

Date of Hearing: March 30, 2022

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 2243 (Eduardo Garcia) – As Amended March 21, 2022

**SUBJECT:** Occupational safety and health standards: heat illness: wildfire smoke

**SUMMARY:** Requires the Division of Occupational Safety and Health (Cal/OSHA) to submit to the Occupational Safety and Health Standards Board (board) a proposal to revise the heat illness standard to include an ultrahigh heat standard and the wildfire smoke standard to reduce the Air Quality Index (AQI) for PM2.5 to 200 or greater for the provision of respiratory protective equipment. Specifically, **this bill:**

- 1) Requires Cal/OSHA, before January 1, 2024, to submit to the board a rulemaking proposal to revise the following:
  - a) The Maria Isabel Vasquez Jimenez heat illness standard, to include an ultrahigh heat standard for outdoor employees for heat in excess of 105 degrees Fahrenheit. The standard shall include additional mandatory work breaks every hour, accessible cool water, shade structures that include cooling features such as misters, increased employer monitoring of employees for symptoms of heat illness, and a requirement that employers provide a copy of the Heat Illness Prevention Plan to new employees, as specified.
  - b) The wildfire smoke standard, to reduce the AQI threshold for PM2.5 at which control by respiratory protective equipment becomes mandatory to, at a maximum, an AQI of 200 or greater and to remove the requirement that the employer reasonably anticipate that employees may be exposed to wildfire smoke. The proposed threshold may be lower than 200 AQI or greater, as determined by Cal/OSHA.
- 2) Requires the board to review the proposed changes and adopt revised standards before July 1, 2024.
- 3) Requires Cal/OSHA to consider developing regulations related to the following:
  - a) Additional protections related to acclimatization, especially following an absence of a week or more from working in ultrahigh heat settings.
  - b) Training programs for outdoor employees in first aid for extreme heat-related illnesses, particularly in rural areas.
  - c) Additional protections for piece-rate workers.
- 4) Defines PM2.5 to mean solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller.

**EXISTING LAW:**

- 1) Creates the Cal/OSHA within the Department of Industrial Relations (DIR) to enforce effective standards, assist and encourage employers to maintain safe and healthful working

conditions, and to provide for enforcement, research, information, education and training in the field of occupational safety and health.

- 2) Establishes the Board within the DIR to adopt, amend, or repeal occupational safety and health standards and orders and requires the standards to be at least as effective as the federal standards promulgated under the federal Occupational Safety and Health Act of 1970.
- 3) Establishes the Maria Isabel Vasquez Jimenez heat illness standard to protect outdoor employees during high temperatures. The standard provides, among other things, that outdoor employees:
  - a) Have access to potable drinking water and shade when a specific temperature is reached.
  - b) Take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.
  - c) Are closely observed by a supervisor or designee during a heat wave for acclimatization.
  - d) Are covered by high-heat procedures, such as monitoring for heat illness symptoms, when the temperature equals or exceeds 95 degrees Fahrenheit.
  - e) Have available to them, at the worksite and upon request, the employer's written heat illness prevention plan.
- 4) Establishes a protection from wildfire smoke standard for instances when the Air Quality Index (AQI) for PM2.5 is 151 or greater and the employer should reasonably anticipate that employees may be exposed to wildfire smoke. The standard requires, among other things, an employer to:
  - a. Determine employee exposure to PM2.5 for covered worksites at the start of each shift and periodically thereafter.
  - b. Establish and implement a system for communicating wildfire smoke hazards in a language and manner readily understandable by employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.
  - c. Provide employees with effective training and instruction, as specified.
  - d. Control for harmful exposure by implementing: 1) Engineering controls such as providing enclosed buildings where the air is filtered; 2) Administrative controls such as relocating work to a location where the current AQI for PM2.5 is lower; and 3) Control by respiratory protective equipment for voluntary use by employees where the current AQI for PM2.5 is equal to or greater than 151, but does not exceed 500.

**FISCAL EFFECT:** Unknown

**COMMENTS:** According to the Community and Labor Center at the University of California, Merced, there are more than 381,000 people across California who work in the frontline essential agriculture industry. Farmworkers in particular are facing multiple health and safety threats- the

COVID-19 pandemic, high heat, and inhaling smoke from large wildfires. A study in the American Journal of Industrial Medicine found that agricultural workers are 35 times more at risk for heat-related mortality than other industries.<sup>1</sup> In addition, studies reveal a wide range of health impacts from inhaling the fine particles in wildfire smoke. Some of the harmful effects of wild fire smoke include irritation “to the eyes, nose and lungs, [aggravation] of asthma and other respiratory illnesses and [increased] risk of death from lung cancer and heart disease.”<sup>2</sup>

According to the author, “with increasingly longer, hotter, and more deadly heat waves, particularly in the region of the Coachella and Imperial Valley, we must do more to protect workers and update our outdoor worker protection standards to align with our new reality. Temperatures in my constituency rise to 120 degrees and our current standards for worker protections only account for temperatures above 95. Additionally, air quality standards need to be updated to account for the unhealthy air above 200 AQI, especially since extreme heat events combined with unhealthy air have tremendous impacts on outdoor workers.”

