

116TH CONGRESS  
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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.

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## 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. SABLAN, Mrs. NAPOLITANO, Ms. VELÁZQUEZ, and Ms. MENG) introduced the following bill; which was referred to the Committee on Education and Labor

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## 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

1 spaces, an acclimatization plan, exposure  
2 monitoring, and other measures to prevent  
3 exposure to heat above safe limits, em-  
4 ployee and supervisor training, hazard no-  
5 tification, an emergency medical response  
6 plan, heat-related surveillance, record-  
7 keeping, and procedures for compensating  
8 piece rate workers for required heat-related  
9 rest breaks;

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

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

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

24 (A) The requirements applicable to occupa-  
25 tional 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(e) 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-

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

3 (i) Identified heat illness risk factors.

4 (ii) Personal factors that may increase  
5 susceptibility to heat-related illness.

6 (iii) Signs and symptoms of heat-re-  
7 lated illness.

8 (iv) Different types of heat illness.

9 (v) The importance of acclimatization  
10 and consumption of liquids.

11 (vi) Engineering control measures.

12 (vii) Administrative control measures.

13 (viii) The importance of reporting  
14 heat-related symptoms being experienced  
15 by the employee or another employee.

16 (ix) Recordkeeping requirements and  
17 reporting procedures.

18 (x) Emergency response procedures.

19 (xi) Employee rights.

20 (B) SUPERVISOR TRAINING.—In addition  
21 to the training and education required in sub-  
22 paragraph (A), training and education shall be  
23 provided to covered employees who are super-  
24 visors 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)).

○