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H. R. 3668

To direct the Occupational Safety and Health Administration to issue an occupational safety and health standard to protect workers from heat-related injuries and illnesses.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2019

Ms. JUDY CHU of California (for herself, Mr. SCOTT of Virginia, Ms. ADAMS, Mr. GRIJALVA, Mr. LEVIN of Michigan, Ms. JAYAPAL, Ms. WILD, Ms. BONAMICI, Ms. OMAR, Mr. MCGOVERN, Mr. TAKANO, Mr. DESAULNIER, Mr. DANNY K. DAVIS of Illinois, Ms. NORTON, Mr. COHEN, Mrs. WATSON COLEMAN, Ms. ROYBAL-ALLARD, Mr. CÁRDENAS, Mr. SABLÁN, Mrs. NAPOLITANO, Ms. VELÁZQUEZ, and Ms. MENG) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To direct the Occupational Safety and Health Administration to issue 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,*

3 **SECTION 1. SHORT TITLE AND FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Asuncion Valdivia Heat Illness and Fatality Prevention
6 Act of 2019”.

7 (b) FINDINGS.—Congress finds the following:

1 (1) Excessive heat exposure poses a direct
2 threat to workers and the economy. Climate change
3 increases this danger, as 18 of the 19 hottest years
4 on record have occurred since 2001. Rising tempera-
5 tures are projected to cause an increase in heat-re-
6 lated workplace injuries and illnesses, a dramatic
7 loss in labor capacity, and decreased productivity.

8 (2) Heat-related illnesses can arise when high
9 temperatures rise above the body's capacity to dispel
10 heat. Impacts range from comparatively minor prob-
11 lems such as heat cramps to severe afflictions such
12 as organ damage, heat exhaustion, stroke, and
13 death.

14 (3) Farmworkers and construction workers suf-
15 fer the highest incidence of heat illness, but all out-
16 door and indoor workers employed in excessively hot
17 and humid environments are at significant risk of
18 material impairment of health or functional capacity.

19 (4) Asuncion Valdivia was a California farm-
20 worker who died of heat stroke in 2004 after picking
21 grapes for 10 straight hours in 105 degree tempera-
22 tures. Instead of calling an ambulance, his employer
23 told his son to drive Mr. Valdivia home. On his way
24 home, he started foaming at the mouth and died.

1 (5) People working in excessive heat suffer di-
2 minished mental acuity and physical ability, which
3 increases the risk of accidents. Heat-related injuries
4 and illnesses increase workers' compensation costs
5 and medical expenses.

6 (6) The costs of lower labor productivity under
7 rising temperatures is estimated to reach up to
8 \$160,000,000,000 in lost wages per year in the
9 United States by 2090 according to the 2018 Na-
10 tional Climate Assessment. The drop in productivity
11 decreases income for employers and workers. Global
12 gross domestic product losses from heat are pro-
13 jected to be greater than 20 percent by the end of
14 this century.

15 (7) Every year, thousands of workers become
16 sick and some die from exposure to heat. Between
17 1992 and 2017, 815 United States workers died
18 from heat and almost 70,000 were seriously injured.
19 These numbers are generally understood to be gross
20 undercounts because many heat-related illnesses and
21 deaths are blamed on natural causes.

22 (8) Workers have a legal right to a safe work-
23 place. The vast majority of heat-related workplace
24 deaths and illnesses can be prevented by access to
25 water, rest, and shade. Many employers don't pro-

1 vide these simple measures for workers according to
2 the Occupational Safety and Health Administration.

3 (9) Employers often retaliate against employees
4 if they report or seek assistance due to problems
5 with heat. Many employees are therefore afraid to
6 report problems and face increased risk of heat-re-
7 lated illnesses or death.

8 (10) In the absence of a Federal standard, mul-
9 tiple branches of the United States Armed Forces—
10 including the Army, Navy, Marine Corps, and Air
11 Force—have issued heat prevention guidelines, and
12 several States—California, Washington, and Min-
13 nesota—have issued heat prevention standards. The
14 National Institute for Occupational Safety and
15 Health (NIOSH) issued criteria for such a standard
16 in 1972, updating it in 1986 and 2016.

17 (11) Congress created the Occupational Safety
18 and Health Administration to ensure safe and
19 healthful working conditions by setting and enforce-
20 ing standards pursuant to section 6 of the Occupa-
21 tional Safety and Health Act of 1970. Employees
22 are exposed to grave danger from exposure to exces-
23 sive heat. The Occupational Safety and Health Ad-
24 ministration must develop a standard to protect

1 workers from the significant risks of heat-related ill-
2 ness and death.

