

Union Calendar No. 393

117TH CONGRESS
2D SESSION

H. R. 2193

[Report No. 117-547]

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

NOVEMBER 7, 2022

Additional sponsors: Ms. OCASIO-CORTEZ, Ms. PINGREE, Ms. SCHAKOWSKY, Mr. LEVIN of Michigan, Ms. OMAR, Mr. RUIZ, Ms. BROWNLEY, Mr. CARSON, Mr. MRVAN, Mr. SAN NICOLAS, Ms. BARRAGÁN, Ms. ROYBAL-ALLARD, Mr. PANETTA, Mr. DESAULNIER, Ms. MATSUI, Mr. COHEN, Ms. NORTON, Ms. SÁNCHEZ, Mr. GALLEG0, Mr. CÁRDENAS, Mr. SABLÁN, Ms. BONAMICI, Mr. SOTO, Mr. BLUMENAUER, Mr. KHANNA, Mrs. TORRES of California, Mr. LOWENTHAL, Ms. LEE of California, Mr. GARAMENDI, Mr. CARBAJAL, Ms. GARCIA of Texas, Mr. DANNY K. DAVIS of Illinois, Mr. CRIST, Ms. CASTOR of Florida, Mr. HUFFMAN, Mr. TORRES of New York, Ms. KAPTUR, Mr. POCAN, Mr. VICENTE GONZALEZ of Texas, Mr. LARSEN of Washington, Mr. SUOZZI, Mrs. KIRKPATRICK, Mr. JOHNSON of Georgia, Mr. NADLER, Ms. LOFGREN, Mr. VARGAS, Mr. CICILLINE, Mr. AGUILAR, Mr. MORELLE, Ms. VELÁZQUEZ, Mr. EVANS, Mr. LIEU, Mr. BISHOP of Georgia, Mr. CASTRO of Texas, Ms. NEWMAN, Ms. WASSERMAN SCHULTZ, Mrs. HAYES, Ms. ROSS, Mr. MCGOVERN, Mr. DEFazio, Mr. GARCÍA of Illinois, Mrs. DEMINGS, Ms. PRESSLEY, Ms. JAYAPAL, Mr. THOMPSON of California, Mr. ESPAILLAT, Mr. VEASEY, Mr. KIM of New Jersey, Mr. CONNOLLY, Mr. MOULTON, Ms. TITUS, Ms. DEAN, Mr. NEGUSE, Mr. SMITH of Washington, Mrs. NAPOLITANO, Mr. TONKO, Ms. ESHOO, Ms. MENG, Mr. KILDEE, Ms. BLUNT ROCHESTER, Mr. MCNERNEY, Mr. JONES, Mr. BOWMAN, Mr. RASKIN, Ms. LEGER FERNANDEZ, Mr. SIRES, Mr. COURTNEY, Mr.

TAKANO, Mr. McEACHIN, Mrs. MURPHY of Florida, Mrs. MCBATH, Mr. LYNCH, Ms. STANSBURY, Mr. RUSH, Mr. HIGGINS of New York, Ms. TLAIB, Mr. CASTEN, Ms. STEVENS, Mrs. CAROLYN B. MALONEY of New York, Mr. BERA, Mr. GOMEZ, Mrs. WATSON COLEMAN, Ms. BUSH, Mr. BROWN of Maryland, Ms. BROWN of Ohio, Ms. CLARKE of New York, Mr. MFUME, Mrs. LAWRENCE, Mr. ALLRED, Ms. WILLIAMS of Georgia, Ms. SCANLON, Mr. PALLONE, and Ms. JACOBS of California

NOVEMBER 7, 2022

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 26, 2021]

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.**

4 *This Act may be cited as the “Asunción Valdivia Heat*
5 *Illness and Fatality Prevention Act of 2022”.*

