

118TH CONGRESS  
1ST SESSION

# H. R. 4897

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from heat-related injuries and illnesses.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2023

Ms. CHU (for herself, Mr. SCOTT of Virginia, Ms. ADAMS, Mr. GRIJALVA, Ms. ROSS, Mr. THOMPSON of California, Ms. WILLIAMS of Georgia, Mr. GALLEG0, Ms. CROCKETT, Ms. BONAMICI, Ms. CLARKE of New York, Ms. PRESSLEY, Mr. CONNOLLY, Mr. VEASEY, Ms. TLAIB, Mr. PALLONE, Mr. MOULTON, Ms. LEGER FERNANDEZ, Mr. DOGGETT, Ms. GARCIA of Texas, Ms. JAYAPAL, Mr. MCGOVERN, Mr. RASKIN, Ms. WASSERMAN SCHULTZ, Mr. MFUME, Mr. CASTRO of Texas, Mr. KILDEE, Ms. TOKUDA, Ms. DEAN of Pennsylvania, Ms. MCCOLLUM, Mr. PANETTA, Ms. MENG, Mr. POCAN, Ms. OMAR, Ms. TITUS, and Mr. CASAR) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from heat-related injuries and illnesses.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Asunción Valdivia  
3 Heat Illness, Injury, and Fatality Prevention Act of  
4 2023”.

5 **SEC. 2. EMPLOYER DUTIES.**

6 Each employer shall—

7 (1) furnish employment and a place of employ-  
8 ment free from conditions that may reasonably be  
9 anticipated to cause death or serious physical harm  
10 from heat stress; and

11 (2) comply with standards, regulations, rules,  
12 and orders promulgated under this Act.

13 **SEC. 3. WORKER HEAT PROTECTION STANDARDS.**

14 (a) DESIGN OF STANDARDS.—

15 (1) IN GENERAL.—The Secretary shall promul-  
16 gate a worker heat protection standard that, in ac-  
17 cordance with the best available evidence, establishes  
18 the maximum protective program of measures an  
19 employer shall implement to regulate employees’ ex-  
20 posure to heat stress and prevent heat-related illness  
21 and injury that attains the highest degree of health  
22 and safety protection to the extent feasible.

23 (2) CONSIDERATIONS.—

24 (A) DEMONSTRABLY ACHIEVABLE MEAS-  
25 URES.—The Secretary may presume that any  
26 requirement substantially equivalent to a re-

1           requirement adopted by a State plan approved by  
2           the Occupational Safety and Health Adminis-  
3           tration pursuant to section 18(c) of the Occupa-  
4           tional Safety and Health Act of 1970 (29  
5           U.S.C. 667(c)) and that has been in effect for  
6           at least 1 year is feasible.

7           (B) PRIORITYING WORKER PROTEC-  
8           TION.—In weighing any considerations during  
9           rulemaking, the Secretary shall place pre-  
10          eminent value on assuring employees a safe and  
11          healthful working environment.

12          (C) AVAILABLE EXPERTISE.—If the Sec-  
13          retary adopts any finding or recommendation  
14          by the Institute, the American Conference of  
15          Governmental Industrial Hygienists, or the Na-  
16          tional Academies of Sciences, Engineering, and  
17          Medicine relevant to heat stress in a rule-  
18          making pursuant to this Act, such finding or  
19          recommendation shall be considered the best  
20          available evidence.

21          (D) EMPLOYER CATEGORIES.—The Sec-  
22          retary may, in any rulemaking analysis or de-  
23          sign of standards, cluster relevant employers in  
24          any categories such as standard industry or oc-  
25          cupational classifications or any common or re-

1           lated features of heat sources, conditions of em-  
2           ployment, employer practices, employee charac-  
3           teristics, or nature of place of employment that,  
4           in the Secretary's reasonable determination, are  
5           useful for designing an effective and practicable  
6           program of standards, regulations, and enforce-  
7           ment that maximizes the health and safety of  
8           employees.

