

January 14, 2025

The Honorable Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Re: Comments on Docket No. OSHA-2021-0009, Proposed rulemaking for “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings”

Via: Federal e-Rulemaking Portal, regulations.gov (Docket NO. OSHA-2021-0009)

Dear Assistant Secretary Parker,

The Center for WorkLife Law at the University of California College of the Law, San Francisco respectfully requests consideration of the following comments regarding the above-referenced rulemaking, which seeks to issue a new standard to require employers, over which the Occupational Safety and Health Administration (OSHA) has jurisdiction, to create a plan to evaluate and control heat hazards in their workplace. We support the proposed Rule as it is evidence based and will improve the health and safety of both outdoor and indoor workers.

The [Center for WorkLife Law](#) is an advocacy and research organization based at the University of California College of the Law, San Francisco, that works to ensure caregivers have the freedom to build and maintain economic security through employment and educational opportunities, without having to sacrifice their health or their loved ones’ care. Our work supports caregiving, pregnant, and postpartum workers in accessing their rights, including protection from health risks in the workplace. The [Dar a Luz: Legal Rights for Farmworkers in Pregnancy and Postpartum](#) project, a collaboration between WorkLife Law and the [Central Coast Alliance United for a Sustainable Economy \(CAUSE\)](#), addresses barriers experienced by pregnant and postpartum farmworkers in California seeking access to accommodations and paid leave to protect their health and that of their children from dangerous workplace exposures.

WorkLife Law bases these comments on our more than 25 years assisting employees, employers, attorneys, government enforcement agencies, journalists, and others with issues related to pregnancy and lactation accommodations in the workplace. We have deep experience applying

the various federal and state laws that require accommodation in the workplace and partnering with healthcare providers to keep workers safe. In particular, our legal helpline has provided direct assistance to scores of employees requesting accommodation and challenging denials, including related to heat exposure in the workplace.

Heat is of particular concern for pregnant workers as pregnancy makes a person more likely to experience heat illness. Pregnant people find it harder to cool down,¹ naturally have an elevated body temperature,² are more vulnerable to dehydration,³ and have hearts that are under significantly more strain than usual.⁴ This leaves pregnant people more vulnerable to heat stroke, heat exhaustion, and other heat-related illnesses.⁵ There is strong evidence that heat can lead to adverse birth outcomes, such as increased risk of birth defects, preterm labor, stillbirth, and fetal distress.⁶ Studies have shown that in the second trimester, “for each additional day a pregnant person spends in extreme heat...the odds of hospitalization increase by almost 5 percent.”⁷

Pregnant workers will benefit greatly from a heat standard under OSHA because workers’ access to information about heat illness and safety, as well as cool drinking water, break areas with cooling measures, and rest breaks will increase, thereby facilitating the ability to reduce or eliminate exposure to harmful excess heat. Marginalized pregnant workers will especially benefit from this heat standard as existing federal protections typically require workers to request accommodations and for employers to evaluate requests on an individualized basis (often requiring medical documentation to do so). The proposed Rule offers accessible and immediate protection for these vulnerable workers who otherwise might be unaware of their rights or unable to access them through more complicated processes.

Adequate protection from excessive heat in the workplace is critical to protect the health of our workforce. The proposed standard would make workplaces safer and improve workers’ ability to do their jobs in hot conditions; however, additional guidance is needed to ensure that workers are

¹ Abbey Rose, *Staying Safe in the Heat During Pregnancy*, MAYO CLINIC HEALTH SYSTEM (July 9, 2022), <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/staying-safe-in-heat-during-pregnancy>

² *Id.*

³ *Heat and Pregnancy*, EPA (last updated Sept. 23, 2024), <https://www.epa.gov/children/heat-and-pregnancy>

⁴ See Reza Ashrafi and Stephanie L. Curtis, *Heart Disease and Pregnancy*, 6 *CARDIOLOGY AND THERAPY* 157-173 (2017).

