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S. 4781

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 SENATE OF THE UNITED STATES

OCTOBER 1, 2020

Mr. SCHUMER (for Ms. HARRIS (for herself, Mr. BROWN, Ms. BALDWIN, Ms. WARREN, and Mr. MERKLEY)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 2020”.

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 19 of the 20 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) On average, 3 times as many people die
9 from extreme heat in the United States each year
10 than from hurricanes, floods, and tornadoes com-
11 bined.

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

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

1 (5) Jobs at highest risk of heat stress illness
2 and death are disproportionately held by Black and
3 Brown workers, a disparity that reflects the racial
4 injustice inherent in our economic system.

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

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

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

21 (9) The costs of lower labor productivity under
22 rising temperatures is estimated to reach up to
23 \$160,000,000,000 in lost wages per year in the
24 United States by 2090 according to the 2018 Na-
25 tional Climate Assessment. The drop in productivity

1 decreases income for employers and workers. Global
2 gross domestic product losses from heat are pro-
3 jected to be greater than 20 percent by the end of
4 this century.

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

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

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

23 (13) In the absence of a Federal standard, mul-
24 tiple branches of the United States Armed Forces—
25 including the Army, Navy, Marine Corps, and Air

1 Force—have issued heat prevention guidelines, and
2 several States—California, Washington, and Min-
3 nesota—have issued heat prevention standards. The
4 National Institute for Occupational Safety and
5 Health (NIOSH) issued criteria for such a standard
6 in 1972, updating it in 1986 and 2016.

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

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

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

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

5 (1) provide no less protection than the most
6 protective heat prevention standard adopted by a
7 State plan that has been approved by the Secretary
8 under section 18 of the Occupational Safety and
9 Health Act of 1970 (29 U.S.C. 667) and, at a min-
10 imum, include the requirements described in section
11 4; and

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

16 (c) INTERIM FINAL STANDARD.—

17 (1) IN GENERAL.—If the proposed standard de-
18 scribed in subsection (a) is not promulgated not
19 later than 2 years after the date of enactment of
20 this Act, the Secretary of Labor shall promulgate an
21 interim final standard on prevention of occupational
22 exposure to excessive heat not later than 2 years and
23 60 days after such date of enactment—

24 (A) to require covered employers to develop
25 and implement a comprehensive workplace ex-

1 cessive heat prevention plan to protect covered
2 employees from excessive heat that may lead to
3 heat-related injuries and illnesses; and

4 (B) that shall, at a minimum—

5 (i) provide no less protection than the
6 most protective heat prevention standard
7 adopted by a State plan that has been ap-
8 proved by the Secretary under section 18
9 of the Occupational Safety and Health Act
10 of 1970 (29 U.S.C. 667);

11 (ii) establish requirements with re-
12 spect to exposure limits that trigger action
13 to protect covered employees from heat-re-
14 lated illness, hydration, scheduled and paid
15 rest breaks in shaded or climate-controlled
16 spaces, an acclimatization plan, exposure
17 monitoring, and other measures to prevent
18 exposure to heat above safe limits, em-
19 ployee and supervisor training, hazard no-
20 tification, an emergency medical response
21 plan, heat-related surveillance, record-
22 keeping, and procedures for compensating
23 piece rate workers for required heat-related
24 rest breaks;

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

7 (iv) include a requirement to protect
8 employees from discrimination or retalia-
9 tion for exercising the rights of the em-
10 ployees under the interim final standard.

11 (2) APPLICABILITY OF OTHER STATUTORY RE-
12 QUIREMENTS.—The following shall not apply to the
13 promulgation of the interim final standard under
14 this subsection:

15 (A) The requirements applicable to occupa-
16 tional safety and health standards under section
17 6(b) of the Occupational Safety and Health Act
18 of 1970 (29 U.S.C. 655(b)).

19 (B) The requirements of section 553(e) of
20 chapter 5 and chapter 6 of title 5, United
21 States Code.

22 (C) The requirements of the National En-
23 vironmental Policy Act of 1969 (42 U.S.C.
24 4321 et seq.).

