. 2000). Of course, the price of this efficiency is durability: an administration can revoke or modify guidance as quickly as it was issued. And because guidance cannot bind the agency, guidance cannot provide the sole or dispositive authority for downstream agency actions.

⁷⁸ Such that the agency can avoid “pure [policy] ad hocery.” *Am. Min. Con. v. Mine Safety and Health Admin*, 995 F.2d 1006 1112 (D.C. Cir. 1993); *see also Syncor Int’l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir. 1997).

a result of legislative, judicial, and executive requirements.⁷⁹ Assuming that these procedural barriers will prolong a fulsome regulatory process on mental health,⁸⁰ issuing guidance on mental health hazards and practical solutions in particular industries is an ideal interim step.

OSHA has recognized the benefits of issuing guidance in several contexts, including limited guidance regarding mental health hazards. For example, instead of initiating another standard-setting process for ergonomic hazards after Congress invalidated its ergonomics standard in 2001, OSHA issued several sector-specific subregulatory guidance documents on ergonomic hazards in particular industries. The documents describe how features of work in certain industries can contribute to ergonomic risk and suggest ways that employers can mitigate these risks. OSHA has issued ergonomics guidance documents for: nursing homes, retail grocery stores, poultry processing, and meatpacking, among other sectors.⁸¹ The ergonomics guidance document for the poultry processing industry, for example, identifies best practices for developing an ergonomic program with worker input, management support, risk identification, and progress evaluation.⁸² The guidance also identifies ergonomic hazards specific to the industry and highlights corresponding engineering solutions (i.e. changes to workstation design, etc.) and administrative solutions (e.g., rotating workers, increasing breaks, etc.) to mitigate ergonomic risk. Similarly, as noted above, OSHA maintains a webpage focused on workplace stress, which includes limited, general guidance for employers, training resources, and resources for employees.⁸³

While it is encouraging that OSHA has begun to take note of the importance of mental health issues, it should consider developing industry-specific, comprehensive guidance documents to encourage employers and workers in those industries to mitigate hazards as much as possible. There is excellent research that OSHA can use to develop industry-specific guidance to mitigate workplace mental health hazards. For example, researchers conducted a meta analysis of 500 studies related to work and suicide to identify work-related factors that predict the likelihood of employees' suicidal thoughts and behaviors.⁸⁴ OSHA can request that NIOSH conduct or fund additional research to help develop guidance materials, and can also use existing NIOSH-commissioned research into these issues.⁸⁵ NIOSH research that already exists include a study examining the psychological

⁷⁹ See Government Accountability Office, *Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting*, (Apr. 19, 2012), <https://www.gao.gov/assets/gao-12-330.pdf> (explaining that the time it took for OSHA to develop and issue safety and health standards “ranged widely, from 15 months to 19 years, and averaged more than 7 years”).

⁸⁰ *Id.* at 12-18.

⁸¹ OSHA, Safety and Health Topics: Ergonomics, (Accessed: Dec. 16, 2022), <https://www.osha.gov/ergonomics/control-hazards#guidelines>.

⁸² OSHA, Prevention of Musculoskeletal Injuries in Poultry Processing OSHA 3213-12R 2013, (Accessed: Feb. 27, 2023), <https://www.osha.gov/sites/default/files/publications/OSHA3213.pdf>.

⁸³ OSHA, Workplace Stress: Make Work Better - Mental Health Matters, (Accessed: Mar. 30, 2023), <https://www.osha.gov/workplace-stress>.

⁸⁴ Matt C. Howard, et. al, Work and suicide: An interdisciplinary systematic literature review, 43:2 *Journal of Organizational Behavior* 260-285, (Apr. 10, 2021), <https://onlinelibrary.wiley.com/doi/abs/10.1002/job.2519>.

⁸⁵ 29 U.S.C. § 671(d) (authorizing NIOSH to conduct new research and craft recommendations upon the request of the Secretary of Labor).

impacts of extended restart breaks after consecutive night shifts,⁸⁶ another examining the circumstances contributing to suicide among repair workers,⁸⁷ and many others.⁸⁸

- b. OSHA could also initiate enforcement actions, as some mental health hazards that can cause serious physical harm or death would likely meet the criteria required to issue a General Duty Clause citation.

The OSH Act's General Duty clause requires that employers "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." In order to support a citation against an employer for a violation, OSHA must demonstrate that: "(1) an activity or condition in the employer's workplace presented a hazard to an employee, (2) either the employer or the industry recognized the condition or activity as a hazard, (3) the hazard was likely to or actually caused death or serious physical harm, and (4) a feasible means to eliminate or materially reduce the hazard existed."⁸⁹

The agency could direct its enforcement efforts to identify companies where one or more job conditions or activities pose a threat to mental health that could cause death or serious physical harm, and where there are feasible means to eliminate or materially reduce the hazard.