6 **SEC. 2. EMPLOYER DUTIES.**

7 *Each employer shall—*

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

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

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

15 *(a) DESIGN OF STANDARDS.—*

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

24 *(2) CONSIDERATIONS.—*

1 (A) *DEMONSTRABLY ACHIEVABLE MEAS-*
2 *URES.—The Secretary may presume that any re-*
3 *quirement substantially equivalent to a require-*
4 *ment adopted by a State plan approved by the*
5 *Occupational Safety and Health Administration*
6 *pursuant to section 18(c) of the Occupational*
7 *Safety and Health Act of 1970 (29 U.S.C.*
8 *667(c)) and that has been in effect for at least*
9 *1 year is feasible.*

10 (B) *PRIORITIZING WORKER PROTECTION.—*
11 *In weighing any considerations during rule-*
12 *making, the Secretary shall place preeminent*
13 *value on assuring employees a safe and healthful*
14 *working environment.*

15 (C) *AVAILABLE EXPERTISE.—If the Sec-*
16 *retary adopts any finding or recommendation by*
17 *the Institute, the American Conference of Gov-*
18 *ernmental Industrial Hygienists, or the National*
19 *Academies of Sciences, Engineering, and Medi-*
20 *cine relevant to heat stress in a rulemaking pur-*
21 *suant to this Act, such finding or recommenda-*
22 *tion shall be considered the best available evi-*
23 *dence.*

24 (D) *EMPLOYER CATEGORIES.—The Sec-*
25 *retary may, in any rulemaking analysis or de-*

1 *sign of standards, cluster relevant employers in*
2 *any categories such as standard industry or oc-*
3 *cupational classifications or any common or re-*
4 *lated features of heat sources, conditions of em-*
5 *ployment, employer practices, employee charac-*
6 *teristics, or nature of place of employment that,*
7 *in the Secretary's reasonable determination, are*
8 *useful for designing an effective and practicable*
9 *program of standards, regulations, and enforce-*
10 *ment that maximizes the health and safety of*
11 *employees.*

12 (3) *PROTECTIVE PROGRAMS.—*

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

20 (i) *ENGINEERING CONTROLS.—Re-*
21 *quirements to eliminate hazardous levels of*
22 *heat stress through engineering controls,*
23 *such as isolation or shielding of employees*
24 *from sources of heat, exhaust ventilation,*
25 *insulation of hot surfaces, or climate-control*

1 *technologies, as well as technology-based*
2 *standards that encourage the development of*
3 *such controls.*

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

9 (iii) *PERSONAL PROTECTIVE EQUIP-*
10 *MENT.—Requirements to provide, at the em-*
11 *ployer's expense, personal protective equip-*
12 *ment such as water-cooled garments, air-*
13 *cooled garments, heat-reflective clothing,*
14 *and cooling vests.*

15 (iv) *HEALTH-RELATED PROTOCOLS.—*
16 *Requirements to conduct medical symptom*
17 *monitoring, emergency response protocols,*
18 *medical removal protection, or training of*
19 *employees and supervisors in recognition of*
20 *symptoms of heat-related illness and appro-*
21 *priate responses.*

22 (v) *TRAINING REQUIREMENTS.—Re-*
23 *quirements to train employees and super-*
24 *visors in topics reasonable or necessary to*
25 *achieve the implementation of the require-*

ments of a standard or the purposes of this Act, including—

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

(II) training of supervisors in monitoring heat conditions and environmental forecasts, recognizing signs of heat-related illness, and protocols for responding to likely heat-related illness.

(vi) *PLANNING REQUIREMENTS.*—Requirements for a heat illness and injury prevention plan that—

(I) is of sufficient quality to effectuate the purposes of this Act and to effectuate the requirements of the standard that apply to the employer;

(II) is developed, updated, and implemented with the meaningful participation of the employer's employees and, where applicable, such employees' representatives, for all aspects of 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 USC
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 heat-
16 related illness or injury, the Secretary may mod-
17 ify, supplement, or revise a worker heat protec-
18 tion standard by rule in order to improve such
19 standard in light of such changes, even if it de-
20 parts from long-standing past practice, provided
21 that the resulting standard is consistent with
22 this Act.