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

3 (A) take effect on a date that is not later
4 than 30 days after the promulgation of such
5 standard, except that such interim final stand-
6 ard may include a reasonable phase-in period
7 for the implementation of required engineering
8 controls that take effect after such date;

9 (B) be enforced in the same manner and
10 to the same extent as any standard promul-
11 gated under section 6(b) of the Occupational
12 Safety and Health Act of 1970 (29 U.S.C.
13 655(b)); and

14 (C) be in effect until the final standard de-
15 scribed in subsection (b) becomes effective and
16 enforceable.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

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

22 (2) COVERED EMPLOYER.—The term “covered
23 employer”—

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

1 (B) includes a contractor, subcontractor, a
2 temporary service firm, or an employee leasing
3 entity.

4 (3) COVERED WORKPLACE.—The term “covered
5 workplace” includes a workplace with occupational
6 exposure to excessive heat.

7 (4) EMPLOYER.—The term “employer” has the
8 meaning given the term in section 3 of the Occupa-
9 tional Safety and Health Act of 1970 (29 U.S.C.
10 652).

11 (5) EXCESSIVE HEAT.—The term “excessive
12 heat” includes outdoor or indoor exposure to heat at
13 levels that exceed the capacities of the body to main-
14 tain normal body functions and may cause heat-re-
15 lated injury, illness, or fatality (including heat
16 stroke, heat exhaustion, heat syncope, heat cramps,
17 or heat rashes).

18 (6) SECRETARY.—The term “Secretary” means
19 the Secretary of Labor.

20 **SEC. 4. REQUIREMENTS FOR FINAL STANDARD ON PRE-**
21 **VENTION OF OCCUPATIONAL EXPOSURE TO**
22 **EXCESSIVE HEAT.**

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

1 (1) take into consideration the NIOSH Criteria
2 for a Recommended Standard: Occupational Expo-
3 sure to Heat and Hot Environments published by
4 the National Institute for Occupational Safety and
5 Health in 2016;

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

18 (3) include the requirements described in sub-
19 section (b) with respect to covered employers.

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

23 (1) HEAT ILLNESS PREVENTION PLANS.—

24 (A) IN GENERAL.—A covered employer
25 shall develop, implement, and maintain an ef-

1 fective, written excessive heat illness prevention
2 plan for covered employees, which shall—

3 (i) be developed and implemented with
4 the meaningful participation of covered
5 employees and, where applicable, employee
6 representatives and collective bargaining
7 representatives, for all aspects of the plan;

8 (ii) be tailored and specific to hazards
9 in the covered workplace;

10 (iii) be in writing, in English and in
11 the language understood by a majority of
12 the employees, if such language is not
13 English; and

14 (iv) be made available, upon request,
15 to such employees, the employee represent-
16 atives for such employees, and the Sec-
17 retary.

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

21 (i) Initial and regular monitoring of
22 employee exposure to determine whether
23 employees are exposed to excessive heat.

1 (ii) Provision of water, paid rest
2 breaks, and access to shade or cool-down
3 areas.

4 (iii) Emergency response.

5 (iv) Acclimatization.

6 (v) Hazard prevention, including engi-
7 neering controls, administrative controls,
8 or personal protective equipment to cor-
9 rect, in a timely manner, applying indus-
10 trial hygiene principles of the hierarchy of
11 controls, including, as appropriate—

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

21 (II) administrative controls that
22 limit exposure to a hazard by adjust-
23 ment of work procedures or work
24 schedules, which may include accli-
25 matizing employees, rotating employ-

1 ees, scheduling work earlier or later in
2 the day, using work-rest schedules, re-
3 ducing work intensity or speed, chang-
4 ing required work clothing, and using
5 relief workers; and

6 (III) personal protective equip-
7 ment which may include water-cooled
8 garments, air-cooled garments, reflec-
9 tive clothing, and cooling vests.

10 (vi) Coordination of risk assessment
11 efforts, plan development, and implementa-
12 tion of the plan with other employers who
13 have employees who work at the covered
14 workplace.

15 (vii) Compensating piece rate workers
16 for required heat-related rest breaks.