9           (3) PROTECTIVE PROGRAMS.—

10           (A) IN GENERAL.—In addition to measures  
11           specified by this Act, the Secretary may develop  
12           a worker heat protection standard with such  
13           additional requirements that, in the Secretary's  
14           reasonable judgment, are necessary or appro-  
15           priate to achieve the purposes of this Act. Such  
16           measures may include the following:

17           (i) ENGINEERING CONTROLS.—Re-  
18           quirements to eliminate hazardous levels of  
19           heat stress through engineering controls,  
20           such as isolation or shielding of employees  
21           from sources of heat, exhaust ventilation,  
22           insulation of hot surfaces, or climate-con-  
23           trol technologies, as well as technology-  
24           based standards that encourage the devel-  
25           opment of such controls.

1 (ii) ADMINISTRATIVE CONTROLS.—Re-  
2 quirements to limit exposure to hazardous  
3 levels of heat stress by adjustment of work  
4 procedures, work schedules, or other work  
5 practices.

6 (iii) PERSONAL PROTECTIVE EQUIP-  
7 MENT.—Requirements to provide, at the  
8 employer’s expense, personal protective  
9 equipment such as water-cooled garments,  
10 air-cooled garments, heat-reflective cloth-  
11 ing, and cooling vests.

12 (iv) HEALTH-RELATED PROTOCOLS.—  
13 Requirements to conduct medical symptom  
14 monitoring, emergency response protocols,  
15 medical removal protection, or training of  
16 employees and supervisors in recognition of  
17 symptoms of heat-related illness and ap-  
18 propriate responses.

19 (v) TRAINING REQUIREMENTS.—Re-  
20 quirements to train employees and super-  
21 visors in topics reasonable or necessary to  
22 achieve the implementation of the require-  
23 ments of a standard or the purposes of  
24 this Act, including—

1 (I) training of employees in signs  
2 and symptoms of heat-related illness,  
3 emergency response procedures, and  
4 their rights under this Act; and

5 (II) training of supervisors in  
6 monitoring heat conditions and envi-  
7 ronmental forecasts, recognizing signs  
8 of heat-related illness, and protocols  
9 for responding to likely heat-related  
10 illness.

11 (vi) PLANNING REQUIREMENTS.—Re-  
12 quirements for a heat illness and injury  
13 prevention plan that—

14 (I) is of sufficient quality to ef-  
15 fectuate the purposes of this Act and  
16 to effectuate the requirements of the  
17 standard that apply to the employer;

18 (II) is developed, updated, and  
19 implemented with the meaningful par-  
20 ticipation of the employer's employees  
21 and, where applicable, such employ-  
22 ees' representatives, for all aspects of  
23 the plan;

1 (III) is produced and maintained  
2 in writing and updated in light of  
3 changing conditions or practices; and

4 (IV) is made available, upon re-  
5 quest, to any employee, the employee's  
6 representative, and the Secretary.

7 (vii) STANDARD HEALTH AND SAFETY  
8 MEASURES.—Any measures described in  
9 section 6(B)(7) of the Occupational Safety  
10 and Health Act of 1970 (29 U.S.C.  
11 655(B)(7)).

12 (B) INNOVATIVE SOLUTIONS.—As the rel-  
13 evant scientific evidence develops, technological  
14 solutions improve, and environmental conditions  
15 or new work practices aggravate the risk of  
16 heat-related illness or injury, the Secretary may  
17 modify, supplement, or revise a worker heat  
18 protection standard by rule in order to improve  
19 such standard in light of such changes, even if  
20 it departs from long-standing past practice,  
21 provided that the resulting standard is con-  
22 sistent with this Act.

23 (C) CORE PRACTICES.—The Secretary  
24 shall establish criteria under which an employer  
25 who exposes or may reasonably be anticipated

1 to expose an employee to heat or heat stress  
2 that is not reduced below hazardous levels by  
3 engineering controls or personal protective  
4 equipment shall implement a reasonable pro-  
5 gram that includes—

6 (i) suitably cool potable water or ap-  
7 propriate hydration, provided at employer  
8 expense;

9 (ii) periodic paid rest breaks sched-  
10 uled to reduce heat stress below hazardous  
11 levels;

12 (iii) access to shade or suitable cool-  
13 down spaces;

14 (iv) acclimatization policies; and

15 (v) such measures that are necessary  
16 or appropriate to ensure effective imple-  
17 mentation of the requirements of this sub-  
18 paragraph.

