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H. R. 2193

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

MARCH 26, 2021

Ms. CHU (for herself, Mr. SCOTT of Virginia, Mr. GRIJALVA, and Ms. ADAMS) 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 2021”.

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

8 (1) Excessive heat exposure poses a direct
9 threat to workers and the economy. Climate change

1 increases this danger, as 19 of the 20 hottest years
2 on record have occurred since 2001. Rising tempera-
3 tures are projected to cause an increase in heat-re-
4 lated workplace injuries and illnesses, a dramatic
5 loss in labor capacity, and decreased productivity.

6 (2) On average, 3 times as many people die
7 from extreme heat in the United States each year
8 than from hurricanes, floods, and tornadoes com-
9 bined.

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

16 (4) Heat stress and COVID-19 are a combined
17 threat to workers. Respiratory infections, such as
18 COVID-19, and protective equipment, like essential
19 face masks, can increase susceptibility to heat ex-
20 haustion and heat stroke. Many of the symptoms of
21 COVID-19 and heat stress may combine to cause
22 acute illness that is especially deadly.

23 (5) Jobs at highest risk of heat stress illness
24 and death are disproportionately held by Black and

1 Brown workers, a disparity that reflects the racial
2 injustice inherent in our economic system.

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

8 (7) Asuncion Valdivia was a California farm-
9 worker who died of heat stroke in 2004 after picking
10 grapes for 10 straight hours in 105 degree tempera-
11 tures. Instead of calling an ambulance, his employer
12 told his son to drive Mr. Valdivia home. On his way
13 home, he started foaming at the mouth and died.

14 (8) People working in excessive heat suffer di-
15 minished mental acuity and physical ability, which
16 increases the risk of accidents. Heat-related injuries
17 and illnesses increase workers' compensation costs
18 and medical expenses.

19 (9) The costs of lower labor productivity under
20 rising temperatures is estimated to reach up to
21 \$160,000,000,000 in lost wages per year in the
22 United States by 2090 according to the 2018 Na-
23 tional Climate Assessment. The drop in productivity
24 decreases income for employers and workers. Global
25 gross domestic product losses from heat are pro-

1 jected to be greater than 20 percent by the end of
2 this century.

3 (10) Every year, thousands of workers become
4 sick and some die from exposure to heat. Between
5 1992 and 2017, 815 United States workers died
6 from heat and almost 70,000 were seriously injured.
7 These numbers are generally understood to be gross
8 undercounts because many heat-related illnesses and
9 deaths are blamed on natural causes.

10 (11) Workers have a legal right to a safe work-
11 place. The vast majority of heat-related workplace
12 deaths and illnesses can be prevented by access to
13 water, rest, and shade. Many employers don't pro-
14 vide these simple measures for workers according to
15 the Occupational Safety and Health Administration.

16 (12) Employers often retaliate against employ-
17 ees if they report or seek assistance due to problems
18 with heat. Many employees are therefore afraid to
19 report problems and face increased risk of heat-re-
20 lated illnesses or death.

21 (13) In the absence of a Federal standard, mul-
22 tiple branches of the United States Armed Forces—
23 including the Army, Navy, Marine Corps, and Air
24 Force—have issued heat prevention guidelines, and
25 several States—California, Washington, and Min-

1 nesota—have issued heat prevention standards. The
2 National Institute for Occupational Safety and
3 Health (NIOSH) issued criteria for such a standard
4 in 1972, updating it in 1986 and 2016.

5 (14) Congress created the Occupational Safety
6 and Health Administration to ensure safe and
7 healthful working conditions by setting and enforce-
8 ing standards pursuant to section 6 of the Occupa-
9 tional Safety and Health Act of 1970. Employees
10 are exposed to grave danger from exposure to exces-
11 sive heat. The Occupational Safety and Health Ad-
12 ministration must develop a standard to protect
13 workers from the significant risks of heat-related ill-
14 ness and death.

15 (15) While heat stress is often associated with
16 outdoor jobs, some indoor workers are also at risk
17 from dangerously high temperatures. Indoor heat
18 stress is prevalent in enclosed workplaces without
19 climate control or adequate ventilation, such as
20 warehouses and factories, and workplaces with heat-
21 generating machinery such as steel mills, electrical
22 utilities, bakeries, commercial kitchens, and laun-
23 dries.

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

3 (a) PROPOSED STANDARD.—Not later than 2 years
4 after the date of enactment of this Act, the Secretary of
5 Labor shall, pursuant to section 6(b) of the Occupational
6 Safety and Health Act of 1970 (29 U.S.C. 655(b)), pro-
7 mulgate a proposed standard on prevention of occupa-
8 tional exposure to excessive heat.