- i. *Element 1: Mental health hazards can amount to "activit[ies] or condition[s] in the employer's workplace [that] present[] a hazard to an employee."*

According to the OSHA Field Operations Manual ("FOM"), which directs enforcement staff on how to document potential General Duty Clause violations, a hazard is any "workplace condition or practice to which employees are exposed, creating the potential for death or serious physical harm to employees."⁹⁰ A hazard is not a particular accident or incident and a hazard need not be directly related to any particular accident or incident.⁹¹ Instead, it is a condition that exists in the workplace that is reasonably foreseeable to cause harm. The employer must also be able to reasonably abate the hazard.

⁸⁶ Shift-Work Schedule Intervention for Extending Restart Breaks after Consecutive Night Shifts: A Non-randomized Controlled Cross-Over Study <https://www.mdpi.com/1660-4601/19/22/15042>.

⁸⁷ Victor Soupene, et. al, Circumstances contributing to installation, maintenance, and repair worker death by suicide, *Journal of Occupational and Environmental Medicine* 65(5):p 394-400, (May 2023), <https://doi.org/10.1097/jom.0000000000002789>.

⁸⁸ *See, e.g.*, Organizational resources and social support influences on stress and depression: a comparison among cooperative and non-cooperative farmers <https://doi.org/10.1080/1059924x.2022.2134243>; Psychological distress and suicidal ideation among male construction workers in the United States <https://doi.org/10.1002/ajim.23340>.

⁸⁹ As an example, in its recent citation of Amazon for ergonomic risk in the company's warehouses, OSHA identified specific job activities that foreseeably heightened the risk of musculoskeletal injury. One such job activity was a process called Fluid Unload, which refers to when workers must unstack floor-loaded boxes from a tractor trailer. The citation explained that "[e]mployees were required to perform lifting, twisting, bending, long reaches, awkward postures, forceful, pushing/pulling, and a combination thereof during the Fluid Unload task placing them at risk for low back injuries and other injuries." The agency's suggested, feasible abatement methods for this hazard included: Items should arrive only on pallets or carts and be removed from trucks using forklifts or electric pallet jacks. Floor unloading should not be performed. If floor loaded trailers must be received, implement: a robotic system to unload packages one at a time onto a powered conveyor." <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2023/02/OSHA20230163b.pdf>

⁹⁰ OSHA, CPL 02-00-163 Field Operations Manual 4-12, (Sept. 13, 2019), https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-00-163.pdf (hereinafter "FOM").

⁹¹ *Brennan v. Occupational Safety & Health Rev. Comm'n*, 494 F.2d 460, 463 (8th Cir. 1974) (explaining that "[n]either the general duty clause nor section 17(k) requires any actual death or physical injury for a violation to occur").

Mental disorders can foreseeably lead to suicide, self-harm, overdose, and other forms of physical debilitation. Thus, OSHA should consider identifying workplaces with job conditions that can cause mental disorders. NIOSH has identified several such general job conditions, some of which could amount to a hazard, including: poor design of tasks (workloads, infrequent rest breaks, long work hours, and hectic and routine tasks that have little inherent meaning, do not utilize workers' skills, and provide little sense of control); poor management style (lack of worker participation in decision making, poor communication, and lack of family-friendly policies); bad social environments (lack of support or help from coworkers and supervisors); conflicting or uncertain job expectations; job insecurity and rapid changes; and environmental conditions (unpleasant or unsafe physical conditions like crowding, noise, air pollution, and ergonomic problems).⁹² Additionally, workers in particular industries face unique threats to their mental health. For example, workers in slaughterhouses report higher rates of depression and anxiety from the mental toll inherent in killing living beings.⁹³ Commercial content moderators, too, encounter deeply troubling experiences on the job that create lasting psychological and emotional distress.⁹⁴

ii. *Element 2: Employers and industries recognize some mental health hazards as hazardous.*

OSHA's FOM explains that recognition of a hazard, which is necessary to fulfill a General Duty Clause's second element, can be established on the basis of employer, industry, or "common-sense" recognition.⁹⁵

Employer recognition can be supported by evidence of actual employer knowledge of a hazardous condition or practice, including written or oral statements made by the employer, company documents, workers' compensation data, frequent employee complaints, an employer's own corrective actions, and collective bargaining agreements.⁹⁶ Particularly since the pandemic, employers have spoken out about mental health issues, including well-known CEOs like Apple's Tim Cook, TIAA's Thasunda Brown Duckett, and BlackRock's Larry Fink.⁹⁷ Companies have taken their own corrective actions to address hazards to mental health, including instituting mental health breaks,⁹⁸ switching to a four-day work week,⁹⁹ and offering employees free mental health apps.¹⁰⁰

⁹² NIOSH, *STRESS...At Work*, (1999), <https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>.