19 (4) OTHER SPECIFICATIONS.—

20 (A) PROTECTION OF PAY.—The Secretary  
21 shall require that, for any required duration  
22 such as rest breaks, medical removal protection,  
23 and training, an employee shall receive com-  
24 pensation at the regular rate at which such em-  
25 ployee is employed.



1           (B) LANGUAGE ACCESS.—Any required  
2 training, poster, label, hazard alert, or written  
3 plan shall be provided in English and a lan-  
4 guage understood by the employees, if such is  
5 not English, and prepared appropriately for the  
6 vocabulary, educational level, and literacy of the  
7 employees.

8           (C) TEMPORARY LABOR CAMPS.—The Sec-  
9 retary shall revise the Secretary’s standard for  
10 temporary labor camps to the extent necessary  
11 to achieve the purposes of this Act.

12          (5) MAINTAINING PROTECTION.—No worker  
13 heat protection standard promulgated under this Act  
14 may reduce the protection afforded employees by an  
15 existing worker heat protection standard.

16          (b) INITIAL STANDARDS.—Not later than the date  
17 that is 1 year after the date of enactment of this Act,  
18 the Secretary shall promulgate, without regard to the re-  
19 quirements of chapters 5 and 6 of title 5, United States  
20 Code, subchapter I of chapter 35 of title 44, United States  
21 Code (commonly known as the “Paperwork Reduction  
22 Act”), or the National Environmental Policy Act of 1969  
23 (42 U.S.C. 431 et seq.), an interim final rule establishing  
24 a worker heat protection standard and related record-  
25 keeping and reporting requirements. Such rule shall take

1 effect upon issuance (except that it may include a reason-  
2 able delay in the effective date), shall have the legal effect  
3 of an occupational safety and health standard as defined  
4 by section 3(8) of the Occupational Safety and Health Act  
5 of 1970 (29 U.S.C. 652(8)), and shall remain in effect  
6 until superseded by a final rule promulgated pursuant to  
7 this Act.

8 (c) RULEMAKING PROCEDURES.—For any rule-  
9 making pursuant to this Act after publication of the in-  
10 terim final rule in subsection (b), the following procedures  
11 shall apply:

12 (1) IN GENERAL.—The Secretary shall, upon a  
13 showing by a petitioner pursuant to paragraph (2)  
14 or the Secretary’s own determination that a worker  
15 heat protection standard is necessary or appropriate  
16 to regulate employees’ exposure to conditions known  
17 to cause or that may reasonably be anticipated to  
18 cause heat-related illness or injury, promulgate any  
19 worker heat protection standard in accordance with  
20 the policies set forth in this section and in accord-  
21 ance with section 553 of title 5, United States Code  
22 (without regard to any reference in such section to  
23 sections 556 and 557 of such title).

24 (2) PETITIONS FOR RULEMAKING.—Any person  
25 may petition the Secretary to promulgate or modify

1 a worker heat protection standard. Within 18  
2 months after receipt of a petition, the Secretary  
3 shall either grant or deny the petition by publishing  
4 a written explanation of the reasons for the Sec-  
5 retary's decision. The Secretary may not deny a pe-  
6 tition solely on the basis of inadequate resources or  
7 insufficient time for review.

8 (3) TIMELINES.—Except as otherwise provided  
9 in subsection (b), the Secretary shall observe the fol-  
10 lowing schedule for rulemaking:

11 (A) PROPOSED STANDARDS.—Within one  
12 year after granting a petition for rulemaking  
13 under paragraph (2), the Secretary shall pub-  
14 lish a proposed worker heat protection standard  
15 consistent with this section.

16 (B) FINAL STANDARDS.—The Secretary  
17 shall promulgate, within one year after such  
18 publication, such standards with such modifica-  
19 tions as the Secretary deems appropriate.

20 (C) EFFECT.—Standards or revisions  
21 thereof shall become effective upon promulga-  
22 tion, except that the Secretary may include a  
23 reasonable delay in the effective date.

