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OSHA Enforcement Predictions for 2026 and Beyond: Key Workplace Safety Focus Areas, Strategies for Compliance and the Use of AI

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Littler Mendelson, P.C.: About the Firm

- Global labor and employment law firm with more than 1,900 attorneys
- 55 offices across the U.S. and in Washington, D.C., with additional offices in 27 other countries
- Practice areas include all aspects of labor and employment
- Littler's Occupational Safety & Health Practice Group services clients nationwide in the U.S. and in Canada
- Website: littler.com

Agenda

- OSHA & OSHRC Leadership Updates
- OSHA Rulemaking & Policy Updates
- Key Areas of Anticipated OSHA Enforcement and Strategies for Compliance
- The use of AI in the Workplace: Risks and Rewards for the Safety Professional



OSHA & OSHRC Leadership Updates



David Keeling Confirmed as Head of OSHA

- On October 7, 2025, David Keeling was confirmed by the Senate to be the Assistant Secretary of Labor.
- Mr. Keeling officially replaces former OSHA chief Doug Parker who resigned in December 2024.
- Amanda Wood Laihow, a former U.S. Occupational Safety and Health Review Commissioner, had been serving as Acting Assistant Secretary of OSHA in the interim.



Anticipated Changes Under Keeling's Leadership

- Mr. Keeling comes from the transportation industry, formerly with UPS followed by Amazon. Consequently, he is expected to favor business-friendly workplace safety policies that focus on compliance assistance and voluntary programs over a strictly enforcement-driven policy.
- We expect to see:
 - Rollbacks to Biden Era electronic recordkeeping requirements.
 - Finalization of a national heat standard using a performance-based formula.
 - Development of a national workplace violence standard for healthcare.
 - Withdrawal of OSHA's Walkaround Rule, pending ongoing court challenges.
 - Overhaul and codification of OSHA's Voluntary Protection Program (VPP).

Jonathan Snare Confirmed to the OSHRC

- On October 7, 2025, Jonathan Snare was confirmed by the Senate to be a member of the Occupational Safety and Health Review Commission.
- Term expires April 27, 2029.
- Mr. Snare takes Amanda Laihow's slot on the Commission.
- Former Deputy Solicitor of Labor, Acting OSHA Chief, and Management-Side OSHA Attorney.
- OSHRC has not had a Commissioner since April 2025, nor a quorum since April 2023. While OSHRC can now direct cases for review, those cases still cannot be heard and no decisions can be issued until at least one more Commissioner is appointed and confirmed.
- OSHRC's case backlog will continue to grow.





OSHA's Regulatory Agenda



Spring 2025 Rule List (Issued September 4, 2025)

