

9SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1299 (Cortese)
Version: March 21, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Farmworkers: benefits

DIGEST

This bill creates a rebuttable presumption that a heat-related injury suffered by a farmworker arose out of and in the course of their employment for the purposes of workers' compensation when the employer fails to comply with the heat illness prevention regulations, as specified.

EXECUTIVE SUMMARY

California's farmworkers work in dangerous conditions to grow, cultivate, and harvest the food eaten across the nation and globe. In California, these dangerous conditions often include high summertime temperatures and heat waves that exceed 100 degrees Fahrenheit. In recent years, many farmworkers have suffered heat-related illness and death from these extreme temperatures. In response, the state has implemented regulations to require growers establish heat illness prevention plans and emergency response procedures and provide farmworkers with adequate water and shade, access to cool-down rest breaks, and training on heat illness prevention. However, data suggests that many growers are not in compliance with the regulations. As global warming continues to push the state's average temperatures higher, the incidence of extreme heat and heat-related illness among farmworkers will likely continue to increase.

This bill creates a rebuttable presumption that a farmworker's heat-related illness arose out of and in the course of their employment when their employer is not in compliance with the state's heat illness prevention standards, and transfers nongeneral funds from the Workers' Compensation Administration Revolving Fund for the administration of its provisions. SB 1299 is sponsored by the United Farm Workers and the California Food & Farming Network, and is supported by the California Labor Federation, the California Rural Legal Assistance Foundation, the County of Santa Clara, Central

California Environmental Justice Network, the Central Coast Alliance United for a Sustainable Economy, and the Centro Binacional de Desarrollo Indigena Oaxaqueño. It is opposed by the California Chamber of Commerce and a collection of farm and agricultural associations. It passed out of the Senate Labor, Public Employment and Retirement Committee on a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires every employer to carry workers' compensation insurance through an insurer or by self-insuring with the consent of the Department of Industrial Relations (DIR). (Labor Code §3700.)
- 2) Establishes the Division of Workers' Compensation (Division) and Workers' Compensation Appeals Board (WCAB) within DIR and charges it with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200 et seq.)
- 3) Charges the WCAB with hearing proceedings related to the recovery of compensation, any right or liability arising out of the compensation, the enforcement against an employer or insurer of any liability, the determination of any question as to the distribution of compensation, the determination of any question as to who are dependents of a deceased employee, for obtaining any order the WCAB is authorized to make, and for the determination of any other matter. Allows the WCAB to appoint one or more workers' compensation administrative law judges in any proceeding, refer, remove to itself, or transfer to a judge the proceedings on any claim. (Labor Code §§ 5300, 5310.)
- 4) Provides that the administrative director of the WCAB may adopt, amend, or repeal through public hearings any rules or regulations reasonably necessary to enforce the workers' compensation provisions. (Labor Code § 5307.3.)
- 5) Creates the Workers' Compensation Administration Revolving Fund (Fund) for the administration of the workers' compensation program, the Return-to-Work Program, and the enforcement of the insurance coverage program established by the Labor Commissioner. (Labor Code §62.5.)
- 6) Specifies that upon knowledge of an injury, the employer or their agent shall provide a workers' compensation claim form to the injured employee within one working day, and within one day of the claim filing, shall authorize medical treatment up to \$10,000 for 90 days or until the claim is rejected. If the claim is not rejected within the 90 days, it is presumed compensable. (Labor Code §5402.)

- 7) Provides that liability for compensation, in lieu of any other liability except as specified, is assigned to an employer, regardless of fault, for any injury an employee suffers arising out of and in the course of the employment, as specified. Provides that liability is assigned for an employee death if the injury proximately causes death, as specified. (Labor Code § 3600.)
- 8) Defines that a covered injury may either be “specific,” in which it occurred as a result of one incident, or “cumulative,” in which repetitive mentally or physically traumatic activities over a period of time combine to cause any disability or need for medical treatment. (Labor Code § 3208.1.)
- 9) Requires the employee to submit the claim within 30 days of the injury, but specifies that failure to do so is not a bar to recovery if the employer was not misled or prejudiced by the failure. (Labor Code §§ 5400, 5403.)
- 10) Charges WCAB with determining whether an employer has violated a Division of Occupational Safety and Health (Cal/OSHA) safety order and making specified findings regarding the manner in which it was violated, the cause of injury or death, and that the safety order was known to, and violated by the employer or their representative. (Labor Code §4551-4553.1.)
- 11) Establishes Cal/OSHA within the Department of Industrial Relations to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §§6300 et seq.)
- 12) Requires Cal/OSHA to investigate an employer or place of employment, with or without notice or hearings, if it learns or has reason to believe that an employment or place of employment is unsafe or injurious to the welfare of an employee. If Cal/OSHA receives a complaint from an employee or an employee’s representative that their employment or place of employment is not safe, it shall, with or without notice or hearing, investigate the complaint of a serious violation within three working days. (Labor Code §6309)
- 13) Establishes heat illness prevention standards, titled the Maria Isabel Vasquez Jimenez heat illness standard, applicable to outdoor places of employment, as specified. Requires that employers:
 - a) provide cool, potable water free of charge to employees, as close as practicable to areas where employees work, and sufficient for one quart per employee per hour of work;
 - b) provide shade that is either open to the air or has ventilation or cooling, as close as practicable to the areas where employees are working, when temperatures exceed 80 degrees Fahrenheit, except as provided;

