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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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''Asuncion Valdivia Heat Illness and Fatality Prevention Act of 2020''.

(b) FINDINGS.—Congress finds the following:

(1) Excessive heat exposure poses a direct threat to workers and the economy. Climate change increases this danger, as 19 of the 20 hottest years on record have occurred since 2001. Rising temperatures are projected to cause an increase in heat-related workplace injuries and illnesses, a dramatic loss in labor capacity, and decreased productivity.

(2) On average, 3 times as many people die from extreme heat in the United States each year than from hurricanes, floods, and tornadoes combined.

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

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

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

(6) Farmworkers and construction workers suffer the highest incidence of heat illness, but all outdoor and indoor workers employed in excessively hot and humid environments are at significant risk of material impairment of health or functional capacity.

(7) Asuncion Valdivia was a California farmworker who died of heat stroke in 2004 after picking grapes for 10 straight hours in 105 degree temperatures. Instead of calling an ambulance, his employer told his son to drive Mr. Valdivia home. On his way home, he started foaming at the mouth and died.

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

(9) The costs of lower labor productivity under rising temperatures is estimated to reach up to $160,000,000,000 in lost wages per year in the United States by 2090 according to the 2018 National Climate Assessment. The drop in productivity

decreases income for employers and workers. Global gross domestic product losses from heat are projected to be greater than 20 percent by the end of this century.

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

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

(12) Employers often retaliate against employees if they report or seek assistance due to problems with heat. Many employees are therefore afraid to report problems and face increased risk of heat-related illnesses or death.

(13) In the absence of a Federal standard, multiple branches of the United States Armed Forces—including the Army, Navy, Marine Corps, and Air

Force—have issued heat prevention guidelines, and several States—California, Washington, and Minnesota—have issued heat prevention standards. The National Institute for Occupational Safety and Health (NIOSH) issued criteria for such a standard in 1972, updating it in 1986 and 2016.

(14) Congress created the Occupational Safety and Health Administration to ensure safe and healthful working conditions by setting and enforcing standards pursuant to section 6 of the Occupational Safety and Health Act of 1970. Employees are exposed to grave danger from exposure to excessive heat. The Occupational Safety and Health Administration must develop a standard to protect workers from the significant risks of heat-related illness and death.

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

(a) PROPOSED STANDARD.—Not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), promulgate a proposed standard on prevention of occupational exposure to excessive heat.

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

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

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

(c) INTERIM FINAL STANDARD.—

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

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

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

(B) that shall, at a minimum—

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

(ii) establish requirements with respect to exposure limits that trigger action to protect covered employees from heat-related illness, hydration, scheduled and paid 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 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)).

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

(C) The requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) EFFECTIVE DATE OF INTERIM STANDARD.—The interim final standard shall—

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

(B) be enforced in the same manner and to the same extent as any standard promulgated under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)); and

(C) be in effect until the final standard described in subsection (b) becomes effective and enforceable.

SEC. 3. DEFINITIONS.

In this Act:

(1) COVERED EMPLOYEE.—The term ''covered employee'' includes an individual employed by a covered employer.

(2) COVERED EMPLOYER.—The term ''covered employer''—

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

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

(3) COVERED WORKPLACE.—The term ''covered workplace'' includes a workplace with occupational exposure to excessive heat.

(4) EMPLOYER.—The term ''employer'' has the meaning given the term in section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652).

(5) EXCESSIVE HEAT.—The term ''excessive heat'' includes outdoor or indoor exposure to heat at levels that exceed the capacities of the body to maintain normal body functions and may cause heat-related injury, illness, or fatality (including heat stroke, heat exhaustion, heat syncope, heat cramps, or heat rashes).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

SEC. 4. REQUIREMENTS FOR FINAL STANDARD ON PREVENTION OF OCCUPATIONAL EXPOSURE TO EXCESSIVE HEAT.

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

(1) 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;

(2) establish requirements with respect to exposure limits that trigger action to protect covered employees from heat-related illness, hydration, scheduled and paid 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, medical monitoring, an emergency medical response plan, heat-related surveillance recordkeeping, procedures for compensating piece rate workers for required heat-related rest breaks, and a heat prevention plan; and

(3) include the requirements described in subsection (b) with respect to covered employers.

(b) REQUIREMENTS.—The final standard promulgated under section 2(b) shall, with respect to covered employers, include the following:

(1) HEAT ILLNESS PREVENTION PLANS.—

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

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

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

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

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

(iv) be made available, upon request, to such employees, the employee representatives for such employees, and the Secretary.

(B) PLAN CONTENT.—Each plan required under subparagraph (A) shall include procedures and methods for the following:

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

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

(iii) Emergency response.

(iv) Acclimatization.

(v) Hazard prevention, including engineering controls, administrative controls, or personal protective equipment to correct, in a timely manner, applying industrial hygiene principles of the hierarchy of controls, including, as appropriate—

(I) engineering controls that may include isolation of hot processes, isolation of employees from sources of heat, local exhaust ventilation, shielding from a radiant heat source, and insulation of hot surfaces, the provision of air conditioning, cooling fans, cooling mist fans, evaporative coolers, and natural ventilation;

(II) administrative controls that limit exposure to a hazard by adjustment of work procedures or work schedules, which may include acclimatizing employees, rotating employ-

ees, scheduling work earlier or later in the day, using work-rest schedules, reducing work intensity or speed, changing required work clothing, and using relief workers; and

(III) personal protective equipment which may include water-cooled garments, air-cooled garments, reflective clothing, and cooling vests.

(vi) Coordination of risk assessment efforts, plan development, and implementation of the plan with other employers who have employees who work at the covered workplace.

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

(2) TRAINING AND EDUCATION.—

(A) EMPLOYEE TRAINING.—A covered employer shall provide annual training and education to covered employees who may be exposed 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 annually to covered employees who are supervisors that shall cover the following topics:

(i) The procedures a supervisor is required to follow under this Act.

(ii) How to recognize high-risk situations, including how to monitor weather reports and weather advisories, and not assigning an employee to situations that pre-

dictably compromise the safety of the employee.

(iii) The procedures to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.

(C) GENERAL TRAINING REQUIREMENTS.—The education and training provided under this paragraph to covered employees shall meet the following:

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

(I) in addition to the education and training provided under clause (ii), subparagraph (A), and, if applicable to such employee, subparagraph (B); and

(II) applicable to such change of job circumstances.

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

ployee prior to the employee's job assignment.

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

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

(v) The education and training shall be appropriate in content and vocabulary to the language, educational level, and literacy of such covered employees.

(3) RECORDKEEPING.—Each covered employer shall—

(A) maintain at all times—

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

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

(iii) data on environmental and physiological measurements related to heat; and

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

(4) WHISTLEBLOWER PROTECTIONS.—

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

(i) exercising the rights of the employee under this Act; or

(ii) reporting violations of the standard to any local, State, or Federal government.

(B) PROHIBITION.—No covered employer shall discriminate or retaliate against any employee for—

(i) reporting a heat-illness-related concern to, or seeking assistance or interven-

tion with respect to heat-related health symptoms from, the employer, local emergency services, or a local, State, or Federal government; or

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

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

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