DOL/OSHA	Prerule Stage	Mechanical Power Presses Update	1218-AC98
DOL/OSHA	Proposed Rule Stage	Shipyards Fall Protection—Scaffolds, Ladders and Other Working Surfaces	1218-AC85
DOL/OSHA	Proposed Rule Stage	Communication Tower Safety	1218-AC90
DOL/OSHA	Proposed Rule Stage	Emergency Response	1218-AC91
DOL/OSHA	Proposed Rule Stage	Lock-Out/Tag-Out Update	1218-AD00
DOL/OSHA	Proposed Rule Stage	Tree Care Standard	1218-AD04
DOL/OSHA	Proposed Rule Stage	Welding in Construction Confined Spaces	1218-AD23
DOL/OSHA	Proposed Rule Stage	Walking-Working Surfaces	1218-AD28
DOL/OSHA	Proposed Rule Stage	removal of 1910 Subpart U (COVID-19 in Healthcare Settings)	1218-AD36
DOL/OSHA	Proposed Rule Stage	Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings	1218-AD39
DOL/OSHA	Proposed Rule Stage	Rapid REDON Fit-Testing Protocol: Amendment to Respiratory Protection Standard Appendix A	1218-AD46
DOL/OSHA	Proposed Rule Stage	Updates to Respiratory Protection Requirements in Chemical-specific Standards	1218-AD47
DOL/OSHA	Proposed Rule Stage	Updates to Respiratory Protection Standard Medical Evaluation Requirements	1218-AD48
DOL/OSHA	Proposed Rule Stage	OSHA Standards Improvement Project 2025	1218-AD49
DOL/OSHA	Proposed Rule Stage	Safety Color Code for Marking Physical Hazards; Textiles; Sawmills; Safety Color Code for Marking Physical Hazards for Shipyard Employment	1218-AD50
DOL/OSHA	Proposed Rule Stage	Open Fires in Marine Terminals	1218-AD51
DOL/OSHA	Proposed Rule Stage	House Falls in Marine Terminals	1218-AD52
DOL/OSHA	Proposed Rule Stage	Rescission of Coordinated Enforcement Regulations	1218-AD53
DOL/OSHA	Proposed Rule Stage	1,2-Dibromo-3-Chloropropane	1218-AD54
DOL/OSHA	Proposed Rule Stage	1,3-Butadiene	1218-AD55
DOL/OSHA	Proposed Rule Stage	13 Carcinogens	1218-AD56
DOL/OSHA	Proposed Rule Stage	Acrylonitrile	1218-AD57
DOL/OSHA	Proposed Rule Stage	Asbestos	1218-AD58
DOL/OSHA	Proposed Rule Stage	Benzene	1218-AD59
DOL/OSHA	Proposed Rule Stage	Cadmium	1218-AD60
DOL/OSHA	Proposed Rule Stage	Coke Oven Emissions	1218-AD61
DOL/OSHA	Proposed Rule Stage	Cotton Dust	1218-AD62
DOL/OSHA	Proposed Rule Stage	Ethylene Oxide	1218-AD63
DOL/OSHA	Proposed Rule Stage	Formaldehyde	1218-AD64
DOL/OSHA	Proposed Rule Stage	Inorganic Arsenic	1218-AD65
DOL/OSHA	Proposed Rule Stage	Lead	1218-AD66
DOL/OSHA	Proposed Rule Stage	Methylene Chloride	1218-AD67
DOL/OSHA	Proposed Rule Stage	Methylenedianiline	1218-AD68
DOL/OSHA	Proposed Rule Stage	Vinyl Chloride	1218-AD69
DOL/OSHA	Final Rule Stage	Powered Industrial Trucks Design Standard Update	1218-AD26
DOL/OSHA	Final Rule Stage	Procedures for Handling of Retaliation Complaints Under the Whistleblower Protection Statutes	1218-AD30
DOL/OSHA	Final Rule Stage	Procedures for the Handling of Retaliation Complaints Under the Anti-Money Laundering Act	1218-AD37
DOL/OSHA	Final Rule Stage	Procedures for the Handling of Retaliation Complaints Under the Criminal Antitrust Anti-Retaliation Act	1218-AD38
DOL/OSHA	Final Rule Stage	Procedures for the Use of Administrative Subpoenas	1218-AD44

OSHA Rulemaking & Policy Updates



OSHA's Proposed Rule on Heat Injury & Illness



Covers nearly all employers regulated by OSHA



Requires a Heat Injury and Illness Prevention Plan (HIIPP)



Heat Triggers:

- Initial heat index of 80° F
- High heat index of 90° F



Suitably cool drinking water that's readily accessible



Paid rest breaks in area(s) with cooling measures



Mandatory paid 15-minute breaks every 2 hours (high heat)



Acclimatization protocols for new and returning workers during first week



Effective and regular two-way communications



Heat Illness and Injury – Examples of Areas of Concern

- OSHA used a one-size-fits all approach
- OSHA did not carve out a separate standard for construction despite repeated requests and having done so in other rulemakings (e.g., Silica, HazCom, Lead).
- No consideration was given to geographic differences in climates.
- Concerns that the initial and high heat triggers are too low given the various climatic differences (e.g., 80° F in NM v. 80° F in FL).
- Requires a written HIIPP and naming a heat safety coordinator in the plan.
- *De facto* requirement for small businesses (10 or fewer employees) to have a written plan to demonstrate compliance.
- OSHA sought comments regarding whether it should define “employee representative” in the final rule – this creates troubling potential enforcement scenarios for employers, similar to its approach in its Worker Walkaround rule.