- c) make shade available when the temperature is below 80 degrees Fahrenheit, except as provided;
 - d) allow and encourage employees to take preventative cool-down rest periods in shade when they feel the need to do so to protect themselves from overheating, and requires the employer monitor a resting employee for and ask about signs of heat illness;
 - e) provide appropriate first aid or emergency response, if an employee taking their cool-down rest exhibits signs of heat illness;
 - f) implement high heat procedures when temperatures equal or exceed 95 Fahrenheit, to include to the extent practicable:
 - i) ensure that effective communication by voice, observation, or electronic means is maintained so that employees can contact a supervisor when necessary;
 - ii) observe employees for alertness and signs or symptoms of heat illness as specified;
 - iii) designate one or more employees to each worksite to call for emergency medical services, if necessary;
 - iv) remind employees throughout the work shift to drink plenty of water;
 - v) conduct 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;
 - vi) for agricultural employees, ensure that employees take a 10 minute cool-down rest every two hours, which can be taken concurrently with any other meal or rest period if they coincide;
 - g) implement emergency response procedures, as specified;
 - h) observe employees, including new employees for a period of 14 days, during temperatures of 80 degrees Fahrenheit or greater to monitor acclimatization;
 - i) provide employee and supervisor training on heat illness detection, prevention, and occurrence, before an employee begins works and a supervisor begins supervising employees; and
 - j) establish, implement, and maintain a written heat illness prevention plan, with specified information, either as part of the employer's written Injury and Illness Program, or maintained in a separate document. (8 CCR §3395, Labor Code §6721.)
- 14) Requires DWC to submit to the standards board, by December 1, 2025, a rulemaking proposal to consider revising Section 3395, as described above, considering requiring employers to distribute a copy of the Health Illness Prevention Plan to all new employees upon hire and upon training as required, requiring employers to distribute a copy of the plan to all employees at least once annually, and reducing the Air Quality Index (AQI) threshold in Section 5141.1 of Title 8 of the Code of Regulations for requiring respiratory protective equipment. Requires the standards board to review the proposal on or before December 1, 2025, and to consider

developing or revising regulations for additional protections related to acclimatization to higher temperatures. (Labor Code § 6721.)

- 15) Requires the Labor and Workforce Development Agency, on or before July 1, 2023, to establish an advisory committee to study and evaluate the effects of heat on California's workers, businesses, and the economy. The advisory committee shall submit a report of its findings to the Legislature by January 1, 2026. (Gov. Code §15562.5.)

This bill:

1. Makes the following findings and recommendations:

- a. The intent and purpose of this act is to prevent increasing farmworker heat-related injury, illness, and death, as climate change raises temperatures. It is the intent of the Legislature that all agricultural employers consider the climate change heat-related needs of farmworkers and do whatever is necessary to prevent injury, illness, and death, consistent with existing laws and regulations. It is not the intent of this act to change any existing heat-related regulation.
- b. Farmworkers are facing climate change in a climate of fear as heat-related injury, illness, and death increases.
- c. The largest agricultural counties in California are experiencing record-breaking heat waves. In 2022, the City of King City in the County of Monterey broke its hottest temperature ever recorded at 116 degrees Fahrenheit (F). The City of Fresno recorded an all-time high at 114 F. The City of Stockton in the County of San Joaquin shattered its 1988 record of 106 degrees by reaching 112 F. The City of Napa set a record at 114 F. The City of Modesto in the County of Stanislaus topped its prior record at 106 F. In 2023, the City of Paso Robles reached an all-time high of 112 F, breaking the old record of 108 F set in 2010.
- d. According to the United States Department of Labor, approximately 77 percent of farmworkers were born outside the United States and many do not speak English. Fear of retaliation and being fired for work-related injuries strongly discourages farmworkers from reporting heat-related injuries or violations by their employers.
- e. From 2018 to 2019, the number of suspected and confirmed farmworker heat-related deaths increased by approximately 130 percent. In 2022, the Office of the Governor noted that, "Extreme heat ranks amongst the deadliest of all climate change hazards, with structural inequities playing a significant role in the capacity of individuals, workers, and communities to protect and adapt to its effects."

2. Provides that, if an employer, as defined, fails to comply with the heat illness prevention standards set forth in Labor Code Section 6721 and Section 3395 of Title 8 of the California Code of Regulations, any resulting heat-related injury suffered by an employee must be presumed to have arisen out of and in the course of the employee's employment. Provides that this presumption is disputable and may be controverted by other evidence. Specifies that the applicable heat illness prevention standards include, but are not limited to:
 - a. establishing, implementing, and maintaining an effective heat illness prevention plan and making it available at the worksite in English and the language understood by the majority of employees;
 - b. providing recognition and response training as required; and
 - c. providing access to shade and water and a cool-down rest period, as required.
3. Defines injury to include any heat-related injury, illness, or death that develops or manifests after the employee was working outdoors during or within the pay period in which an employee suffers any heat-related illness, injury, or death.
4. Specifies that compensation that is awarded pursuant to the bill's provisions shall include full hospital, surgical, medical treatment, disability, indemnity, and death benefits, as provided.
5. Establishes the Farmworker Climate Change Heat Injury and Death Fund, with a one-time transfer of five million dollars from the nongeneral funds of the Workers' Compensation Administration Revolving Fund, for the purpose of paying any administrative costs related to the presumption provided in this bill.