### **Committee Comments**

The bill directs Cal/OSHA to propose revisions to the heat illness standard, including adding a requirement that employers “provide a copy of the Heat Illness Prevention Plan to all new employees when temperatures exceed 80 degrees and to all employees on an annual basis.” (Labor Code Section 6721 (b)). Committee staff recommends that the author instead consider requiring employers to provide a copy of the plan to *all employees upon hire* and anytime temperatures exceed 80 degrees.

### **Arguments in Support**

California Water Service is in support and states, “Across the state, we have approximately 1,200 employees, and their health and safety is of paramount importance to us. 365 days a year, you will find our employees in the field, working diligently on everything from conducting tests to ensure our customers’ drinking water meets the highest levels of safety to installing new infrastructure so that our customers’ service remains reliable.

With climate change driving an increased frequency and intensity of wildfires and warmer temperatures across the state, the potential dangers from wildfire smoke and ultrahigh heat will become more prevalent in coming years. [This] legislation will do much to help ensure our employees – and those of thousands of other entities across California – remain safe and healthy.”

### **Arguments in Opposition**

A coalition of employer associations, including the California Chamber of Commerce, are opposed and state, “AB 2243 would force Cal/OSHA to lower the threshold for maximum precautions from an AQI of 500 to an AQI of 200. This is a massive change. In fact, putting mandatory N95 usage at a threshold of 200 *is a lower threshold than Cal/OSHA ever proposed during the regulatory process.*

---

<sup>1</sup> Gubernot, D.M., Anderson, G.B. and Hunting, K.L. (2015), Characterizing occupational heat-related mortality in the United States, 2000–2010: An analysis using the census of fatal occupational injuries database. *Am. J. Ind. Med.*, 58: 203-211.

<sup>2</sup> Gross, Liza, “Fires Fuel New Risks to California Farmworkers,” *Inside Climate News*, September 21, 2021.

In effect, this change would mean that even counties distant from a wildfire would be forced into the highest level of precautions under the Wildfire Smoke Standard – including forcing employees to wear N95’s, forcing any outside workers to shave, and quickly hiring medical personnel to fit-test/evaluate their workers should a distant fire occur. For example, downtown Sacramento workplaces would have qualified for maximum precautions under this standard on multiple occasions in 2018 and 2019 – despite being far from major wildfires. Every worker who was outdoors for more than an hour would need to *either* be sent home, or be forced to shave, be fit-tested, be medically evaluated (for mask fit) and compelled to wear an N-95. To reiterate: this would effectively require shaving and mandatory N95 usage from everyone from school yard duty attendants to delivery drivers to policemen to waiters (with some outdoor tables) to construction workers.”

### **Prior Legislation**

AB 73 (R. Rivas) Chapter 322, Statutes of 2021 expands the definition of essential workers to include agricultural workers for the purpose of accessing the personal protective equipment stockpile for emergencies established by the State Department of Public Health and the Office of Emergency Services. Directs the Division of Occupational Safety and Health (Cal/OSHA) to review and update the content of wildfire smoke training in existing regulations.

AB 1124 (Maienschein) Chapter 266, Statutes of 2020 proposed before being gut and amended to require the Occupational Safety and Health Standards Board to adopt emergency regulations requiring employers to make respirators available to outdoor workers when it is reasonably expected that they will be exposed to harmful levels of wildfire smoke.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

California Environmental Voters  
 California Water Service Company  
 LA Cooperativa Campesina De California  
 The Greenlining Institute  
 Union of Concerned Scientists

#### **Oppose**

Agricultural Council of California  
 American Composites Manufacturers Association  
 American Pistachio Growers  
 Associated General Contractors  
 California Association of Joint Powers Authorities  
 California Association of Sheet Metal & Air Conditioning Contractors National Association  
 California Association of Winegrape Growers  
 California Builders Alliance  
 California Building Industry Association  
 California Chamber of Commerce  
 California Cotton Ginners and Growers Association  
 California Framing Contractors Association

California Grocers Association  
California League of Food Producers  
California Manufacturers & Technology Association  
California New Car Dealers Association  
California Railroads  
California Restaurant Association  
California State Association of Counties  
California Strawberry Commission  
Construction Employers' Association  
Hollywood Chamber of Commerce  
Housing Contractors of California  
National Elevator Industry, INC.  
National Federation of Independent Business  
Nisei Farmers League  
PCI West-Chapter of The Precast/Prestressed Concrete Institute  
Residential Contractors Association  
Sacramento Regional Builders Exchange  
Western Agricultural Processors Association  
Western Growers Association  
Western Steel Council  
Wine Institute

**Analysis Prepared by:** Megan Lane / L. & E. /