OSHA's Heat Rule Timeline

- Proposed Rule was published August 30, 2024.
- 120-day comment period with comments originally due Dec. 30, 2024.
- On Nov. 29, OSHA extended the comment deadline by 15 days to Jan. 14, 2025.
- Members of the public could submit a Notice of Intention to Appear by May 2, 2025.
- Public written testimony or evidence was due no later than May 23, 2025.
- Public hearings were held daily from June 16, 2025 until July 2, 2025.
- Post-Hearing Comments are due October 30, 2025 (recently extended from September 30).



OSHA's Heat Rule Timeline (Continued)

- In a Sept. 4 press release announcing the release of the latest Unified Agenda, DOL says it “is continuing to examine how to establish standards specifically related to heat-related injury and illness prevention.”
- The Small Business Administration Office of Advocacy has urged OSHA to withdraw the Biden-era proposed heat standard and start over, pointing to the proposal’s failure to address multiple issues raised by a federal review panel.
- If OSHA decides to propose a new rule, small business advocates said the agency should use performance-based outcomes rather than prescriptive mandates.





WHOOOP DEE DO, WHAT DOES IT ALL MEAN?

The Big Question: Will the Trump Administration Stop the Heat Rule?

- Given that the rule is not final yet, it is **not** be subject to the Congressional Review Act (CRA) which allows Congress to overturn federal agency actions (like OSHA).
 - For background, if a rule is subject to the CRA and overturned, the statute prohibits the agency from reintroducing a substantially similar rule in the future. This was done with ergonomics a number of years ago. However, because the heat rule isn't final, it doesn't qualify for the CRA.
 - Recent 6th Circuit FCC Decision may open the door for OSHA to propose an ergo rule.
- Many are commenting that the rule will be withdrawn or just go away. It is unlikely this will happen.
- Given that states are moving forward with their own rules, a more simplified or straightforward regulation may be a better solution for uniformity.

New Heat Rules in Maryland and Nevada

- Maryland and Nevada adopted their own heat regulations.
 - Maryland – 9/30/24
 - Indoor and outdoor settings at 80° F
 - Heat Related Illness Prevention & Management Plan with similar requirements to what OSHA has proposed.
 - Nevada – 11/15/24
 - Indoor and outdoor settings
 - No specific heat trigger
 - Requires employers with 10* or more employees to update their written plans to add measures for heat.
- *Nevada already requires written safety plans for employers with 10 or more employees.

OSHA's Proposed Emergency Response Rule

- On February 5, 2024, OSHA published a Notice of Proposed Rulemaking to replace its Fire Brigades standard (29 CFR 1910.156) with a new standard titled “Emergency Response.”
- The goal is to address a broader scope of emergencies (beyond firefighting) and a broader scope of responders (such as EMS and other rescue duties), including any private organization that employs an internal emergency response team (more than just first aid).
- Requires a written emergency response program, as well as an incident management system and standard operating procedures for managing and directing first response.
- The latest round of public comments to the Rule closed on January 17, 2025.
- Like OSHA's Heat Rule, this Rule will similarly not be subject to the CRA, as it is not final.
- However, unlike OSHA's Heat Rule, there is a strong industry consensus for complete withdrawal, which is likely under Trump's Regulatory Freeze Executive Order.
- Incidentally, OSHA's regulatory agenda notes a November 2025 deadline to analyze and review the comments to the proposed rule, but this is most likely a low priority under the current Administration given Trump's deregulation goals.