COMMENTS

1. Author's statement

According to the author:

As climate change continues to escalate, breaking heat records across California, our farm workers are increasingly vulnerable. SB 1299 responds to the changing climate by protecting our essential farm workers. Farm workers who suffer injury, illness, or death while working for a noncompliant employer will be treated and compensated expeditiously.

The bill promotes compliance with the existing outdoor heat regulation through a rebuttable presumption for heat-related injury and death. It does not create any additional workers' compensation benefit level beyond what is otherwise available under existing workers' compensation law. Nor does it apply to a compliant employer.

2. Farmworkers are dying in the fields from heat

a. *Farm workers & the agricultural industry*

Agriculture is one of the largest industries in California, and accounts for over a third of the United States' vegetables and two-thirds of its fruits and nuts.¹ This industry relies on about 500,000 to 800,000 farmworkers, who work mostly outdoors to plant, irrigate, nurture, and harvest the hundreds of different crops grown throughout the state.² California's farmworkers are primarily Latino, and the large majority are not United States citizens.³ The median personal income for a farmworker is about \$20,000 to \$25,000, and 73 percent of farmworker households earn less than 200 percent of the federal poverty line.⁴

Agriculture is one of the least regulated industrial workplaces in the nation. This is despite the fact that agricultural work primarily involves a significant amount of time outdoors, and is one of the most dangerous industries for workers.⁵ One of the ways in which agricultural work is so dangerous for farmworkers is through exposure to extreme heat. California's Central Valley and Central Coast, where the majority of the state's agricultural land is located, regularly experience high summer temperatures above 100 degrees. In 2023, California witnessed record high summer temperatures across the state, as did the planet.⁶ Daytime temperatures in many California inland areas exceeded 100 degrees, with temperatures in Death Valley, the hottest place on Earth, reaching 128 degrees on July 16, 2023.⁷ Such extreme heat incidents and high average temperatures across the state have been increasing, and will only increase more as climate change continues to affect the state.

Thus, farmworkers complete some of the most difficult and dangerous work in the economy, while making some of the lowest incomes of California workers. In addition,

¹ California Department of Food & Agriculture, California Agricultural Statistics Review 2019-2020 (2020).

² Philip L. Martin, How many workers are employed in California agriculture?, California Agriculture Vol. 71(1) (Aug. 23, 2016), p. 30-34, available at <https://calag.ucanr.edu/Archive/?article=ca.2016a0011>.

³ United States Department of Labor, California Findings from the National Agricultural Workers Survey (NAWS) 2015-2019: A demographic and Employment Profile of California Farmworkers, Research Report No. 15 (Jan. 2022), available at <https://www.dol.gov/agencies/eta/national-agricultural-workers-survey/research>.

⁴ *Id.*, California Research Bureau, Farmworkers in California: A Brief Introduction, S-13-017 (Oct. 2013).

⁵ Bureau of Labor Statistics, National Census of Fatal Occupational Injuries in 2022, United States Department of Labor, USDL-23-2615 (Dec. 19, 2023) (finding that the fatal work injury rate in 2022 for all industries was 3.7 fatalities per 100,000 full-time equivalent workers, while it was 23.5 fatalities per 100,000 for farming, fishing, and forestry occupations, the highest rate of any industry.)

⁶ Seth Borenstein, California's Death Valley sizzles as brutal heat wave continues, Associated Press (Jul. 16, 2023), available at <https://apnews.com/article/death-valley-heat-wave-california-hottest-record-c1b2d83dc384e46f133d460893787c52>; California Office of Emergency Services, Extreme Heat Breaking Records at Home and Beyond (Aug. 2, 2023), available at <https://news.caloes.ca.gov/extreme-heat-breaking-records-at-home-and-beyond/>.

⁷ Borenstein, *supra* note 6.

since many farmworkers are undocumented or do not have permanent immigration status, they are not eligible for many public benefits, and can be vulnerable to intimidation and harassment due to their immigration status. This is why, according to the author, many farmworkers fear retaliation for reporting an injury to their employer or asserting their rights.

b. Heat-related deaths and illness among farmworkers

In the summer of 2005, California experienced one such heat wave. During the heat wave, five farmworkers died while working in the fields.⁸ In response, Governor Schwarzenegger instructed California Occupational Safety and Health Administration (Cal/OSHA) to promulgate emergency heat stress regulations to require all employers to allow outdoor workers to rest in a shaded area if they are suffering from heat illness or feeling the effects of heat, and to require that employers and workers receive training on recognizing, preventing, and treating heat stress.⁹ These regulations were made permanent in June of 2006, becoming the first heat illness prevention standards for outdoor workers in the country at the time.¹⁰ The permanent rules enacted in 2006 required employers to provide workers access to filtered drinking water, provide shade for employees suffering from heat illness, and train workers and supervisors on the risk factors for heat illness, how to avoid it, and the employer's procedures relating to the standard and emergency procedures if an employee suffers heat illness.