17 (2) TRAINING AND EDUCATION.—

18 (A) EMPLOYEE TRAINING.—A covered em-
19 ployer shall provide annual training and edu-
20 cation to covered employees who may be ex-
21 posed to high heat levels, which shall cover the
22 following topics:

23 (i) Identified heat illness risk factors.

24 (ii) Personal factors that may increase
25 susceptibility to heat-related illness.

- 1 (iii) Signs and symptoms of heat-re-
2 lated illness.
- 3 (iv) Different types of heat illness.
- 4 (v) The importance of acclimatization
5 and consumption of liquids.
- 6 (vi) Engineering control measures.
- 7 (vii) Administrative control measures.
- 8 (viii) The importance of reporting
9 heat-related symptoms being experienced
10 by the employee or another employee.
- 11 (ix) Recordkeeping requirements and
12 reporting procedures.
- 13 (x) Emergency response procedures.
- 14 (xi) Employee rights.
- 15 (B) SUPERVISOR TRAINING.—In addition
16 to the training and education required in sub-
17 paragraph (A), training and education shall be
18 provided annually to covered employees who are
19 supervisors that shall cover the following topics:
- 20 (i) The procedures a supervisor is re-
21 quired to follow under this Act.
- 22 (ii) How to recognize high-risk situa-
23 tions, including how to monitor weather re-
24 ports and weather advisories, and not as-
25 signing an employee to situations that pre-

1 dictably compromise the safety of the em-
2 ployee.

3 (iii) The procedures to follow when an
4 employee exhibits signs or reports symp-
5 toms consistent with possible heat illness,
6 including emergency response procedures.

7 (C) GENERAL TRAINING REQUIRE-
8 MENTS.—The education and training provided
9 under this paragraph to covered employees shall
10 meet the following:

11 (i) In the case of such an employee
12 whose job circumstances have changed,
13 within a reasonable timeframe after such
14 change of job circumstances, education and
15 training shall be provided that shall be—

16 (I) in addition to the education
17 and training provided under clause
18 (ii), subparagraph (A), and, if applica-
19 ble to such employee, subparagraph
20 (B); and

21 (II) applicable to such change of
22 job circumstances.

23 (ii) Applicable education and training
24 shall be provided for each new covered em-

1 ployee prior to the employee’s job assign-
2 ment.

3 (iii) The education and training shall
4 provide such employees opportunities to
5 ask questions, give feedback, and request
6 additional instruction, clarification, or
7 other follow-up.

8 (iv) The education and training shall
9 be provided in-person and by an individual
10 with knowledge of heat illness prevention
11 and of the plan of the employer under this
12 section.

13 (v) The education and training shall
14 be appropriate in content and vocabulary
15 to the language, educational level, and lit-
16 eracy of such covered employees.

17 (3) RECORDKEEPING.—Each covered employer
18 shall—

19 (A) maintain at all times—

20 (i) records related to each plan of the
21 employer under paragraph (1), including
22 heat illness risk and hazard assessments,
23 and identification, evaluation, correction,
24 and training procedures;

1 (ii) data on all heat-related illnesses
2 and deaths; and

3 (iii) data on environmental and phys-
4 iological measurements related to heat; and

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

11 (4) WHISTLEBLOWER PROTECTIONS.—

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

16 (i) exercising the rights of the em-
17 ployee under this Act; or

18 (ii) reporting violations of the stand-
19 ard to any local, State, or Federal govern-
20 ment.

21 (B) PROHIBITION.—No covered employer
22 shall discriminate or retaliate against any em-
23 ployee for—

24 (i) reporting a heat-illness-related con-
25 cern to, or seeking assistance or interven-

1 tion with respect to heat-related health
2 symptoms from, the employer, local emer-
3 gency services, or a local, State, or Federal
4 government; or

5 (ii) exercising any other rights of the
6 employee under this Act.

7 (C) ENFORCEMENT.—This paragraph shall
8 be enforced in the same manner and to the
9 same extent as any standard promulgated
10 under section 6(b) of the Occupational Safety
11 and Health Act of 1970 (29 U.S.C. 655(b)).

○