Renewed Amputation NEP

- On June 27, 2025, OSHA renewed its [National Emphasis Program on Amputations in Manufacturing Industries](#) (NEP), superseding the prior version. The NEP will be in place for five years.
- The NEP continues to seek to identify and reduce or eliminate hazards from machinery or equipment in manufacturing and industrial workplaces that could cause amputations. However, there are some notable changes:
 - Expands the scope of targeted North American Industry Code System (NAICS) establishments;
 - ❖ New industries include automobile, household furniture, bottled water, and cut stone manufacturing.
 - Revises the methodology used to target specific industries;
 - Expands unprogrammed inspections into an Amputation NEP inspection for certain NAICS codes;
 - Exempts participating Voluntary Protection Program (VPP) sites from OSHA's programmed inspection list of targeted sites during the duration of their approved participation in the VPP;
 - Exempts from inspections under "low-hazard" NEP establishments with 10 or fewer employees.

New Small Business Penalty Policy

- On July 14, 2025, OSHA issued significant updates to its penalty guidelines, aimed at reducing burdens on small businesses and incentivizing swift correction of workplace hazards. These updates expand eligibility for penalty reductions.
- The threshold for small employer penalty reductions has been raised—businesses with up to 25 employees (previously 10) can now qualify for a 70% penalty reduction.
- Additionally, employers that promptly correct hazards may receive a new 15% reduction under OSHA’s “Quick-Fix” credit.
- The updated policy also expands the penalty reduction for employers without a history of serious, willful, repeat, or failure-to-abate OSHA violations. Employers may be eligible for a 20% history-based penalty reduction if they have either:
 - Been inspected by federal OSHA or a State Plan within the past five years and were found in compliance or cited only for other-than-serious violations; or
 - Never been inspected by OSHA or a State Plan.

Deregulation Efforts

- On July 1, 2025, OSHA issued 25 proposed rules aimed at easing regulatory burdens on businesses in response to President Trump's Executive Order 14192 ("Unleashing Prosperity Through Deregulation").
- *Clarification of the General Duty Clause*: OSHA seeks to clarify its interpretation of the General Duty Clause "to exclude from enforcement known hazards that are inherent and inseparable from the core nature of a professional activity or performance." These would include hazards arising from normal activities that are intrinsic to sports or entertainment occupations. (Citing *SeaWorld of Florida LLC v. Perez*, 748 F.3d 1202 (DC Cir. 2014)).
- *Reduction of OSHA Recordkeeping Burdens*: OSHA seeks to withdraw a January 29, 2010 proposal that would have amended the OSHA 300 Log by adding a column to specifically record occupational musculoskeletal disorders (MSDs).

Deregulation Efforts (Continued)

- *Removal of Medical Evaluation Requirements for Certain Respirators:* OSHA seeks to remove certain medical evaluation requirements for filtering facepiece respirators (FFRs) and loose-fitting powered air-purifying respirators (PAPRs). Currently, employers must complete medical evaluations to determine whether an employee is physically able to wear a respirator. OSHA now believes that current data is “lacking and insufficient to establish that medical evaluations meaningfully reduce material impairment caused by wearing” these types of respirators.
- OSHA’s proposed rule would also provide employers greater flexibility in the respiratory protection they select for workers who are exposed to various specific substances in the workplace.
- *Streamlining of Construction Standards:* OSHA seeks to withdraw its construction illumination requirements in 29 CFR 1926.26 and 1926.56. This would remove the requirement that construction areas, aisles, stairs, ramps, runways, corridors, offices, shops, and storage areas where work is in progress be lighted with either natural or artificial illumination.

Deregulation Efforts (Continued)

- *Office of Information and Regulatory Affairs (OIRA) Memorandum, October 21, 2025* – seeks to “offer guidance to the agencies as how to bolster, streamline, and speed” deregulation of “facially unlawful” regulations and deregulatory activity that continues to require the development of more extensive record-building.
- Establishes a maximum 28-day review period for deregulatory actions that are executed with factual records, and a maximum 14-day OIRA review period for facially unlawful rules.
- Significant departure from the current review framework established under the Clinton-era Executive Order (EO) 12866, which provides that OIRA shall review regulatory actions within 90 days – or 40 days as to actions based on largely unchanged information.
- Deregulatory actions should not be held to the same extensive regulatory processes as regulatory actions, and they should be repealed without notice and comment under the Administrative Procedure Act (APA) “good cause” exemption.
 - Allows agencies to bypass traditional notice-and-comment rulemaking when an “agency for any good cause finds” that doing so would be “impracticable, unnecessary, or contrary to the public interest.”