3 **SEC. 2. OSHA SAFETY STANDARD FOR EXPOSURE TO HEAT**
4 **AND HOT ENVIRONMENTS.**

5 (a) PROPOSED STANDARD.—Not later than 2 years
6 after the date of enactment of this Act, the Secretary of
7 Labor shall, pursuant to section 6(b) of the Occupational
8 Safety and Health Act (29 U.S.C. 655), promulgate a pro-
9 posed standard on prevention of occupational exposure to
10 excessive heat.

11 (b) FINAL STANDARD.—Not later than 42 months
12 after the date of enactment of this Act, the Secretary shall
13 promulgate a final standard on prevention of occupational
14 exposure to excessive heat that shall—

15 (1) provide no less protection than the most
16 protective heat prevention standard adopted by a
17 State plan that has been approved by the Secretary
18 under section 18 of the Occupational Safety and
19 Health Act of 1970 (29 U.S.C. 667) and, at a min-
20 imum, include the requirements described in section
21 4; and

22 (2) be effective and enforceable in the same
23 manner and to the same extent as any standard pro-
24 mulgated under section 6(b) of the Occupational
25 Safety and Health Act of 1970 (29 U.S.C. 655(b)).

1 (c) INTERIM FINAL STANDARD.—

2 (1) IN GENERAL.—If the proposed standard de-
3 scribed in subsection (a) is not promulgated not
4 later than 2 years after the date of enactment of
5 this Act, the Secretary of Labor shall promulgate an
6 interim final standard on prevention of occupational
7 exposure to excessive heat not later than 2 years and
8 60 days after such date of enactment—

9 (A) to require covered employers to develop
10 and implement a comprehensive workplace ex-
11 cessive heat prevention plan to protect covered
12 employees from excessive heat that may lead to
13 heat-related injuries and illnesses; and

14 (B) that shall, at a minimum—

15 (i) provide no less protection than the
16 most protective heat prevention standard
17 adopted by a State plan that has been ap-
18 proved by the Secretary under section 18
19 of the Occupational Safety and Health Act
20 of 1970 (29 U.S.C. 667);

21 (ii) establish requirements with re-
22 spect to exposure limits that trigger action
23 to protect covered employees from heat-re-
24 lated illness, hydration, scheduled and paid
25 rest breaks in shaded or climate-controlled

spaces, an acclimatization plan, exposure monitoring, and other measures to prevent exposure to heat above safe limits, employee and supervisor training, hazard notification, an emergency medical response plan, heat-related surveillance, record-keeping, and procedures for compensating piece rate workers for required heat-related rest breaks;

(iii) take into consideration the NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health in 2016; and

(iv) include a requirement to protect employees from discrimination or retaliation for exercising the rights of the employees under the interim final standard.

(2) APPLICABILITY OF OTHER STATUTORY REQUIREMENTS.—The following shall not apply to the promulgation of the interim final standard under this subsection:

(A) The requirements applicable to occupational safety and health standards under section

1 6(b) of the Occupational Safety and Health Act
2 of 1970 (29 U.S.C. 655(b)).

3 (B) The requirements of section 553(c) of
4 chapter 5 and chapter 6 of title 5, United
5 States Code, and chapter 55 of title 42, United
6 States Code.

7 (3) EFFECTIVE DATE OF INTERIM STAND-
8 ARD.—The interim final standard shall—

9 (A) take effect on a date that is not later
10 than 30 days after the promulgation of such
11 standard, except that such interim final stand-
12 ard may include a reasonable phase-in period
13 for the implementation of required engineering
14 controls that take effect after such date;

15 (B) be enforced in the same manner and
16 to the same extent as any standard promul-
17 gated under section 6(b) of the Occupational
18 Safety and Health Act of 1970 (29 U.S.C.
19 655(b)); and

20 (C) be in effect until the final standard de-
21 scribed in subsection (b) becomes effective and
22 enforceable.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) COVERED EMPLOYEE.—The term “covered
2 employee” includes an individual employed by a cov-
3 ered employer.

4 (2) COVERED EMPLOYER.—The term “covered
5 employer”—

6 (A) means an employer that employs an
7 individual to work at a covered workplace; and

8 (B) includes a contractor, subcontractor, a
9 temporary service firm, or an employee leasing
10 entity.