24 (4) TRANSPARENCY IN RULEMAKING.—For any  
25 rulemaking notice pursuant to this Act, the Sec-

1       retary shall place in the public record not later than  
2       the date of such rulemaking notice the following:

3               (A) The drafts of such rulemakings pre-  
4               pared before publication and submitted by the  
5               Secretary to the Office of Management and  
6               Budget for any interagency review process prior  
7               to publication, all documents accompanying  
8               such drafts, all written comments thereon by  
9               other agencies, and all written responses to  
10              such written comments by the Secretary.

11             (B) A summary of the substance of any  
12             changes between the text of the draft rule-  
13             making that the agency provided to the Office  
14             of Management and Budget under section  
15             6(a)(3)(B)(i) of Executive Order 12,866 and  
16             the text published in the Federal Register, ex-  
17             cluding any non-substantive changes such as  
18             spelling or grammatical corrections or re-order-  
19             ing of text that has no legal effect.

20             (C) A statement identifying any party or  
21             entity at whose request any such change was  
22             made.

23       (5) JUDICIAL REVIEW.—

24             (A) FILING OF PETITION.—A petition for  
25             review in accordance with section 702 of title 5,

1 United States Code, of action of the Secretary  
2 in promulgating any worker heat protection  
3 standard or any other nationally applicable reg-  
4 ulation or final action taken by the Secretary  
5 pursuant to this Act may be filed only in the  
6 United States Court of Appeals for the District  
7 of Columbia. The filing of a petition for review  
8 shall not postpone the effectiveness of such rule  
9 or action.

10 (B) TIMELY FILING.—Any petition for re-  
11 view under this paragraph shall be filed within  
12 sixty days from the date notice of such promul-  
13 gation, approval, or action appears in the Fed-  
14 eral Register.

15 (C) NOT SUBJECT TO REVIEW.—Action of  
16 the Secretary with respect to which review could  
17 have been obtained under this paragraph shall  
18 not be subject to judicial review in civil or  
19 criminal proceedings for enforcement. Failure  
20 to promulgate any standard pursuant to the  
21 schedule established by this section shall be  
22 subject to review.

23 **SEC. 4. IMPLEMENTATION AND ENFORCEMENT.**

24 (a) IN GENERAL.—Except as otherwise provided by  
25 this section—

1           (1) a worker heat protection standard shall  
2           have the same legal effect as an occupational safety  
3           and health standard as defined by section 3(8) of  
4           the Occupational Safety and Health Act of 1970 (29  
5           U.S.C. 652(8)); and

6           (2) any rule, regulation, or order promulgated  
7           pursuant to this Act shall have the same legal effect  
8           as a rule, regulation, or order promulgated pursuant  
9           to the Occupational Safety and Health Act of 1970  
10          (29 U.S.C. 651 et seq.).

11          (b) ENFORCEMENT.—

12           (1) STATUTE OF LIMITATIONS FOR CITATION.—  
13          No citation for any violation of section 2 or any  
14          standard, rule, regulation, or order pursuant to this  
15          Act may be issued under this section after the expi-  
16          ration of four years following the occurrence of any  
17          violation.

18           (2) REVIEW.—The Commission shall grant sub-  
19          stantial deference to any reasonable interpretation  
20          by the Secretary of this Act or any standard, regula-  
21          tion, or order pursuant to this Act.

22          (c) RECORDKEEPING AND REPORTING.—

23           (1) IN GENERAL.—With regard to record-  
24          keeping and reporting, the Secretary and Secretary  
25          of Health and Human Services shall have the same

1 authority to prescribe regulations related to this Act  
2 as under section 8 of the Occupational Safety and  
3 Health Act (29 U.S.C. 657).

4 (2) CONSOLIDATING REQUIREMENTS.—The  
5 Secretary may incorporate recordkeeping and report-  
6 ing requirements under this section into existing rec-  
7 ordkeeping and reporting requirements promulgated  
8 pursuant to section 8 of the Occupational Safety and  
9 Health Act (29 U.S.C. 657), provided that a viola-  
10 tion of such a requirement with regard to implemen-  
11 tation of this Act shall be enforced as a distinct vio-  
12 lation separate and apart from any other simulta-  
13 neous violation of a requirement pursuant to the Oc-  
14 cupational Safety and Health Act.