Key Areas of OSHA Enforcement



OSHA's Top Ten Most Frequently Cited Standards (FY 2024)

1. Fall Protection, construction
2. Hazard Communication, general industry
3. Ladders, construction
4. Respiratory Protection, general industry
5. Control of Hazardous Energy (lockout/tagout), general industry
6. Powered Industrial Trucks, general industry
7. Fall Protection Training, construction
8. Scaffolding, construction
9. Eye and Face Protection, construction
10. Machinery and Machine Guarding, general industry

Other Actively Enforced Standards & Key Focus Areas

Recordkeeping

Emergency Action Plans

**Indoor & Outdoor Heat Illness
Prevention/Heat National Emphasis
Program (NEP)**

- Original Effective Dates: April 8, 2022 – April 8, 2025 (On 1/16/25, Biden Administration extended the Heat NEP until April 8, 2026).
- “Protect[s] employees from heat-related hazards and resulting injuries and illnesses in outdoor and indoor workplaces,” such as warehouses and industries with high radiant heat sources.
- OSHA uses General Duty Clause to enforce NEP (60 citations).
- OSHA does not currently have a heat illness prevention standard. However, a final rule is pending with further action possibly later rather than sooner...

Ergonomics

**Warehousing NEP (NAICS
491110, 492110, 492210,
493110, 493130, 493190)**

- Effective Dates: July 13, 2023 – July 13, 2026 (unless extended)
- Powered industrial trucks (forklifts), ergonomics, material handling/storage, walking-working surfaces, egress, fire protection, heat.
- NEP covers mail processing and distribution centers, couriers and express delivery services, local messengers and local delivery industries, and high injury rate retail establishments.
- Shall be expanded into a Heat NEP inspection if exposure to heat hazards is occurring within the workplace.

Workplace Violence

Additional Current NEPs

- Renewed Amputation NEP (Effective 6/27/25)
- Falls (Effective 4/24/23)
- Combustible Dust (Effective 1/30/23)
- Trenching and Excavation (Effective 10/1/18)
- Process Safety Management (PSM) Covered Chemical Facilities (Effective 1/17/17)
- Shipbreaking (Effective 3/7/16)
- Primary Metal Industries (Effective 10/20/14)
- Hexavalent Chromium (Chromium VI) (Effective 2/23/10)
- Lead (Effective 8/14/08)



GOVERNMENT SHUTDOWN!

Government Shutdown & Impact on Enforcement

- “Essential” functions of federal OSHA will be maintained during the shutdown, which include:
 - Inspection of imminent danger situations;
 - Inspection of workplace fatalities and catastrophes;
 - Review of whistleblower complaints and subsequent referrals to an appropriate agency of any complaint that identifies a workplace or public safety and/or health condition that poses, or if not referred or acted upon, is reasonably likely to pose, an imminent threat to the safety of human life or the protection of property;
 - Follow-up inspections of establishments with high-gravity, serious violations and no abatement; and
 - Enforcement activities on open cases needed to meet the Agency’s six-month statutory deadline to issue citations where those cases establish employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm.
- Contest and abatement deadlines will continue during the shutdown, although employers likely will not be able to engage with federal OSHA via an informal conference or otherwise during the shutdown.
- Federal OSHA inspection activity will continue during the shutdown that may result in citations.
- The OSHRC will cease all operations during the shutdown.
- State OSHA Plans will continue operating. Business as usual!