However, farmworkers have continued to die from heat related illness in the fifteen years since. The United Farm Workers (UFW), the farmworker union founded by César Chávez and Dolores Huerta, recorded two suspected heat-related deaths of farmworkers in 2006, one in 2007, and six in the first half of 2008.¹¹ One of the farmworkers who died in 2008 was Maria Isabel Vasquez Jimenez, a 17-year-old, pregnant farmworker originally from Oaxaca, Mexico.¹² The temperature was above 95 degrees when Maria collapsed while working in the fields; when she arrived at the hospital, she was in a coma with a body temperature of 108 degrees. Reports claimed that the farm labor contractor that had hired her had been fined and cited for failing to comply with California's heat illness prevention standards two years prior to Maria's

⁸ United Farm Workers, Services for Constantino Cruz, 5th valley farm worker to die from heat in July (Aug. 2, 2005), available at <https://ufw.org/Services-for-Constantino-Cruz-5th-valley-farm-worker-to-die-from-heat-in-July/>.

⁹ Josh Cable, California: Worker Deaths Prompt Emergency Heat Stress Rule Proposal, EHS Today (Aug. 4, 2005), available at <https://www.ehstoday.com/archive/article/21907188/california-worker-deaths-prompt-emergency-heat-stress-rule-proposal>.

¹⁰ Katherine Torres, California Adopts Standard to Stave Off Heat-Related Deaths, EHS Today (Jun. 21, 2006), available at <https://www.ehstoday.com/safety/article/21904231/california-adopts-standard-to-stave-off-heat-related-deaths>.

¹¹ United Farm Workers, Suspected Heat Related Farm Worker Deaths: July 2004- July 2008 (Aug. 8, 2008), available at <https://ufw.org/suspected-heat-related-farm-worker-deaths-july-2004-july-2008/>.

¹² Sasha Khokha, Teen Farmworker's Heat Death Sparks Outcry, National Public Radio (Jun. 6, 2008), available at <https://www.npr.org/2008/06/06/91240378/teen-farmworkers-heat-death-sparks-outcry>.

death.¹³ Maria's death was a preventable tragedy. While some data suggests that heat-related injuries declined 30 percent after California's heat regulations were implemented in 2005, reports of farmworker heat-related illness and death have continued, including just last year.¹⁴

Data from the United States Department of Labor (DOL) and studies from scholars suggest that the issue of heat illness significantly affects many workers every year. DOL data from 2010 to 2020 recorded 267 worker heat deaths nationally, with more than 40 of those deaths taking place in California.¹⁵ A study from an economist at UCLA estimated that heat causes illness or injury to 20,000 California workers every year.¹⁶

c. The impact of heat on farmworkers' health

Heat is so deadly because it can have serious, fast-acting effects on the human body. Exposure to high temperatures can cause illnesses like heat rash, heat cramps, heat syncope (fainting), rhabdomyolysis, heat exhaustion, and heat stroke. Rhabdomyolysis is the rapid breakdown and death of muscle tissue, which can cause muscle cramps and pain, weakness, irregular heart rhythms, seizures, and damage to the kidneys.¹⁷ Heat exhaustion is the body's response to an excessive loss of water and salt, and can cause headache, nausea, dizziness, weakness, thirst, irritability heavy sweating, decreased urine output, and elevated body temperature. Heat stroke is the most serious heat-related illness, and occurs when the body can no longer regulate its temperature. Heat stroke can quickly elevate the body's temperature, and can cause permanent disability and death if the individual does not receive prompt emergency treatment.¹⁸ Moreover, numerous studies have found that heat stress and high heat can increase mortality and morbidity, and is linked to cardiovascular and respiratory diseases.¹⁹

¹³ *Id.*

¹⁴ Jisung Park et al., *Temperature, Workplace Safety, and Labor Market Inequality*, University of California, Los Angeles (Jun. 28, 2021), available at <https://ucla.app.box.com/s/14m6pj1algt7rwb8ihq4lyqjhm2ueejj>; Esther Quintanilla, *Farmworker dies in Fresno county after working in extreme heat. 'He should not have died.'*, KVPR (Aug. 18, 2023), available at <https://www.kvpr.org/local-news/2023-08-18/farmworker-dies-in-fresno-county-after-working-in-extreme-heat-he-should-not-have-died>.

¹⁵ Brian Edwards & Jacob Margolis, *Why California Workers Are Still Dying from Heat – Despite Protections*, KQED (Sept. 8, 2021), available at <https://www.kqed.org/news/11886402/why-california-workers-are-still-dying-from-heat-despite-protections>.

¹⁶ Park, *supra* note 14.

¹⁷ National Institute for Occupational Safety and Health, *Heat Stress – Heat Related Illness*, United States Centers for Disease Control and Prevention (May 13, 2022), available at <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>.

¹⁸ *Id.*

¹⁹ See Kristie L. Ebi et al, *Hot Weather and heat extremes: health risks*, *The Lancet*, Vol. 398, Is. 10301 (Aug. 21, 2021), p. 698, available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01208-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01208-3/fulltext); Sadeer Al-Kindi et al, *Cardiovascular disease burden attributable to non-optimal temperature: analysis of the 1990-2019 global burden of disease*, *European Journal of Preventive Cardiology*, Vol. 30, No. 15 (Oct. 2023), p. 1623, available at

3. California's agricultural workplace rules on heat

In 2009, the UFW sued the state of California and Cal/OSHA claiming that the state had failed to adequately protect the safety of farmworkers and ensure compliance with its heat regulations. (*Bautista v. State of California* (2009), No. BC418871.) It brought a second lawsuit in 2012. Both lawsuits were settled in 2015, with Cal/OSHA agreeing to revise its policies and procedures for completing inspections more quickly and taking action against repeat violators, allow the UFW and the UFW Foundation through a memorandum of understanding with the state to report and refer potential violations to Cal/OSHA, conduct confidential internal audits of Cal/OSHA, taking farmworker testimony in the field during heat inspections, and focus on outdoor workplaces during periods of high heat, among other commitments.²⁰ As a result of this settlement, Cal/OSHA updated its heat illness prevention regulations.