11 (3) COVERED WORKPLACE.—The term “covered
12 workplace” includes a workplace with occupational
13 exposure to excessive heat.

14 (4) EMPLOYER.—The term “employer” has the
15 meaning given the term in section 3 of the Occupa-
16 tional Safety and Health Act of 1970 (29 U.S.C.
17 652).

18 (5) EXCESSIVE HEAT.—The term “excessive
19 heat” includes outdoor or indoor exposure to heat at
20 levels that exceed the capacities of the body to main-
21 tain normal body functions and may cause heat-re-
22 lated injury, illness, or fatality (including heat
23 stroke, heat exhaustion, heat syncope, heat cramps,
24 or heat rashes).

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Labor.

3 **SEC. 4. REQUIREMENTS FOR FINAL STANDARD ON PRE-**
4 **VENTION OF OCCUPATIONAL EXPOSURE TO**
5 **EXCESSIVE HEAT.**

6 (a) IN GENERAL.—The final standard promulgated
7 under section 2(b) shall, at a minimum—

8 (1) take into consideration the NIOSH Criteria
9 for a Recommended Standard: Occupational Expo-
10 sure to Heat and Hot Environments published by
11 the National Institute for Occupational Safety and
12 Health in 2016;

13 (2) establish requirements with respect to expo-
14 sure limits that trigger action to protect covered em-
15 ployees from heat-related illness, hydration, sched-
16 uled and paid rest breaks in shaded or climate-con-
17 trolled spaces, an acclimatization plan, exposure
18 monitoring, and other measures to prevent exposure
19 to heat above safe limits, employee and supervisor
20 training, hazard notification, medical monitoring, an
21 emergency medical response plan, heat-related sur-
22 veillance recordkeeping, procedures for compensating
23 piece rate workers for required heat-related rest
24 breaks, and a heat prevention plan; and

1 (3) include the requirements described in sub-
2 section (b).

3 (b) REQUIREMENTS.—The final standard promul-
4 gated under section 2(b) shall include the following:

5 (1) HEAT ILLNESS PREVENTION PLANS.—

6 (A) IN GENERAL.—A covered employer
7 shall develop, implement, and maintain an ef-
8 fective, written excessive heat illness prevention
9 plan for covered employees, which shall—

10 (i) be developed and implemented with
11 the meaningful participation of covered
12 employees and, where applicable, employee
13 representatives and collective bargaining
14 representatives, for all aspects of the plan;

15 (ii) be tailored and specific to hazards
16 in the covered workplace;

17 (iii) be in writing, in English and in
18 the language understood by a majority of
19 the employees, if such language is not
20 English; and

21 (iv) made available, upon request, to
22 such employees, the employee representa-
23 tives for such employees, and the Sec-
24 retary.

1 (B) PLAN CONTENT.—Each plan shall in-
2 clude procedures and methods for the following:

3 (i) Initial and regular monitoring of
4 employee exposure to determine whether
5 employees are exposed to excessive heat.

6 (ii) Provision of water, paid rest
7 breaks, and access to shade or cool-down
8 areas.

9 (iii) Emergency response.

10 (iv) Acclimatization.

11 (v) Hazard prevention, including engi-
12 neering controls, administrative controls,
13 or personal protective equipment to cor-
14 rect, in a timely manner, applying indus-
15 trial hygiene principles of the hierarchy of
16 controls, including, as appropriate—

17 (I) engineering controls that may
18 include isolation of hot processes, iso-
19 lation of employees from sources of
20 heat, local exhaust ventilation, shield-
21 ing from a radiant heat source, and
22 insulation of hot surfaces, the provi-
23 sion of air conditioning, cooling fans,
24 cooling mist fans, evaporative coolers,
25 and natural ventilation;

1 (II) administrative controls that
2 limit exposure to a hazard by adjust-
3 ment of work procedures or work
4 schedules, which may include accli-
5 matizing employees, rotating employ-
6 ees, scheduling work earlier or later in
7 the day, using work-rest schedules, re-
8 ducing work intensity or speed, chang-
9 ing required work clothing, and using
10 relief workers; and

11 (III) personal protective equip-
12 ment which may include water-cooled
13 garments, air-cooled garments, reflec-
14 tive clothing, and cooling vests.

15 (vi) Coordination of risk assessment
16 efforts, plan development, and implementa-
17 tion of the plan with other employers who
18 have employees who work at the covered
19 workplace.