⁹³ Jessica Slade & Emma Alleyne, *The Psychological Impact of Slaughterhouse Employment: A Systematic Literature Review*, (Jul. 7, 2021), <https://doi.org/10.1177/15248380211030243>. Of course, as such a mental toll is inherent to the meat industry, OSHA would need to determine whether the hazard can be reasonably abated.

⁹⁴ *See generally* Steiger, et. al, *The Psychological Well-Being of Content Moderators*, https://crowd.cs.vt.edu/wp-content/uploads/2021/02/CHI21_final__The_Psychological_Well_Being_of_Content_Moderators-2.pdf.

⁹⁵ FOM at 4-14.

⁹⁶ *Id.*

⁹⁷ Jennifer A. Kingson, *CEOs are getting a new playbook for boosting workers' mental health*, *Axios*, (Aug. 16, 2022), <https://www.axios.com/2022/08/16/workplace-employee-mental-health-ceos>. Indeed, mental health among CEOs has also deteriorated due to working conditions. Bryan Robinson, *As Doves Of CEOs Resign Amid Mental Health Crisis, 3 Leaders Cry For A New Playbook*, *Forbes*, (Nov. 12, 2022), <https://www.forbes.com/sites/bryanrobinson/2022/11/12/ceos-resigning-in-doves-amid-mental-health-crisis-3-leaders-explain-why/?sh=7e99e7d62d32>.

⁹⁸ *See, e.g.*, Caroline Colvin, *Fully offline: Bumble joins burnout break wave*, *HR Dive*, (Jul. 1, 2021), <https://www.hrdiver.com/news/fully-offline-bumble-joins-burnout-break-wave/602726/>.

⁹⁹ *See, e.g.*, Joe Pinsker, *Kill the 5-Day WorkWeek*, *The Atlantic*, (Jun. 17, 2021), <https://www.theatlantic.com/family/archive/2021/06/four-day-workweek/619222/>.

¹⁰⁰ *See, e.g.*, John Torous & Elena Rodriguez-Villa, *Should Your Company Provide Mental Health Apps to Employees?*, (Jul. 12, 2021), <https://hbr.org/2021/07/should-your-company-provide-mental-health-apps-to-employees>.

Industry recognition can be based on evidence external to a specific firm, including: statements by safety and health experts who are familiar with the relevant conditions; the existence of corrective actions of employers within the firm's industry; studies conducted by the employer's industry; and studies conducted by unions, government, and the insurance industry, assuming that the employer was made aware of them.¹⁰¹ There is ample evidence in many industries of recognition of mental health hazards present in the workplace. For example, the construction industry is well-aware of its problem with suicidal death, as evidenced by government studies and the industry's own trade publications.¹⁰² And, as described above, plenty of employers are instituting mental health hazard-mitigation efforts.

Finally, although not granted as much deference as employer or industry recognition, "hazard recognition can still be established if a hazardous condition is so obvious that any reasonable person would have recognized it."¹⁰³ According to the FOM, this option should only be used in "flagrant or obvious cases."¹⁰⁴ In industries with particularly bad mental health crises and after the COVID-19 when many employers were newly aware of mental health issues,¹⁰⁵ there could exist cases in which job conditions could satisfy this standard.

- iii. *Element 3: Some mental health hazards are likely to or actually have "caused death or serious physical harm."*

This element can be satisfied if either an actual death or serious injury resulted from the recognized hazard or when, if an accident or incident occurred, the likely result would be death or serious physical harm. Importantly, as the Congressional Research Service ("CRS") explains, the probability that physical harm or death will occur, which OSHA considers within the first element of the General Duty Clause analysis, is irrelevant in determining whether a recognized hazard is likely to cause serious physical harm or death to employees. Instead, OSHA "considers the level of physical harm that an employee would face *if* an accident were to happen, no matter how slight the chance an accident would happen in the first place."¹⁰⁶ The CRS gave an example:

in Waldon Health Care Center, a hazardous workplace condition presented only a small chance that employees would catch Hepatitis B, a virus from which, [the Occupational Safety and Health Review Commission ("OSHRC")] noted, most people fully recover. Even so, OSHRC found serious physical harm or death likely because a small percentage of people that catch Hepatitis B die or do not fully recover from it, and the hazardous condition therefore had the chance, though apparently slight, of seriously injuring or killing employees.¹⁰⁷

¹⁰¹ FOM at 4-15.

