

Asunción Valdivia Heat Illness, Injury and Fatality Prevention Act of 2023 S.2501/H.R.4897

IMPORTANT FACTS

- Heat is the leading weather-related killer, and it is becoming more dangerous. The last 10 years have been the hottest on record.ⁱ In 2023, the northern hemisphere suffered through a hotter year than any in the past two millennia. It is certain that 2024 will rank in the top 5 hottest years on record and there is a greater than 60% chance it will exceed the record broken in 2023.ⁱⁱ
- Heat exposure is responsible for as many as 2,000 worker fatalities in the U.S. each year.ⁱⁱⁱ Up to 170,000 workers in the U.S. are injured in heat stress-related accidents annually.^{iv} When temperatures rise above 90°F, there is a 5-6% increase in workplace injuries, particularly traumatic injuries such as fractures, dislocations and lacerations.^v
- Worker heat-stress tragedies disproportionately strike workers who are poor,^{vi} Black or Brown as they are overrepresented in many of the jobs with the highest rates of heat stress.^{vii} Latino workers are three times more likely to die of heat stress.^{viii} Black construction workers are 51% more likely to die of heat stress than other construction workers.^{ix}
- The failure to implement simple heat safety measures costs U.S. employers nearly \$100 billion every year in lost productivity.^x Employers without heat protections are also paying for absenteeism; overtime costs; repair or replacement of equipment, vehicles and property due to accidents; increased workers' compensation premiums; lawsuits for negligence; and loss of reputation and public goodwill.^{xi}
- There are many simple ways employers can mitigate heat stress in the workplace, like providing access to cool drinking water and adequate "cool down" breaks in a shaded or air-conditioned space.
- Nearly 70% of heat-related deaths occur during a worker's first three days on the job, so acclimatization is a critical heat stress protection.^{xii}
- At least 50,000 injuries and illnesses could be avoided in the U.S. each year with an effective Occupational Safety and Health Administration (OSHA) heat standard.^{xiii}

Many occupations expose workers to dangerous heat stress risks, both indoors and outdoors. Examples of workers at particularly high risk are farm laborers, construction workers, utility workers, delivery drivers, first responders, refuse and recycling workers, oil rig workers and those who work in warehouses, restaurants, bakeries, commercial laundries, and factories.

**Congress must direct the Occupational Safety and Health Administration (OSHA)
to issue an interim heat standard to protect workers from excessive heat.**

The Asunción Valdivia Heat Illness, Injury and Fatality Prevention Act of 2023

In 2021, OSHA began the process of creating a workplace heat standard. However, on average it takes OSHA seven to eight years to finalize a rule.^{xiv} OSHA has nearly completed the process of developing a proposed heat standard — a Notice of Proposed Rulemaking (NPRM) — but a final rule is likely still a couple years away. Workers can't afford to wait.

The bipartisan Asunción Valdivia Heat Illness, Injury and Fatality Prevention Act directs OSHA to issue an interim standard that would protect workers until a final rule can be completed. It is essential that Congress takes this step.

KEY ELEMENTS OF THE BILL

- The bill directs OSHA to create an outdoor/indoor heat standard (currently underway).
- The bill requires employers to provide employees exposed to hazardous heat levels with water, rest in the shade or a cool location, and policies to acclimatize workers to the heat.
- The bill directs OSHA to create an enforceable interim heat standard to protect workers until the final standard is issued. The interim heat standard will also serve as the NPRM for the final standard.
- In response to a petition for modification of the heat standard (once it exists), OSHA must make a decision to grant or deny the petition within 18 months and issue a new rule/modification within two years of granting the petition.
- The bill ensures employees have the right to be free from retaliation by employers for reporting violations of the heat standard.
- The National Agricultural Workers Survey will be updated with questions useful to better understand the prevalence of heat related illness and injury to farmworkers.

Helmed by U.S. Senators Sherrod Brown (OH), Alex Padilla (CA) and Catherine Cortez Masto (NV) and U.S. Representatives Judy Chu (CA-28), Raúl Grijalva (AZ-7), Alma Adams (NC-12), and Bobby Scott (VA-3), the Asunción Valdivia Heat Illness, Injury and Fatality Prevention Act (named for a California farmer who died working under extreme heat conditions), will provide workers with the essential lifesaving protections they deserve and save the U.S. economy \$100 billion per year. Temperatures are rising and workers are suffering right now. Congress must act immediately!

