

## **NSPE Position Statement No. 10-1760—Workers’ Compensation**

**Adopted: 2009**

**Latest Revision: September 2019**

**Sunset Date: September 2022**

**NSPE Contact: Committee on Policy and Advocacy**

**Professional Policy Supported: 10-Professional Practice**

**Position Statement:** It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of provisions in state workers’ compensation laws that provide professional engineers on the construction site immunity from third-party claims by injured workers, unless those professionals have specifically assumed the responsibility for safety practices or have been willfully or grossly negligent in the preparation of design plans or specifications.

NSPE urges its state societies to seek the enactment of this liability immunity provision in state workers’ compensation laws. Furthermore, NSPE urges the states to use the model outlined below as a resource in supporting such legislation at the state level.

### **Background:**

Workers’ compensation laws require employers to assume the cost of an employee’s occupational disabilities without the need of the employee to prove fault or negligence on the part of the employer. In exchange, the laws prohibit employees from suing their employer for damages. Many workers’ compensation laws, however, do not prohibit an injured employee from suing a third party who may have been responsible for or contributed to the employee’s injury for compensation beyond that provided in the workers’ compensation law. On construction sites, professional engineers are a likely third-party target for such additional compensation.

Some state legislatures have recognized the need to extend the immunity provided to employers under the workers’ compensation law to professional engineers when they are one of numerous parties on a construction site. These states have amended their statutes to provide immunity to professional engineers on construction projects when they are not responsible under contract for the means, methods, techniques, sequences, and procedures of construction or for employee safety.

### **Model Sole Source Workers’ Compensation Statute**

1. Except as provided in the workers' compensation act, no professional engineer who is retained to perform professional services on a construction project, nor any employee of a professional engineer who is assisting or representing the professional engineer in the performance of professional services on the site of the construction project, shall be liable for any injury on the construction project for which compensation is recoverable under the workers' compensation act, unless responsibility for safety practices is specifically assumed by contract.
2. The immunity provided by this section shall not apply to willful misconduct or gross negligence in the preparation of design plans or specifications.