The current heat illness prevention regulations are contained in California Code of Regulations Section 3395, known as the Maria Isabel Vasquez Jimenez Heat Illness Standard. (Ca. Code of Regs. § 3395.) These regulations require employers to:

- provide cool, filtered water sufficient for at least one quart per hour of work to employees free of charge;
- provide adequate shade when temperatures exceed 80 degrees Fahrenheit;
- allow employees to take preventative cool-down rests;
- provide appropriate first aid and emergency response when a worker is exhibiting signs of heat illness;
- implement effective emergency response procedures;
- train employees and supervisors on heat illness and prevention and risk factors, and the employers' heat illness prevention procedures; and
- establish, implement, and maintain an effective heat illness prevention plan.

In addition, the regulations require certain additional procedures when temperatures exceed 95 degrees Fahrenheit. When temperatures surpass 95 degrees, the employer must: ensure effective communication is maintained so workers can contact a supervisor if necessary; observe employees for signs of heat illness; and ensure that employees take at least one 10 minute cool-down rest every two hours.

Section 6721 of Title 8 of the California Code of Regulations requires that the Division of Workers' Compensation (DWC), the division of DIR that administers and monitors the workers' compensation system, review and propose revisions to Section 3395 by

<https://academic.oup.com/eurjpc/article/30/15/1623/7146482?login=true>; United States Environmental Protection Agency, Climate Change Indicators: Heat-Related Deaths (Apr. 2021), available at <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-related-deaths#ref20>.

²⁰ United Farm Workers, Better Enforcement of farm-worker heat rules as UFW and Brown Administration settle lawsuit (Jun. 11, 2015), available at <https://ufw.org/Better-enforcement-of-farm-worker-heat-rules-as-UFW-and-Brown-administration-settle-lawsuit/>; see also United Farm Workers, CA Heat Regs (Jan. 27, 2023), available at <https://ufw.org/heat/>.

December 1, 2025. (8 Cal. Code of Regs. § 6721.) It requires the DWC to consider requiring employers to distribute a copy of its heat illness prevention plan to all new employees and upon the required training, requiring employers to distribute the heat illness prevention plan at least annually to workers, and to consider changing specified requirements about at what air quality index an employer must provide respiratory protective equipment.

4. Compliance with the heat rules

The author asserts that part of why farmworkers are still suffering from heat-related illness and death is because growers are not following California's heat illness prevention regulations, and available reporting supports this assertion. One study out of the University of California, Merced, found that 22 percent of farmworkers reported that their employer never monitors for heat illness, that 82 percent say they have never received heat related illness training, and that about half of farmworkers reported that their employers always provide the required 10 minute rest breaks when the temperature is particularly high.²¹ The report also found that 21 percent of farmworkers surveyed said their employers never provided the required 10 minute rest breaks, and a quarter said their employer never or rarely provided the required shade. In 2019, Cal/OSHA conducted more than 4,000 heat-related inspections, and cited employers for noncompliance with the heat illness prevention regulations in 47 percent of the inspections.²² Complicating the state's ability to conduct inspections for enforcement and compliance are the persistent issues with staffing and funding faced by Cal/OSHA.

SB 988 also allocates funds from the Workers' Compensation Administration Revolving Fund for the use of administering its provisions. The bill would transfer five million dollars from the nongeneral funds of the Revolving Fund to a new Farmworker Climate Change Heat Injury and Death Fund. This one-time transfer of funds would be used to cover the costs of any administrative costs related to SB 988's provisions.

5. The worker's compensation system

California law requires that every employer carry workers' compensation insurance to cover their employees. (Labor Code § 3700.) Workers' compensation coverage covers work-related injuries that workers suffer while working, and is premised on the concept that workers should be protected from and compensated for injury or illness they suffered from the workplace.²³ Workers' compensation is based on a no-fault system, in

²¹ Paul Brown & Ana Padilla, *Farmworker Health in California: Health in a time of contagion, drought, and climate change*, University of California, Merced (Aug. 2022), available at <https://clc.ucmerced.edu/publications>.

²² Edwards & Margolis, *supra* note 15.

²³ California Department of Insurance, *The Evolution of Workers Compensation* (Oct. 4, 2023), available at <https://www.insurance.ca.gov/01-consumers/105-type/95-guides/09-comm/WorkersCompensation.cfm>.

which an injured employee does not need to prove that the injury or illness was the employer's or another's fault in order to receive compensation benefits. To qualify for workers' compensation, the injury must have "aris[en] out of and in the course of the employment." (Labor Code § 3600.) A covered injury may either be "specific," in which it occurred as a result of one incident, or "cumulative," in which repetitive mentally or physically traumatic activities occurred over a period of time cause any disability or need for medical treatment. (Labor Code § 3208.1.)

