

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

Section 1. Short Title

This section establishes that the short title of the Act is the *Asunción Valdivia Heat Illness, Injury, and Fatality Prevention Act of 2023*.

Section 2. Employer Duties

This section provides that employers have a duty in general to furnish employment and a place of employment free from conditions that may reasonably be anticipated to cause death or serious physical harm from heat stress. It also provides that employers have a specific duty to comply with standards and rules promulgated pursuant to this Act.

Section 3. Worker Heat Protection Standards

This section authorizes the Occupational and Safety Health Administration (OSHA) to develop standards for the prevention of heat-related illness and injury on the job. OSHA is directed to develop standards that provide the maximum level of worker protection to the extent feasible. In light of the longstanding difficulties OSHA has faced to issue needed worker health and safety standards quickly, this section sets out policies and procedures to facilitate a swift and effective rulemaking process to produce the strongest workable standards.

In the course of weighing considerations for the development of a standard, the Secretary is charged with prioritizing worker safety, empowered to adopt outside expert findings, and encouraged to replicate measures that have been proven to work in the states.

OSHA is broadly empowered to adopt a range of protective measures that are reasonable and appropriate to protect workers from heat stress. Given increased scrutiny in the courts applying the Major Questions Doctrine when reviewing creative applications of such broad grants of authority, OSHA is specifically authorized to think creatively and update standards over time, as technology improves or heat-related hazards worsen. OSHA will establish any criteria under which an employer must implement some of the most basic policies to prevent heat-related illness and injury: paid rest breaks, water or other suitable hydration, and shaded or cooled spaces to recover from the heat. Additionally, OSHA must ensure that workers, including piece-rate workers, are fully compensated in any periods away from the usual job tasks required under the standard (such as training and paid rest breaks); that workers can understand training and materials in their own language; and that a longstanding standard on temporary labor camps is also updated to the extent necessary to prevent heat illness. Whenever OSHA updates or revises heat standards in the future, it will be prohibited from rolling back existing protections and putting workers back at risk of heat-related illness and injury.

OSHA is required to issue an interim final rule on the prevention of heat-related illness and injury on the job within one year of enactment.

This section also creates a process for OSHA to revise and build upon these standards in the future, with enforceable timelines. OSHA will be able to launch rulemaking on its own initiative or in response to a petition for rulemaking. OSHA will be required to offer a substantive and timely decision on any petitions for rulemaking under this Act within 18 months. If OSHA approves a petition for rulemaking, it must publish a proposed rule within one year. A proposed rule must be followed by a final rule within one year. The rulemaking docket must be transparent about any changes made in the course of review coordinated by the White House's Office of Management and Budget. Any party may challenge a rule in the courts only by filing a petition within 60 days in the U.S. Court of Appeals for the D.C. Circuit.

Section 4. Implementation and Enforcement

In general, any standard or regulation promulgated pursuant to this Act will be treated the same as any other OSHA rule. Instead of the aggressive statutes of limitations in the *Occupational Safety and Health Act* (OSH Act) of 6 months for citations and 30 days for whistleblower claims, this Act sets 4 years and 180 days, respectively. Given the Occupational Safety and Health Review Commission's history of usurping OSHA's primary role in interpreting the OSH Act and OSHA rules, this Act requires the Commission to give substantial deference to OSHA's interpretations. OSHA will be allowed to develop additional recordkeeping and reporting requirements but may also incorporate such requirements in existing required forms and logs, without new paperwork, provided that violations for heat-related issues are enforceable separately under the 4-year statute of limitations. Protections for whistleblowers against retaliation are expanded to include a private right of action if OSHA opts not to pursue a whistleblower's claim.

Section 5. General Provisions

This section provides for severability and authorization of appropriations.

Section 6. Agenda for Further Review and Action

This section directs the Department of Labor to update its National Agricultural Workers Survey to include questions relevant to measure the incidence of heat-related illness and injury and assess the impact of this Act.

Section 7. Definitions

This section defines key terms, including heat stress and heat-related illness and injury.