⁵ *Heat and Pregnancy*, CDC (June 25, 2024), <https://www.cdc.gov/heat-health/risk-factors/heat-and-pregnancy.html>

⁶ See Lindsey Konkel, *Taking the Heat: Potential Fetal Health Effects of Hot Temperatures*, 127 *ENV’T HEALTH PERSP.* (2019); Virginia Gewin, *How Did We Miss This for So Long?: The Link Between Extreme Heat and Preterm Birth*, *THE 19th NEWS* (May 30, 2024), <https://19thnews.org/2024/05/heat-waves-risky-premature-births/>

⁷ *Higher Temperatures Hurt Moms and Babies*, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES (May 2021), <https://nationalpartnership.org/report/higher-temperatures-hurt-moms/>

able to access the changes they need to stay safe. While extreme heat impacts all workers, it disproportionately affects low-income individuals, people of color, and pregnant women. These workers are less likely to be able to access their rights and must rely on clear and enforceable employer mandates to stay safe. What’s more, workers from these marginalized populations who fear retaliation are less likely to report employer violations.⁸

We respectfully request that OSHA consider the following regarding the proposed Rule:

I. The regulation should mandate employers provide periodic paid rest breaks at the initial heat trigger of 80 degrees Fahrenheit and above.

We applaud OSHA’s proposed regulation requiring employers to provide employees cool drinking water, break areas with cooling measures, indoor work area controls, acclimatization protocols for new and returning unacclimatized employees, and regular and effective two-way communication at the initial heat trigger.⁹ Additionally, we support the proposed regulation requiring employers to provide a minimum 15-minute paid rest break at least every two hours once the 90 degree high heat trigger is reached. Agricultural workers that suffer heat-related illness symptoms are less likely to take a break from physical work due to concerns about meeting productivity standards, losing income, and facing retaliation. Low-wage workers, who are over-represented in the industries most affected by excessive heat, often cannot afford to reduce their income by taking an unpaid break. Just as other employer-mandated safety measures are the employer’s responsibility to provide, employers should bear the responsibility of making these life-saving breaks affordable. Mandating paid rest breaks ensures that workers are able to use the protections to which they are entitled.

WorkLife Law urges OSHA to extend these break provisions to the initial heat trigger as well. Under the proposed standard, the decision of whether and when to take a break due to a heat-related stressor rests with the employee when the worksite is between 80 and 89 degrees. As a result, there will be a significant risk of employers interfering with employees taking breaks, making it difficult for workers to stay safe. For example, employers tell employees that they should be accustomed to working in 80-degree weather and therefore dismiss employee concerns at this temperature, despite the employee’s well-founded concern for their health. Studies have

⁸ See Laura Huizar, *Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation*, NATIONAL EMPLOYMENT LAW PROJECT (June 2019), <https://www.nelp.org/insights-research/exposing-wage-theft-without-fear/>

⁹ Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70771(proposed Aug. 30, 2024) (to be codified at 29 C.F.R. pt. 1910).

shown that 80 degrees is a reasonable trigger temperature given that ninety-six percent of civilian workforce fatalities occurred at and above this temperature.¹⁰ The regulation should mandate paid rest breaks at 80 degrees rather than leaving breaks at the employer’s discretion because serious health risks and even death are possible at this temperature.

Finally, the proposed regulation states an employer “could require the employee to notify a supervisor and wait to be relieved [...] as quickly as possible” when “allowing employees to leave their work station at their election would present a hazard.”¹¹ In practice this may serve as a mechanism for employers to require employees to ask for permission before taking a break in order to delay or discourage break-taking. WorkLife Law urges OSHA to offer guidance on what constitutes a “hazard” and how “as quickly as possible” will be assessed in the context of the heat standard so this does not become an unintended exception to the Rule.

II. We urge OSHA to remove the sedentary worker exemption.

As written, the proposed regulation excludes “sedentary work activities at indoor work areas.” The exemption would even apply to those workers who perform physical labor while seated, and those who perform non-seated activities for up to a third of their workday. Sedentary workers can experience dangerous physiological reactions to heat, even when indoors. In particular, pregnant workers in a more sedentary role can still be severely impacted by heat.¹²

Manual labor while standing, lifting or walking is not required for a worker to be affected by excessive heat. And, as noted above, pregnant workers can be particularly vulnerable; as an OB-GYN at the University of California San Francisco has described, “a pregnant woman in the third trimester who’s just sitting there, it is almost like she’s working out.”¹³ These risks are even further heightened for pregnant farmworkers who already face an increased risk of occupational heat-related illness due to the nature of agricultural work¹⁴ and the location of the fields in which they work.¹⁵

¹⁰ See Zaw Muang and Aaron W. Tustin, *Heat Death Line: Proposed Heat Index Alert Threshold for Preventing Heat Related Fatalities in the Civilian Workforce*, PUBMED (June 17, 2020), <https://pubmed.ncbi.nlm.nih.gov/32552315/>

¹¹ 89 Fed. Reg. 70786 (proposed Aug. 30, 2024) (to be codified at 29 C.F.R. pt. 1910).