When a worker notifies their employer that they suffered a work-related injury, or the employer otherwise becomes aware of the work-related injury, the employer must provide the employee with a claims form within one day for the employee to complete and file with the employer to request workers' compensation. (Labor Code §§ 5401-5402.) The employee generally must submit the claim to their employer or the claims administrator within 30 days of the injury, and the administrator will then review the claim and either approve or deny it. (Labor Code § 5400.) If the claims administrator determines that the injury was not in the course of the employee's employment, or does not otherwise qualify, they may deny the claim. They generally have 90 days to deny the claim, after which point the claim is presumed to be compensable. (Labor Code § 5402.).

If the employee's claim is denied, or they are denied compensation for treatment or a specific treatment for the injury, they may have their case heard by an administrative workers' compensation judge within the Division of Workers' Compensation. (Labor Code § 5300.) A decision of the workers' compensation judge can be appealed to the Workers' Compensation Appeals Board (WCAB), which may grant reconsideration and consider the case. Additionally, decisions of the WCAB may be appealed to the state's appellate courts on certain writs.²⁴

6. This bill aims to provide workers assistance when they suffer a heat-related illness and ensure growers are complying with the heat rules

In light of increased heat-related deaths of farmworkers in the fields, SB 1299 aims to promote compliance with California's heat illness prevention regulations through a rebuttable presumption for heat-related injury or death in the workers' compensation system. SB 1299 states that, if an employer fails to comply with the state's heat illness prevention standards, any resulting heat-related injury to an employee shall be presumed to arise out of and in the course of employment. The bill provides that this presumption is rebuttable, but otherwise requires that a worker's compensation appeals board find in accordance of the presumption. SB 1299 also defines injury for its purposes to include any heat-related injury, illness, or death that develops or manifests after the employee was working outdoors during or within the pay period in which the

²⁴ Workers' Compensation Appeals Board, Organization and Functions, Department of Industrial Relations (accessed Apr. 12, 2024), available at https://www.dir.ca.gov/wcab/about_wcabf.htm.

employee suffers any heat-related illness, injury, or death. Compensation made available under SB 1299 includes full hospital, surgical, medical treatment, disability indemnity, and death benefits.

Through these provisions, SB 1299 requires that a heat-related injury shall be covered by worker's compensation when the employer was not in compliance with the state's heat illness prevention regulations, unless the employer can rebut that the injury was work-related. The definition of heat illness in the bill, providing that it may cover illness, injury, or death that manifests or develops within any pay period in which the employee suffers a heat-related illness, would allow that worker's compensation could cover injury the worker suffers that does not immediately develop. Considering the extensive impact that heat exposure can have on an individual's body, symptoms and complications from the effects of heat illness could take time to manifest in the worker. SB 988 helps ensure such injuries can still be covered as a work-related heat illness.

7. The rationale for SB 1299's provisions

The author asserts that SB 1299 will ensure compliance with the state's heat illness prevention standards and ensure that farmworkers injured by heat illness while working for a noncompliant employer will be able to obtain prompt medical treatment. Certainly, by placing a presumption upon the employer when they are out of compliance with the heat illness prevention standards, SB 1299 will likely encourage more employers to comply with the heat illness prevention standards, as being liable for workers' compensation claims could increase the employer's worker compensation insurance premiums. However, such an increase is avoidable, if an employer ensures compliance of the heat illness prevent standards. Doing so may not guarantee that no employees will suffer heat illness, but could likely decrease the incidents of heat illness in the fields. As the data demonstrates, California's heat illness prevention regulations likely have contributed to some decrease in heat illness since they were first implemented in 2005; however, many growers continue to be out of compliance with their requirements.²⁵ Thus, helping ensure compliance could further reduce the amount of heat illness incidents and adverse health outcomes among California's farmworkers.

Furthermore, SB 1299's presumption is not entirely novel in workers' compensation law. There are a variety of other presumptions within the labor code for workers' compensation that provide a presumption that an injury arose out of the course of employment for the purposes of obtaining workers' compensation. For example, Labor Code Section 3212.15 provides a presumption that post-traumatic stress disorder (PTSD) arose out of the course of employment for firefighters and police officers. (Labor Code § 3212.15(c).) The law also includes a presumption that hernia, heart trouble, or pneumonia arose out of the course of employment for sheriffs, district attorney's office staff, and police and fire departments. (Labor Code § 3212.) As another example, Labor

²⁵ Edwards & Margolis, *supra* note 15.

Code Section 3212.1 includes a presumption that cancer arose out of the course of employment for firefighters when the cancer develops or manifests during a period in which a firefighter is in service to their department, and the firefighter can demonstrate that they were exposed to a carcinogen while in service to the department. (Labor Code § 3212.1.) Thus, the workers' compensation system already includes a variety of presumptions meant to allow certain workers the ability to obtain workers' compensation when their occupation is particularly hazardous, and the injury may be more difficult to attribute to a specific cause. Like the presumption in Section 3212.1, this bill creates a presumption that runs when an employee can show that the employer did not follow safety regulations to protect against the very types of heat-related injuries that the employee is requesting workers' compensation to treat.

Opposition to SB 1299 raises concerns about how it would be determined under this bill that an employer is not in compliance with the state's heat illness prevention regulations. This question would likely be addressed by a workers' compensation administrative judge upon a farmworker's appeal of a denial of coverage. An administrative workers' compensation judge would likely be well-suited for such a task, as they are required to evaluate specific factual questions in every case, including in cases regarding presumptions that already exist in the law. Such presumptions already regularly arise in workers' compensation proceedings. Additionally, evidence that an employer is not in compliance with heat illness prevention regulations may be as simple as evaluating if and how recently the employer was cited by Cal/OSHA for violations. SB 1299 also would not be the first instance in workers' compensation law in which a workers' compensation judge is tasked with considering whether an employer complied with workplace safety or other laws. Labor Code Section 4551, for example, requires consideration of whether an injury was caused by the failure of the employer to comply with any provision of law, or any safety order of Cal/OSHA. (Labor Code § 4551.)