The use of AI in the Workplace: Risks and Rewards for the Safety Professional

Benefits of Using AI in Enhancing Workplace Safety*

- Real-time hazard detection through sensors and computerized vision technologies
 - AI-powered systems using cameras, sensors, and wearables can continuously monitor the environment to detect issues like improper PPE use, unsafe machinery operation, or environmental hazards like toxic gas leaks.
- Predictive analytics which can anticipate certain types of accidents under specific scenarios
 - AI can analyze historical data to identify trends and predict potential hazards, allowing for preventative action rather than just reacting to incidents.
- Automated inspections
 - AI can use computer vision to analyze data from drones or cameras for more efficient and safer inspections of areas like roofs or equipment.
- Automating dangerous tasks with robotics or drones
 - AI-controlled robots and drones can perform tasks in hazardous environments, reducing the risk to human workers.
- Personalized training
 - AI can create customized, interactive safety training programs using virtual reality to help employees practice skills in a safe, controlled environment.

Benefits of Using AI in Enhancing Workplace Safety*

- Improved incident response
 - AI can assist in incident response by quickly analyzing data from an event and identifying key details to inform decision-making.
- Automated compliance tracking
 - AI systems can continuously monitor safety metrics and automatically generate reports to help ensure and demonstrate compliance with regulations.
- Reduced human error
 - By automating tasks like data collection, analysis, and reporting, AI can reduce the potential for human error and fatigue in safety management.
- Efficient reporting
 - AI can streamline the incident reporting and analysis process, allowing safety professionals to focus more on strategic risk management and behavior-based safety initiatives.

** AI responses may include mistakes*

Risks of Using AI in Enhancing Workplace Safety

- Network or power interruptions
- Hallucinations!
- Human error – applying the wrong parameters to the system
- Insufficient training on how to use the system or interpret the data
- Data can be imputed to the employer as knowledge of a hazard – “knew or could have known”
- Need to ensure data is retained according to company document retention policies. (Keep enough but don’t keep too much).
- Need to ensure data isn’t destroyed according to company document retention policies.
- Need to observe employee privacy concerns.
- Need to protect sensitive company and customer data from public disclosure.
- Can lead to an over-reliance on AI as a safety professional – there is no substitute for human oversight and experience on the workplace floor. Employees need to see safety professionals on the floor so that they feel assured that their employer takes safety seriously and is committed to their safety and health.

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AI Legislation is Already Coming (Presumably Written by Humans)

- California SB 7 was introduced in December 2024. The bill sought to regulate the use of Automated Decision-Making Systems (ADS) impacting any “employment-related decisions.”
 - Requires an employer to provide a written notice that an ADS is in use at the workplace to all workers that will foreseeably be directly affected by the ADS;
 - Prohibits in some instances and in others limits the use of an ADS by an employer;
 - Provides worker anti-retaliation protections for exercising their rights under these provisions; and
 - Specifies enforcement provisions that include penalties and relief for violations.
- The bill defines “employment-related decision” as “any decision by an employer that materially impacts a worker’s wages, benefits, compensation, work hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, work responsibilities, assignment of work, access to work and training opportunities, productivity requirements, or **workplace health and safety.**”
- SB 7 passed both the Assembly and Senate on September 11th and 12th, 2025, but was **vetoed** on October 13th, 2025 by Governor Newsom as an unreasonably broad limitation on the use of ADS. The restrictions would have scoped in “even the most innocuous tools.”
- This exercise suggests that more narrowly-tailored AI-limiting legislation targeting workplace safety ADS could make its way back to the Governor and ultimately become law.

Use of AI in OSHA Enforcement

- Late last year, according to an announcement by smart-glasses manufacturer Vuzix, federal OSHA ramped up its deployment of Vuzix M400 smart glasses after placing an order for additional devices, all equipped with subscription-based Zoom licenses, “to support their goal of boosting operational efficiency and safety during field inspections and service activities.”
- The internet-connected smart glasses allow for real-time communication with OSHA supervisors and other personnel outside the premises being inspected, real-time audio and video recording, and augmented reality capabilities which allow information to be overlaid onto the viewer’s lenses.
- OSHA has not commented officially on how or in what instances this technology will be used, but employers should review their policies on video and audio recording while on their premises and prepare to hold OSHA inspectors to the same rules. For example:
 - Obtain employee consent prior to activating those features, otherwise require inspectors to take notes and photographs.
 - Make it clear that any evidence collected by the inspector will be considered business confidential and/or trade secrets, such that it cannot be disclosed into the public domain following a FOIA request.