¹² Jessica Kutz, *A Biden Rule on Heat Safety at Work Could Take Years*, THE 19TH (July 17, 2024), <https://19thnews.org/2024/07/biden-heat-safety-rule-pregnant-workers-fairness-act-protections/>

¹³ *Id.*

¹⁴ Joan Flocks et al., *Female Farmworkers’ Perceptions of Heat Related Illness and Pregnancy Health*, PUBMED (Nov. 13, 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5682625/>

¹⁵ Esther Quintanilla, *Central Valley, Where a Quarter of the U.S.’s Food is Grown, Faces Extreme Heat*, NPR (July 14, 2024), <https://www.npr.org/2024/07/14/nx-s1-5026962/central-valley-where-a-quarter-of-the-u-s-s-food-is-grown-faces-extreme-heat>

We urge the Administration to not exempt sedentary workers from protections, whether the workers are indoors or outdoors. If OSHA chooses to adopt an exemption, it should only apply below the 90-degree high-heat trigger.

III. We strongly support the acclimatization standards and urge OSHA to make clear who is responsible for ensuring temporary workers have this protection.

We strongly support the Administration’s proposal to adopt an acclimatization requirement but urge amendment of this provision in order to specifically address the needs of temporary workers. OSHA has recognized that the vast majority of heat-related deaths occur on a worker’s first week on the job, with nearly half on the very first day.¹⁶ Further, studies have shown that temporary workers could be twice as likely as permanent workers to face heat exhaustion.¹⁷

Many farmworkers, including pregnant farmworkers, work on a temporary, seasonal, or contract basis and switch employers due to the nature of hiring in the agricultural sector. Exposure to heat is not the same across agricultural jobs, and agricultural temporary workers can benefit from acclimatization. These and other temporary workers are often employed through staffing agencies and individual jobsites may be unaware of the workers’ previous experience with heat. The proposed regulation should be clarified to specify that host employers are responsible for ensuring temporary workers’ acclimatization to heat. Without a standard that ensures someone on the jobsite is responsible, these workers may be forced to forgo the acclimatization they need to stay safe on the job.

IV. We commend the Administration for requiring mandatory training and policies accessible to workers of varying languages and literacy levels.

Adopting the proposed standard on worker education that trains on the signs of heat stress and related employer policies will reduce barriers to health for the most marginalized workers. Numerous studies have shown that without attention to language equity, safety trainings given to workers with limited English proficiency are ineffective because workers cannot fully comprehend the critical safety information communicated in the trainings.¹⁸ Further, the proposed regulation’s requirement to consider workers’ literacy level is particularly important

¹⁶ See *Heat Prevention: Protecting New Workers*, OSHA (last accessed Jan. 13, 2025), <https://www.osha.gov/heat-exposure/protecting-new-workers>

¹⁷ *Labor Subcontracting in California: Key Facts*, NELP (March 2014), <https://www.nelp.org/app/uploads/2015/03/Labor-Subcontracting-in-California.pdf>

¹⁸ *Ensuring Language Justice in Occupational Safety and Health Training*, APHA (Nov. 7, 2017), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/ensuring-language-justice>

for the population we serve. For example, in California, it is estimated that there are roughly 165,000 indigenous farmworkers, about half of whom are Mixteco- speaking.¹⁹ Mixteco is primarily an oral language.

V. Conclusion

WorkLife Law thanks OSHA for responding to the increasing risks of workplace heat exposure, and again commend the Administration on this strong NPRM. We are certain that this proposed regulation will save the lives of workers, particularly pregnant and agricultural workers, whom we serve. Thank you for considering WorkLife Law’s suggestions to ensure comprehensive, equitable protection for all workers, especially the most vulnerable. We appreciate the opportunity to comment on this proposed rulemaking action.

Respectfully,

Center for WorkLife Law
University of California College of the Law, San Francisco

By:

Jessica Dimas, Legal Fellow, Reproductive Justice for Farmworkers
Juliana Franco, Senior Staff Attorney

¹⁹ Isabel Gross, *Indigenous Farmworkers Face Unique Barriers to Healthcare*, FARMWORKER JUSTICE (April 26, 2021), <https://www.farmworkerjustice.org/blog-post/indigenous-farmworkers-face-unique-barriers-to-healthcare/>