For additional information, contact Juley Fulcher (jfulcher@citizen.org), Worker Health and Safety Advocate in Public Citizen's Congress Watch Division.

Visit <https://www.citizen.org/tags/heat-stress-network/> for additional information and resources.

-
- ⁱ *Global Temperature – Latest Annual Average Anomaly: 2023*, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA) (accessed May 16, 2024), <https://tinyurl.com/4544ntcp>.
- ⁱⁱ *April 2024 Global Climate Report – Global Annual Temperature Rankings Outlook*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NATIONAL CENTERS FOR ENVIRONMENTAL INFORMATION (May, 2024), <https://tinyurl.com/v4u7m7b6>.
- ⁱⁱⁱ Juley Fulcher, *Boiling Point: OSHA Must Act Immediately to Protect Workers from Deadly Temperatures*, PUBLIC CITIZEN (June, 2022), <https://bit.ly/3tfFlff>. [hereinafter Fulcher, *Boiling Point* (June, 2022).]
- ^{iv} *Id.*
- ^v Sebastian Negrusa, Olesya Fomenko and Vennela Thumula, *Impact of Excessive Heat on the Frequency of Work-Related Injuries*, WORKERS' COMPENSATION RESEARCH INSTITUTE, WC-24-18 (May 2024), <https://tinyurl.com/mwxnvcx3>.
- ^{vi} R. Jisung Park, Nora Pankratz & A. Patrick Behrer, *Temperature, Workplace Safety, and Labor Market Inequality*, IZA INSTITUTE OF LABOR ECONOMICS DP No. 14560 3 (July, 2021), <https://bit.ly/2V3WriL>.
- ^{vii} See, Fulcher, *Boiling Point* (June, 2022), <https://bit.ly/3tfFlff>.
- ^{viii} *Climate Change: Heat And Drought*, HISPANIC ACCESS FOUNDATION (accessed May 8, 2024), <https://bit.ly/3rDPhSv>.
- ^{ix} Xiuwen Sue Dong, Gavin West, Alfreda Holloway-Beth, Xuanwen Wang & Rosemary Sokas, *Heat-Related Deaths Among Construction Workers in the United States*, 62(12) AMERICAN JOURNAL OF INDUSTRIAL MEDICINE 1047-1057 (Dec. 2019), <https://bit.ly/3CWYd6L>.
- ^x Luke A. Parsons, Yuta J. Masuda, Timm Kroeger, Drew Shindell, Nicholas H. Wolff and June T. Spector, *Global Labor Loss Due to Humid Heat Exposure Underestimated for Outdoor Workers*, 17(1) ENVIRONMENTAL RESEARCH LETTERS 014050 (2022), <https://bit.ly/3DXvrWn>.
- ^{xi} See, e.g., Juley Fulcher, *The Cost of Inaction: The Failure of Employers to Mitigate the Effects of Heat Stress on Workers Causes Preventable Heat-Related Illness, Injury and Fatalities and Costs the U.S. Economy Nearly \$100 Billion Each Year*, PUBLIC CITIZEN, (October 4, 2022), <https://tinyurl.com/43fvuhwa>.
- ^{xii} See, e.g., Sheila Arbury, Brenda, Jacqklitsch, Opeyemi Farquah, Michael Hodgson, Glenn Lamsom, Heather Martin and Audrey Proffitt, *Heat Illness and Death Among Workers – United States, 2012–2013*, 63(31) MORBIDITY AND MORTALITY WEEKLY REPORT (MMWR), CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) 661-665 (August 8, 2014), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6331a1.htm>.
- ^{xiii} Fulcher, *Boiling Point* (June, 2022), <https://bit.ly/3tfFlff>.
- ^{xiv} See, e.g., CONGRESSIONAL RESEARCH SERVICE, *COST BENEFIT ANALYSIS IN FEDERAL AGENCY RULEMAKING* (Mar. 8, 2022), <https://bit.ly/3RrAOjC>.