Moreover, there is a legitimate public policy rationale for including such a rebuttable presumption as SB 1299's in workers' compensation law. Workers' compensation is primarily concerned with ensuring that an employer is responsible for the injuries a worker suffers on the job, as a result of their employment, and not the employee. From the very foundation of workers' compensation law early in the Twentieth Century, this premise made sense, as workers must be compensated for their work, and should not be expected to shoulder additional burdens or business expenses in the course of the work that is not part of their employment and compensation. Workers are paid for their labor, and should not be expected to suffer additional costs for that compensation; requiring them to do so would essentially diminish the compensation they receive and affect their life and health outside of the job. When California's workers' compensation system was created, it came about due to increased awareness and outrage at the poor and dangerous working conditions of early industrial America, and at the financially

devastating impact a work-related injury could have on a worker or their family.²⁶ Farmworkers also do work that is incredibly dangerous, and are at risk of financial distress from a significant medical expense given most farmworkers' average wages.

Yet workers' compensation law and workplace safety are also intrinsically tied: employers are required to maintain a safe and healthy workplace, and so it follows that a part of that obligation is that the employer ensure that injuries a worker suffers in the workplace are promptly treated at the employer's expense. Part of ensuring a safe and healthy workplace is ensuring that workers receive prompt medical care if they do suffer an injury. Thus, it is rational public policy to place a heavier burden on an employer to prove a worker's injury is not work-related when that employer is not adequately ensuring the safety of the workplace. The state has an interest in ensuring that employers are complying with its heat illness prevention regulations, and doing so would ensure fewer farmworkers suffer heat-related illness. SB 1299 could help accomplish this goal, and would help ensure farmworkers who do suffer heat-related injuries can be adequately compensated for their injuries.

8. Arguments in support

According to the United Farm Workers, the sponsor of SB 1299:

[SB 1299] would establish a Farm Worker Climate Change Heat Injury and Death administrative fund and promote employer compliance with existing state outdoor heat illness prevention standards by creating a rebuttable presumption – if a farm worker heat-related injury or death occurs and their agricultural employer is found to be noncompliant with the state heat illness prevention standards, the injury or death is presumed to have occurred in the course of employment.

There is an increasing number of farm worker heat-related injuries, illnesses, and deaths, as climate change raises temperatures. From 2018 to 2019, the number of suspected and confirmed farmworker heat-related deaths increased approximately 130 percent. And, the largest agricultural counties in California are experiencing record-breaking heat waves. In 2022, the City of King City in the County of Monterey broke its hottest temperature ever recorded at 116 degrees. The City of Fresno recorded an all-time high at 114 degrees. The City of Stockton in the County of San Joaquin shattered its 1988 record of 106 degrees by reaching 112 degrees. The City of Napa set a record at 114 degrees. The City of Modesto in the County of Stanislaus topped its prior record at 106 degrees. In 2023, the City of Paso Robles reached an all-time high of 112 degrees, breaking the old record of 108 degrees set in 2010.

²⁶ California Department of Insurance, *supra* note 23.

Additionally, farm workers face a climate of fear. According to the United States Department of Labor, approximately 77 percent of farm workers were born outside the United States and many do not speak English. Fear of retaliation and being fired for work-related injuries strongly discourages farm workers from reporting heat-related injuries or violations by their employers.

SB 1299 will promote agricultural employer consideration of the climate change heat-related needs of farm workers and do whatever is necessary to prevent injury, illness, and death. It would also ensure farm workers and their families receive appropriate and timely benefits authorized by existing law. The bill does not change any existing heat-related regulation or workers' compensation benefit.

9. Arguments in opposition

According to the California Chamber of Commerce, which is opposed to SB 1299:

SB 1299 would create a presumption that a heat-related illness or injury is occupational if the employer fails to comply with any of the heat illness prevention standards in Sections 6721 or 3395 of Title 8 of the California Code of Regulations. We are unaware of any data demonstrating that there is a need for a presumption for agricultural workers for heat-related illnesses and injuries.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation, regardless of fault. If there is ever a dispute in evidence, the law requires the evidence to be viewed in favor of the worker. As this Legislature and Administration have recognized many times, presumptions should be established *sparingly*. As this committee has said:

[T]he creation of presumptive injuries is an exceptional deviation that uncomfortably exists within the space of the normal operation of the California workers' compensation system. Rather than permit the existing system to operate in its normal course, the Legislature places its thumb on the scale: for these peace officers, for these injuries, employer must accept liability (barring unusual circumstances). As this essentially creates a set-aside microsystem within the larger workers' compensation system of automatic indemnity payments, the Legislature has historically decided to keep the number of presumed injuries and individuals who could qualify for such presumptions limited. If these exceptions were not limited, they would essentially consume and undermine the entire system, as it would create a situation where a small class of workers has more and more access to the workers' compensation system in a manner that other workers (some similarly situated) do not enjoy.

This administration correctly noted in prior veto messages that presumptions should only be created where there is clear and convincing evidence of the need for one:

A presumption is not required for an occupational disease to be compensable. Such presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence.