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

pose an employee to heat or heat stress that is not reduced below hazardous levels by engineering controls or personal protective equipment shall implement a reasonable program that includes—

(i) suitably cool potable water or appropriate hydration, provided at employer expense;

(ii) periodic paid rest breaks scheduled to reduce heat stress below hazardous levels;

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

(iv) acclimatization policies; and

(v) such measures that are necessary or appropriate to ensure effective implementation of the requirements of this subparagraph.

(4) OTHER SPECIFICATIONS.—

(A) PROTECTION OF PAY.—The Secretary shall require that, for any required duration such as rest breaks, medical removal protection, and training, an employee shall receive compensation at the regular rate at which such employee 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 not*
5 *English, and prepared appropriately for the vo-*
6 *cabulary, 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 to*
11 *achieve the purposes of this Act.*

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

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

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

7 *(c) RULEMAKING PROCEDURES.—For any rulemaking*
8 *pursuant to this Act after publication of the initial final*
9 *rule in subsection (b), the following procedures shall apply:*

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

22 *(2) PETITIONS FOR RULEMAKING.—Any person*
23 *may petition the Secretary to promulgate or modify*
24 *a worker heat protection standard. Within 18 months*
25 *after receipt of a petition, the Secretary shall either*

1 *grant or deny the petition by publishing a written ex-*
2 *planation of the reasons for the Secretary's decision.*
3 *The Secretary may not deny a petition solely on the*
4 *basis of inadequate resources or insufficient time for*
5 *review.*

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

9 (A) *PROPOSED STANDARDS.—Within one*
10 *year after granting a petition for rulemaking*
11 *under paragraph (2), the Secretary shall publish*
12 *a proposed worker heat protection standard con-*
13 *sistent with this section.*

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

18 (C) *EFFECT.—Standards or revisions there-*
19 *of shall become effective upon promulgation, ex-*
20 *cept that the Secretary may include a reasonable*
21 *delay in the effective date.*

22 (4) *TRANSPARENCY IN RULEMAKING.—For any*
23 *rulemaking notice pursuant to this Act, the Secretary*
24 *shall place in the public record not later than the date*
25 *of such rulemaking notice the following:*

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

9 (B) *A summary of the substance of any*
10 *changes between the text of the draft rulemaking*
11 *that the agency provided to the Office of Manage-*
12 *ment and Budget under section 6(a)(3)(B)(i) of*
13 *Executive Order 12,866 and the text published in*
14 *the Federal Register, excluding any non-sub-*
15 *stantive changes such as spelling or grammatical*
16 *corrections or re-ordering of text that has no*
17 *legal effect.*

18 (C) *A statement identifying any party or*
19 *entity at whose request any such change was*
20 *made.*

21 (5) *JUDICIAL REVIEW.—*

22 (A) *FILING OF PETITION.—A petition for*
23 *review in accordance with section 702 of title 5,*
24 *United States Code, of action of the Secretary in*
25 *promulgating any worker heat protection stand-*

ard or any other nationally applicable regulation or final action taken by the Secretary pursuant to this Act may be filed only in the United States Court of Appeals for the District of Columbia. The filing of a petition for review shall not postpone the effectiveness of such rule or action.

(B) *TIMELY FILING.*—Any petition for review under this paragraph shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register.

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

SEC. 4. IMPLEMENTATION AND ENFORCEMENT.