20 (vii) Compensating piece rate workers
21 for required heat-related rest breaks.

22 (2) TRAINING AND EDUCATION.—

23 (A) EMPLOYEE TRAINING.—A covered em-
24 ployer shall provide annual training and edu-
25 cation to covered employees who may be ex-

posed to high heat levels, which shall cover the following topics:

- (i) Identified heat illness risk factors.
- (ii) Personal factors that may increase susceptibility to heat-related illness.
- (iii) Signs and symptoms of heat-related illness.
- (iv) Different types of heat illness.
- (v) The importance of acclimatization and consumption of liquids.
- (vi) Engineering control measures.
- (vii) Administrative control measures.
- (viii) The importance of reporting heat-related symptoms being experienced by the employee or another employee.
- (ix) Recordkeeping requirements and reporting procedures.
- (x) Emergency response procedures.
- (xi) Employee rights.

(B) SUPERVISOR TRAINING.—In addition to the training and education required in subparagraph (A), training and education shall be provided to covered employees who are supervisors that shall cover the following topics:

1 (i) The procedures a supervisor is re-
2 quired to follow under this Act.

3 (ii) How to recognize high-risk situa-
4 tions, including how to monitor weather re-
5 ports and weather advisories, and not as-
6 signing an employee to situations that pre-
7 dictably compromise the safety of the em-
8 ployee.

9 (iii) The procedures to follow when an
10 employee exhibits signs or reports symp-
11 toms consistent with possible heat illness,
12 including emergency response procedures.

13 (C) GENERAL TRAINING REQUIRE-
14 MENTS.—The education and training provided
15 under this paragraph to covered employees shall
16 meet the following:

17 (i) In the case of such an employee
18 whose job circumstances have changed,
19 within a reasonable timeframe after such
20 change of job circumstances, education and
21 training shall be provided that shall be—

22 (I) in addition to the education
23 and training provided under subpara-
24 graph (A) and, if applicable to such
25 employee, subparagraph (B); and

1 (II) applicable to such change of
2 job circumstances.

3 (ii) Applicable education and training
4 shall be provided for each new covered em-
5 ployee prior to the employee's job assign-
6 ment.

7 (iii) The education and training shall
8 provide such employees opportunities to
9 ask questions, give feedback, and request
10 additional instruction, clarification, or
11 other follow-up.

12 (iv) The education and training shall
13 be provided in-person and by an individual
14 with knowledge of heat illness prevention
15 and of the plan of the employer under this
16 section.

17 (v) The education and training shall
18 be appropriate in content and vocabulary
19 to the language, educational level, and lit-
20 eracy of such covered employees.

21 (3) RECORDKEEPING.—Each covered employer
22 shall—

23 (A) maintain at all times—

24 (i) records related to each plan of the
25 employer, including heat illness risk and

1 hazard assessments, and identification,
2 evaluation, correction, and training proce-
3 dures;

4 (ii) data on all heat-related illnesses
5 and deaths; and

6 (iii) data on environmental and phys-
7 iological measurements related to heat; and

8 (B) make such records and data available,
9 upon request, to covered employees and their
10 representatives for examination and copying in
11 accordance with section 1910.1020 of title 29,
12 Code of Federal Regulations (as such section is
13 in effect on the date of enactment of this Act).

14 (4) WHISTLEBLOWER PROTECTIONS.—

15 (A) POLICY.—Each covered employer shall
16 adopt a policy prohibiting any person (including
17 an agent of the employer) from discriminating
18 or retaliating against any employee for—

19 (i) exercising the rights of the em-
20 ployee under this Act; or

21 (ii) reporting violations of the stand-
22 ard to any local, State, or Federal govern-
23 ment.

1 (B) PROHIBITION.—No covered employer
2 shall discriminate or retaliate against any em-
3 ployee for—

4 (i) reporting a heat-illness-related con-
5 cern to, or seeking assistance or interven-
6 tion with respect to heat-related health
7 symptoms from, the employer, local emer-
8 gency services, or a local, State, or Federal
9 government; or

10 (ii) exercising any other rights of the
11 employee under this Act.

12 (C) ENFORCEMENT.—This paragraph shall
13 be enforced in the same manner and to the
14 same extent as any standard promulgated
15 under section 6(b) of the Occupational Safety
16 and Health Act (29 U.S.C. 655(b)).

○