¹⁰² *See, e.g.*, AsphaltPro 34, (Jun. 2022), https://issuu.com/asphaltpro/docs/ap_june_2022_proof_3.

¹⁰³ FOM at 4-16.

¹⁰⁴ *Id.*

¹⁰⁵ American Psychological Association, Workers appreciate and seek mental health support in the workplace, (2022), <https://www.apa.org/pubs/reports/work-well-being/2022-mental-health-support> (reporting that 71 percent of workers believe that their employer is more concerned about mental health than they were in the past).

¹⁰⁶ Congressional Research Service, The OSH Act: A Legal Overview 5, (Jan. 22, 2015), https://www.everycrsreport.com/files/20150122_R43768_5e34cf1abc09ffbbc2774eac0c553ea20650aea1.pdf (emphasis in original).

¹⁰⁷ *Id.* citing *Waldon Health Care Ctr.*, 16 O.S.H. Cas. (BNA) ¶ 1052 (O.S.H.R.C. Apr. 2, 1993).

The Hepatitis B example here is quite relevant to mental health disorders. Research, including that funded by NIOSH,¹⁰⁸ shows that job conditions like long working hours and other contributors to job strain can cause depression and anxiety, severe forms of which can contribute to suicide and severe physical symptoms. The fact that work-related mental health disorders do not always – or even frequently - lead to severe physical harm or death does not prevent OSHA from fulfilling this third element.

- iv. *Element 4: there exist “feasible means to eliminate or materially reduce” mental health hazards.*

This final element requires OSHA to “specify the particular steps a cited employer should have taken to avoid citation, and demonstrate the feasibility and likely utility of those measures.”¹⁰⁹ Such abatement measures could include: the employer’s own abatement methods, which were not implemented; abatement methods of other employers; and suggested abatement methods contained in trade journals and national consensus standards.

In satisfying this element in the mental health context, OSHA might look to employers that have implemented effective mental health improvement programs. Identifying success stories among an employer’s peers will be essential in demonstrating this element because a measure must be economically feasible and not “threaten the economic viability of the employer.”¹¹⁰ The NIOSH research and employer programs (flexibility, shortened work weeks, etc.) cited in an above section could be useful in demonstrating feasible abatement strategies, as could OSHA’s existing guidance on workplace stress.

4. OSHA should consider developing occupational safety and health standards to protect workers from mental health hazards.

As discussed in the previous sections of this letter, OSHA has tools at its disposal now that can help the agency protect workers from hazards to their mental health. While it should use these existing tools, guidance and enforcement under the General Duty Clause alone are insufficient. OSHA should also take steps towards using its regulatory authority under the OSH Act to set an enforceable workplace safety and health standard (or a set of industry-specific standards) that provides more comprehensive support to American workers. As reproduced above, an “occupational safety and health standard ... requires conditions, or the adoption ... of ... practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment.” Thus, OSHA can issue occupational safety and health standards regulating practices that contribute to mental health hazards if it establishes that those practices are deleterious to safe and healthful employment and that they can be regulated “reasonably.”

While developing these standards may take time and require more research and public engagement, it will be well worth the effort. Such an undertaking will ensure that OSHA lives up to its statutory

¹⁰⁸Sarah Mitchell & BongKyoo Choi, *Job Strain, Long Work Hours, and Suicidal Thoughts*, (Sept. 13, 2018), <https://blogs.cdc.gov/niosh-science-blog/2018/09/13/suicide-prevention/>.

¹⁰⁹ *United States Postal Serv., Respondent. v. Nat'l Ass'n of Letter Carriers (Nalc), Authorized Emp. Representative, v. Nat'l Rural Letter Carriers' Ass'n (Nrlca) Authorized Emp. Representative.*, No. 16-1713, 2023 WL 2263313, at *7 (04 National/Federal Feb. 17, 2023).

¹¹⁰ *Id.*

mission of “assur[ing] so far as possible every working man and woman in the Nation safe and healthful working conditions...”¹¹¹

We applaud OSHA’s action on mental health issues to this date and urge the agency to ramp up its activity.

Sincerely,

Dr. David Michaels, PhD, MPH
*Professor, Dep’t of Environmental & Occupational Health
Milken Institute School of Public Health
Former Assistant Secretary of Labor for OSHA*

Co-signing organizations

Governing for Impact
Economic Policy Institute
Justice for Migrant Women
National Education Association

National Employment Law Project
National Institute for Workers' Rights
National Workrights Institute
Service Employees International Union

¹¹¹ 29 U.S.C. § 651(b).