



California Bill Would Give Farmworkers Extra Heat Relief: What Agricultural Employers Need to Know About the Crackdown on Heat Safety

Insights

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With California once again expecting extreme heat conditions this summer, state officials are ramping up efforts to protect agricultural workers by punishing employers who don't comply with heat standards. The state is considering a workers' compensation bill that would make it easier for farmworkers get relief for heat-related injuries if their employer fails to comply with heat illness prevention standards. We'll explain everything you need to know and what steps you should consider taking next.

What's in the Proposed Bill?

State lawmakers are considering a new bill designed to incentivize agricultural employers to comply with heat safety standards by expediting workers' compensation claims for heat-injured farmworkers if they don't. If enacted, SB 1299 would:

- create a disputable presumption that a farmworker's heat-related injury, illness, or death arose out of and came in the course of employment if it developed after the employee was working outdoors and the employer failed to comply with the state's heat illness prevention standards;
- require the state's Workers' Compensation Appeals Board to find in favor of the employee unless the employer presents evidence to rebut that presumption; and
- specify that compensation awarded to farmworkers for heat-related injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits.

To cover the administrative costs associated with this presumption, the bill would create the "Farmworker Climate Change Heat Injury and Death Fund" with a one-time \$5 million transfer from the Workers' Compensation Administration Revolving Fund.

What Are California's Heat Illness Prevention Standards?

California's heat illness prevention standards apply to all outdoor places of employment and are enforced by a state agency known as Cal/OSHA. Employers must take certain steps to prevent heat illness such as:

- providing employees with drinking water, rest, and shade in accordance with specific conditions

- providing employees with drinking water, rest, and shade in accordance with specific conditions;
- developing and implementing an effective heat illness prevention plan (which must be in writing in both English and the language understood by the majority of the employees) that includes, among other things, emergency response procedures; and
- training all employees and supervisors on heat illness prevention.

Agricultural employers also must comply with high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit. Under those procedures, agricultural employers must, to the extent possible, take additional specific measures, including:

- maintaining **effective communication** by voice, observation, or electronic means so that employees at the work site can contact a supervisor when necessary;
- **observing employees** for alertness and signs or symptoms of heat illness;
- designating one or more employees on each worksite as **authorized to call for emergency medical services**, and allowing other employees to call for emergency services when no designated employee is available;
- reminding employees throughout the work shift to **drink plenty of water**;
- holding **pre-shift meetings** to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary; and
- ensuring that employees take a paid 10-minute “**preventative cool-down rest period**” every two hours (which may coincide with other required meal or rest periods during the first eight hours of a shift).

An employer’s failure to comply with the heat illness prevention standards can result in significant penalties. And, if SB 1299 is enacted, a failure to comply would trigger the disputable presumption in favor of a heat-injured employee for purposes of a workers’ compensation claim.

Recent Heat Safety Enforcement Efforts

According to a June 4 news release from Governor Gavin Newsom’s office, the state is in phase 2 of its Extreme Response Plan due to heatwaves impacting much of inland California – where many farmworkers are concentrated – and predictions of excessive heat activity. State efforts to prepare for the increased temperatures include “conducting targeted inspections at worksites where workers are most vulnerable to heat illness including in agriculture.” The state also issued an advisory on June 3 reminding employers of the steps they must take to protect workers from heat illness.

In addition, a new state law took effect earlier this year requiring agricultural employers to provide a special notice to California farmworkers admitted through the federal H-2A agricultural visa program. That notice must describe, among other things, the employee’s rights and protections

under state law – including those related to heat illness prevention.

California is one of the states that operates an [State Plan](#) approved by the federal Occupational Safety and Health Administration (OSHA) – allowing it to run its own workplace safety and health program so long as it is “at least as effective” as OSHA in protecting workers. But heat safety in the workplace is now a priority at the federal level, too. Federal OSHA is [finalizing a stringent new heat rule](#) that would considerably raise the stakes for employers and, according to a [news release](#) issued last month, the agency is “prioritizing programmed inspections in agricultural industries that employ temporary, nonimmigrant H-2A workers for seasonal labor.”

What Should You Do?

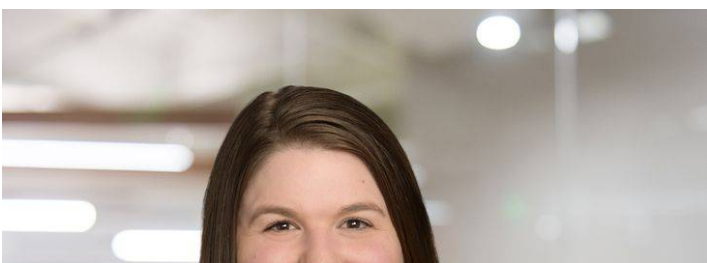
As you face extreme temperatures this summer, workplace safety should be a top priority. If you operate in California, you should consider taking these steps:

- implement policies and procedures that protect your farmworkers from heat-related injuries and comply with Cal/OSHA’s heat illness prevention standards;
- review Cal/OSHA’s [best practices](#) and other heat safety resources and be prepared for the agency to conduct a targeted inspection at your worksite;
- work with your legal counsel to ensure that your written heat illness prevention plan is effective and legally compliant;
- train your supervisors and employees on heat illness prevention;
- stay tuned for any developments related to SB 1299 – if it’s enacted, consult your legal counsel when disputing the presumption applicable to workers’ compensation claims; and
- review wage and hour rules to ensure that high heat breaks are properly categorized – if you are paying employees a piece rate, the high heat break should be compensated as nonproductive time at the employee’s regular rate of pay, just like a typical rest period.

Conclusion

We will continue to monitor these developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips’ Insight System](#). If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our California offices](#), or any attorney on [our Agriculture Team](#).

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Rebecca Hause-Schultz

Partner

916.210.0391

Email



Alden J. Parker

Regional Managing Partner

916.210.0404

Email

Service Focus

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