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



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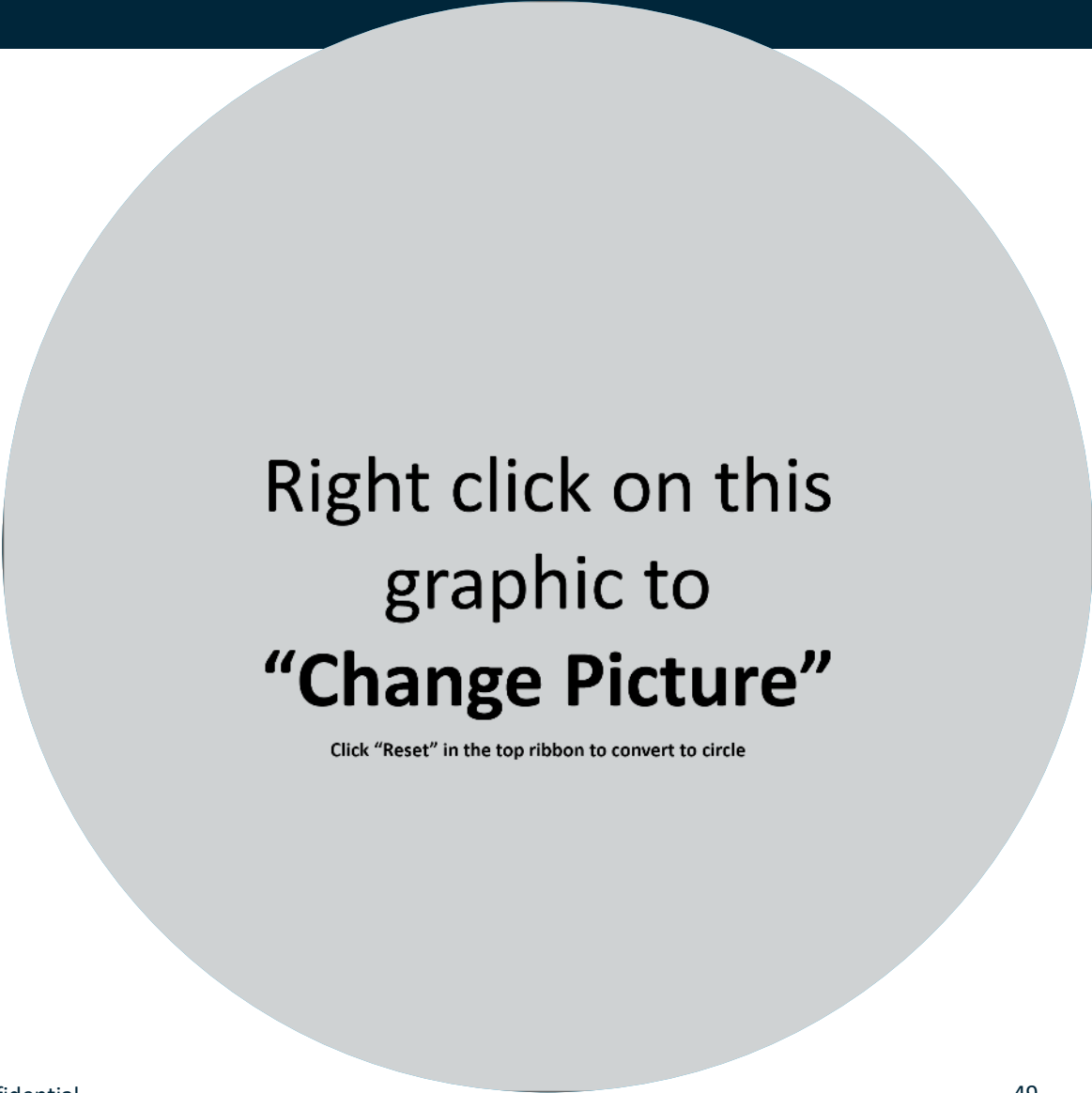