Preliminary internal audits demonstrate that almost no heat-related claims are filed in the agriculture industry. One large entity that covers the agriculture industry only had 13 heat-related claims over the last five years. That is less than three heat-related claims per year. There is no evidence that the system is failing to function regarding these claims. If proponents of SB 1299 have other data, we are happy to review it. But currently, we are unaware of any data supporting this bill.

The reason presumptions are so rarely enacted is because a presumption essentially forces an employer to cover an injury regardless of whether it does in fact fall under the purview of workers' compensation. For example, here the presumption would also apply even if the alleged violation was tangential to any potential injury. If just one supervisor did not receive the required training, the presumption would apply to any heat-related illness or injury for any employee, even one that has no interaction with that supervisor. And pursuant to proposed section 3212.81(b), it would apply to any illness or injury that develops during the pay period, which could be up to 31 days under Labor Code section 205.

Further, the bill does not include mechanics as far as how establishing applicability of the presumption would work. The bill does not specify how it would be determined that an employer did in fact violate the applicable provisions of heat illness prevention standard. If the bill contemplates that determination being made by the Workers Compensation Appeals Board (WCAB), we have strong concerns with imparting that responsibility on an entity that specializes in workers' compensation claims, not workplace safety.

While we appreciate the intent behind the proposed Farmworker Climate Change Heat Injury and Death Fund is to assist workers who suffer occupational injuries, it is unclear from the proposed language what the fund would cover. The language provides that it will fund "paying any administrative costs related to Section 3212.81". It is unclear if that is the workers' costs, which should not be necessary because those claims would be accepted and paid, or if it is the state's administrative costs. Further, the fund is coming from the Workers' Compensation Administration Revolving Fund. The Workers' Compensation

Administration Revolving Fund is funded through workers' compensation assessments paid by all employers, including public entities. Generally, other industry-specific funds are funded by that industry alone.

SUPPORT

United Farm Workers (sponsor)
California Food & Farming Network (sponsor)
California Labor Federation
California Rural Legal Assistance Foundation
Central California Environmental Justice Network
Central Coast Alliance United for a Sustainable Economy
Centro Binacional de Desarrollo Indigena Oaxaqueño
County of Santa Clara

OPPOSITION

Agricultural Council of California
American Property Casualty Insurance Association
Association of California Egg Farmers
Brea Chamber of Commerce
Building Owners and Managers Association
California Association of Joint Powers Authority
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Business Properties Association
California Chamber of Commerce
California Coalition on Workers' Compensation
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Producers
California Pear Growers Association
California Seed Association
California State Floral Association
California Strawberry Commission
Carlsbad Chamber of Commerce
Corona Chamber of Commerce
Cupertino Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Family Winemakers of California

Fontana Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Huntington Beach Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
Lodi District Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
NAIOP California
National Federation of Independent Business
Nisei Farmers League
Newport Beach Chamber of Commerce
Pacific Egg & Poultry Association
Rancho Mirage Chamber of Commerce
Redondo Beach Chamber of Commerce
San Pedro Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Tri-County Chamber Alliance
Tulare Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association

RELATED LEGISLATION

Pending Legislation: AB 2264 (Arambula, 2024) requires an employee to obtain and maintain a heat illness prevention training certification from Cal/OSHA within 30 days after the date of hire and require an employer to reimburse the employee for training time. AB 2264 is currently in the Assembly Labor and Employment Committee.

Prior Legislation:

SB 623 (Laird, Ch. 621, Stats. 2023) extended the workers' compensation PTSI presumption for specified public safety personnel and required the Commission on Health and Safety and Workers' Compensation to submit two reports to the Legislature regarding PTSI.

AB 636 (Kalra, Ch. 451, Stats. 2023) required an employer to provide an employee a specified notice that includes specified information about any federal or state disaster declaration for the county or counties in which the employee will be employed, and requires an employer of an employee with an H-2A agricultural visa to provide the employee on their first day a notice describing the agricultural employee's rights and protections under California law.

AB 1643 (Rivas, Ch. 263, Stats. 2022) required, on or before July 1, 2023, the Labor and Workforce Development Agency to establish an advisory committee of specified representatives to evaluate and recommend the scope of a study on the effects of heat on California's workers, businesses, and the economy.

SB 1159 (Hill, Ch. 85, Stats. 2020) created a rebuttable presumption that illness or death related to COVID-19 is an occupational injury and therefore eligible for workers' compensation benefits.

SB 542 (Stern, Ch. 390, Stats. 2019) created a rebuttable presumption for specified peace officers that a diagnosis of post-traumatic stress injury is occupational and therefore covered by workers' compensation.

AB 2346 (Butler, 2012) would have, among other things, made growers and the farm labor contractors they hire jointly liable for failing to supply farm workers with shade and water as required by law. AB 2346 was vetoed by Governor Brown, on the basis that it would burden courts with private lawsuits.

AB 2676 (Calderon, 2012) would have made it a misdemeanor, punishable by jail time and fines, to fail to provide water and shade, as specified, to employees. AB 2676 was vetoed by Governor Brown on the basis that creating a new criminal ground was not the appropriate solution to enforce heat illness prevention standards.

AB 805 (Chu, 2005) would have required Cal/OSHA to adopt heat illness standards. AB 805 died in the Senate Appropriations Committee.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 4, Noes 1)