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

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

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

24 (c) INTERIM FINAL STANDARD.—

25 (1) IN GENERAL.—If the proposed standard de-
26 scribed in subsection (a) is not promulgated not

1 later than 2 years after the date of enactment of
2 this Act, the Secretary of Labor shall promulgate an
3 interim final standard on prevention of occupational
4 exposure to excessive heat not later than 2 years and
5 60 days after such date of enactment—

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

11 (B) that shall, at a minimum—

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

18 (ii) establish requirements with re-
19 spect to exposure limits that trigger action
20 to protect covered employees from heat-re-
21 lated illness, hydration, scheduled and paid
22 rest breaks in shaded or climate-controlled
23 spaces, an acclimatization plan, exposure
24 monitoring, and other measures to prevent
25 exposure to heat above safe limits, em-

1 ployee and supervisor training, hazard no-
2 tification, an emergency medical response
3 plan, heat-related surveillance, record-
4 keeping, and procedures for compensating
5 piece rate workers for required heat-related
6 rest breaks;

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

13 (iv) include a requirement to protect
14 employees from discrimination or retalia-
15 tion for exercising the rights of the em-
16 ployees under the interim final standard.

17 (2) APPLICABILITY OF OTHER STATUTORY RE-
18 QUIREMENTS.—The following shall not apply to the
19 promulgation of the interim final standard under
20 this subsection:

21 (A) The requirements applicable to occupa-
22 tional safety and health standards under section
23 6(b) of the Occupational Safety and Health Act
24 of 1970 (29 U.S.C. 655(b)).

1 (B) The requirements of section 553(e) of
2 chapter 5 and chapter 6 of title 5, United
3 States Code.

4 (C) The requirements of the National En-
5 vironmental Policy Act of 1969 (42 U.S.C.
6 4321 et seq.).

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) with respect to covered employers.

3 (b) REQUIREMENTS.—The final standard promul-
4 gated under section 2(b) shall, with respect to covered em-
5 ployers, include the following:

6 (1) HEAT ILLNESS PREVENTION PLANS.—

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

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

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

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

22 (iv) be made available, upon request,
23 to such employees, the employee represent-
24 atives for such employees, and the Sec-
25 retary.

1 (B) PLAN CONTENT.—Each plan required
2 under subparagraph (A) shall include proce-
3 dures and methods for the following:

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

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

10 (iii) Emergency response.

11 (iv) Acclimatization.

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

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

1 cooling mist fans, evaporative coolers,
2 and natural ventilation;

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

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

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

22 (vii) Compensating piece rate workers
23 for required heat-related rest breaks.

24 (2) TRAINING AND EDUCATION.—

1 (A) EMPLOYEE TRAINING.—A covered em-
2 ployer shall provide annual training and edu-
3 cation to covered employees who may be ex-
4 posed to high heat levels, which shall cover the
5 following topics:

6 (i) Identified heat illness risk factors.

7 (ii) Personal factors that may increase
8 susceptibility to heat-related illness.

9 (iii) Signs and symptoms of heat-re-
10 lated illness.

11 (iv) Different types of heat illness.

12 (v) The importance of acclimatization
13 and consumption of liquids.

14 (vi) Engineering control measures.

15 (vii) Administrative control measures.

16 (viii) The importance of reporting
17 heat-related symptoms being experienced
18 by the employee or another employee.

19 (ix) Recordkeeping requirements and
20 reporting procedures.

21 (x) Emergency response procedures.

22 (xi) Employee rights.

23 (B) SUPERVISOR TRAINING.—In addition
24 to the training and education required in sub-
25 paragraph (A), training and education shall be

1 provided annually to covered employees who are
2 supervisors that shall cover the following topics:

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

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

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

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

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

24 (I) in addition to the education
25 and training provided under clause

1 (ii), subparagraph (A), and, if applica-
2 ble to such employee, subparagraph
3 (B); and

4 (II) applicable to such change of
5 job circumstances.

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

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

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

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

24 (3) RECORDKEEPING.—Each covered employer
25 shall—

1 (A) maintain at all times—

2 (i) records related to each plan of the
3 employer under paragraph (1), including
4 heat illness risk and hazard assessments,
5 and identification, evaluation, correction,
6 and training procedures;

7 (ii) data on all heat-related illnesses
8 and deaths; and

9 (iii) data on environmental and phys-
10 iological measurements related to heat; and

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

17 (4) WHISTLEBLOWER PROTECTIONS.—

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

22 (i) exercising the rights of the em-
23 ployee under this Act; or

1 (ii) reporting violations of the stand-
2 ard to any local, State, or Federal govern-
3 ment.

4 (B) PROHIBITION.—No covered employer
5 shall discriminate or retaliate against any em-
6 ployee for—

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

13 (ii) exercising any other rights of the
14 employee under this Act.

15 (C) ENFORCEMENT.—This paragraph shall
16 be enforced in the same manner and to the
17 same extent as any standard promulgated
18 under section 6(b) of the Occupational Safety
19 and Health Act of 1970 (29 U.S.C. 655(b)).

○