15 (d) WHISTLEBLOWER PROTECTIONS.—

16 (1) COMPLAINT.—Any employee who believes  
17 that such employee has been discharged or otherwise  
18 discriminated against by any person in violation of  
19 section 11(c)(1) of the Occupational Safety and  
20 Health Act (29 U.S.C. 660(c)(1)) with regard to any  
21 matter under or related to this Act may, within 180  
22 days after such violation occurs, file a complaint  
23 with the Secretary following the procedures in para-  
24 graph (2) of such section alleging such discrimina-  
25 tion.

1           (2) ACTION.—If the Secretary fails to notify  
2           the complainant of the Secretary’s determination on  
3           the complaint within 90 days pursuant to section  
4           11(c)(3) of the Occupational Safety and Health Act  
5           (29 U.S.C. 660(c)(3)) or determines not to bring an  
6           action pursuant to paragraph (2) of such section,  
7           such employee may bring an action in any appro-  
8           priate United States district court against such per-  
9           son for all appropriate relief in accordance with  
10          paragraph (2) of such section as well as reasonable  
11          attorney’s fees and costs.

12 **SEC. 5. GENERAL PROVISIONS.**

13          (a) SEVERABILITY.—If any provision of this Act is  
14          held invalid, the remainder of this Act shall not be affected  
15          thereby. If the application of any provision of this Act to  
16          any person or circumstance is held invalid, the application  
17          of such provision to other persons or circumstances shall  
18          not be affected thereby.

19          (b) AUTHORIZATION OF APPROPRIATIONS.—There  
20          are authorized to be appropriated from sums not otherwise  
21          appropriated, for each fiscal year, such sums as may be  
22          necessary to carry out this Act.

23 **SEC. 6. AGENDA FOR FURTHER REVIEW AND ACTION.**

24          The Secretary shall update the National Agricultural  
25          Workers Survey with such questions that, in the Sec-



1 retary’s judgment, are useful to identify the incidence and  
2 prevalence of heat-related illness and injury and assess the  
3 impact of standards and enforcement pursuant to this Act.  
4 Within one year of the date of enactment of this Act, the  
5 Secretary shall submit to the Committee on Education and  
6 the Workforce of the House of Representatives and the  
7 Committee on Health, Education, Labor, and Pensions of  
8 the Senate a report on the Secretary’s implementation of  
9 this section.

10 **SEC. 7. DEFINITIONS.**

11 For purposes of this Act:

12 (1) The term “Commission” means the Occupa-  
13 tional Safety and Health Review Commission.

14 (2) The term “employee” has the same mean-  
15 ing as in section 3(6) of the Occupational Safety and  
16 Health Act of 1970 (29 U.S.C. 652(6)).

17 (3) The term “employer” has the same meaning  
18 as in section 3(5) of the Occupational Safety and  
19 Health Act of 1970 (29 U.S.C. 652(5)).

20 (4) The term “heat stress” means the load of  
21 heat that a person experiences due to—

22 (A) sources of heat or heat retention (in-  
23 cluding the combined contributions of metabolic  
24 heat, environmental factors, and clothing or  
25 personal protective equipment); or

1 (B) the presence of heat in a work setting.

2 (5) The term “heat-related illness” means a  
3 material impairment of health that occurs due to  
4 heat stress.

5 (6) The term “heat-related injury” means an  
6 injury caused by exposure to heat or sources of heat  
7 or occurring as a result of heat stress.

8 (7) The term “Institute” means the National  
9 Institute for Occupational Safety and Health.

10 (8) The term “Secretary” means the Secretary  
11 of Labor.

12 (9) The term “worker heat protection stand-  
13 ard” means a standard that regulates employee ex-  
14 posure to heat stress and prevents heat-related ill-  
15 ness and injury by requiring conditions or the adop-  
16 tion or use of one or more practices, means, meth-  
17 ods, operations, or processes reasonably necessary or  
18 appropriate to provide employment and places of  
19 employment that are safe or healthful.

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