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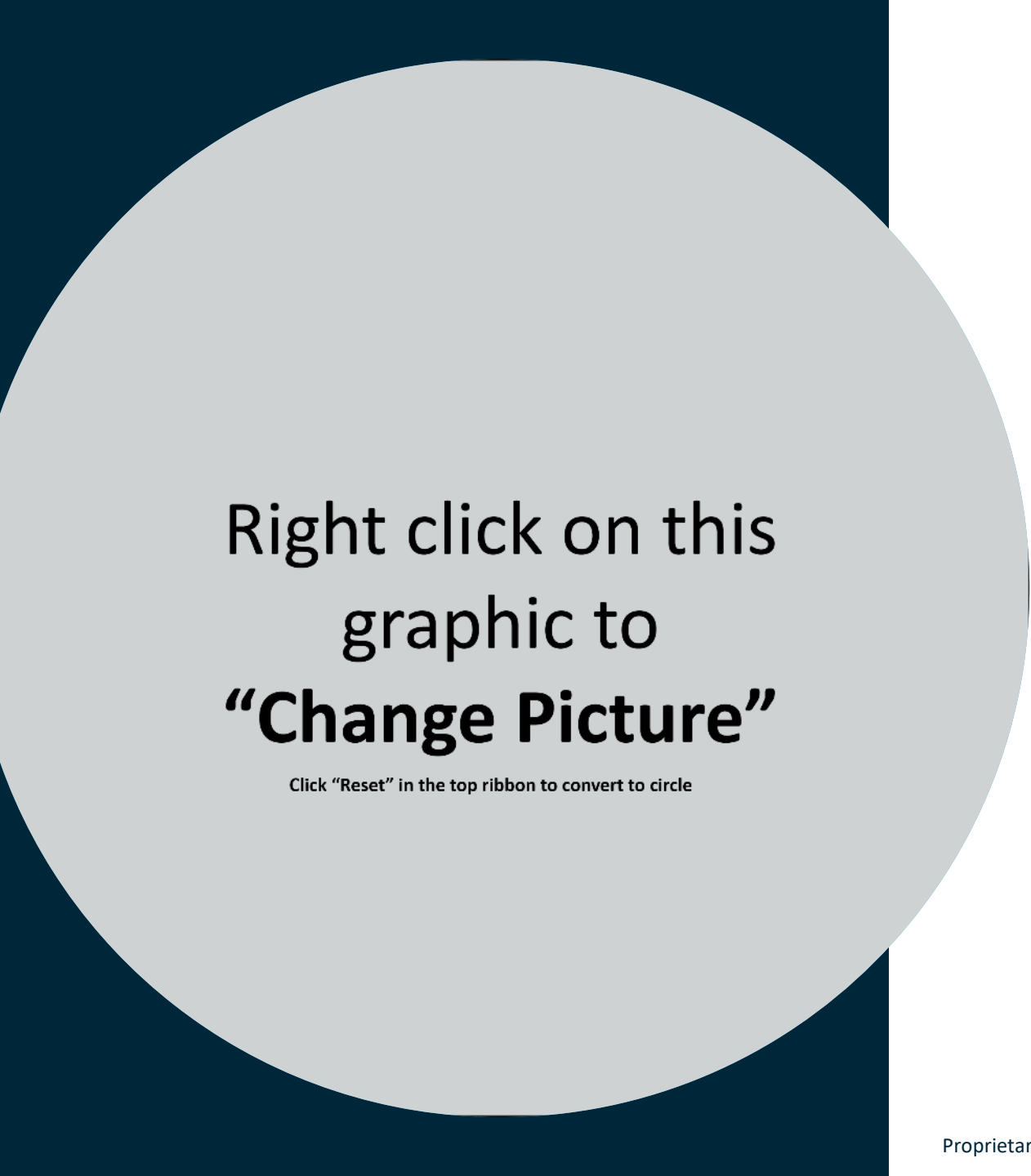


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