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

(1) a worker heat protection standard shall have the same legal effect as an occupational safety and

1 *health standard as defined by section 3(8) of the Oc-*
2 *cupational Safety and Health Act of 1970 (29 U.S.C.*
3 *652(8)); and*

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

9 *(b) ENFORCEMENT.—*

10 *(1) STATUTE OF LIMITATIONS FOR CITATION.—*
11 *No citation for any violation of section 2 or any*
12 *standard, rule, regulation, or order pursuant to this*
13 *Act may be issued under this section after the expira-*
14 *tion of four years following the occurrence of any vio-*
15 *lation.*

16 *(2) REVIEW.—The Commission shall grant sub-*
17 *stantial deference to any reasonable interpretation by*
18 *the Secretary of this Act or any standard, regulation,*
19 *or order pursuant to this Act.*

20 *(c) RECORDKEEPING AND REPORTING.—*

21 *(1) IN GENERAL.—With regard to recordkeeping*
22 *and reporting, the Secretary and Secretary of Health*
23 *and Human Services shall have the same authority to*
24 *prescribe regulations related to this Act as under sec-*

tion 8 of the Occupational Safety and Health Act (29 U.S.C. 657).

(2) *CONSOLIDATING REQUIREMENTS.*—The Secretary may incorporate recordkeeping and reporting requirements under this section into existing recordkeeping and reporting requirements promulgated pursuant to section 8 of the Occupational Safety and Health Act (29 U.S.C. 657), provided that a violation of such a requirement with regard to implementation of this Act shall be enforced as a distinct violation separate and apart from any other simultaneous violation of a requirement pursuant to the Occupational Safety and Health Act.

(d) *WHISTLEBLOWER PROTECTIONS.*—

(1) *COMPLAINT.*—Any employee who believes that such employee has been discharged or otherwise discriminated against by any person in violation of section 11(c)(1) of the Occupational Safety and Health Act (29 U.S.C. 660(c)(1)) with regard to any matter under or related to this Act may, within 180 days after such violation occurs, file a complaint with the Secretary following the procedures in paragraph (2) of such section alleging such discrimination.

(2) *ACTION.*—If the Secretary fails to notify the complainant of the Secretary's determination on the

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

10 **SEC. 5. GENERAL PROVISIONS.**

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

17 *(b) AUTHORIZATION OF APPROPRIATIONS.—There are*
18 *authorized to be appropriated from sums not otherwise ap-*
19 *propriated, for each fiscal year, such sums as may be nec-*
20 *essary to carry out this Act.*

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

22 *The Secretary shall update the National Agricultural*
23 *Workers Survey with such questions that, in the Secretary's*
24 *judgment, are useful to identify the incidence and preva-*
25 *lence of heat-related illness and injury and assess the im-*

1 *pact of standards and enforcement pursuant to this Act.*
2 *Within one year of the date of enactment of this Act, the*
3 *Secretary shall submit to the Committee on Education and*
4 *Labor of the House of Representatives and the Committee*
5 *on Health, Education, Labor, and Pensions of the Senate*
6 *a report on the Secretary's implementation of this sub-*
7 *section.*

8 **SEC. 7. DEFINITIONS.**

9 *For purposes of this Act:*

10 *(1) The term "Commission" means the Occupa-*
11 *tional Safety and Health Review Commission.*

12 *(2) The term "employee" has the same meaning*
13 *as in section 3(6) of the Occupational Safety and*
14 *Health Act of 1970 (29 U.S.C. 652(6)).*

15 *(3) The term "employer" has the same meaning*
16 *as in section 3(5) of the Occupational Safety and*
17 *Health Act of 1970 (29 U.S.C. 652(5)).*

18 *(4) The term "heat stress" means the load of heat*
19 *that a person experiences due to—*

20 *(A) sources of heat or heat retention (in-*
21 *cluding the combined contributions of metabolic*
22 *heat, environmental factors, and clothing or per-*
23 *sonal protective equipment); or*

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

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

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

7 (7) *The term “Institute” means the National In-*
8 *stitute for Occupational Safety and Health.*

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

11 (9) *The term “worker heat protection standard”*
12 *means a standard that regulates employee exposure to*
13 *heat stress and prevents heat-related illness and in-*
14 *jury by requiring conditions or the adoption or use*
15 *of one or more practices, means, methods, operations,*
16 *or processes reasonably necessary or appropriate to*
17 *provide employment and places of employment that*
18 *are safe or healthful.*

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