



July 27, 2022

Dear Chairman Scott and Ranking Member Foxx:

The Coalition for Workplace Safety opposes the Asuncion Valdivia Heat Illness and Fatality Prevention Act (H.R. 2193) as amended by the Amendment in the Nature of a Substitute (ANS) and urges the Education and Labor Committee not to approve it.

The CWS is comprised of a diverse group of associations, representing many industries with millions of employees in every state in the nation who believe strongly in improving workplace safety. Many CWS members have designed effective heat injury and illness prevention programs consistent with OSHA's existing approach to address heat-related illnesses, which has been to provide extensive guidance ("[Water, Rest, Shade](#)") that can be flexibly applied to meet a wide range of circumstances. OSHA's use of this guidance, coupled with the general duty clause in enforcement proceedings in heat illness cases, has had positive results. It gives employers the flexibility to create a program that fits their unique environment while still providing useful information and elevating the concern around heat exposure. Every worksite is different, from construction to manufacturing to retail, and all these workplaces have different factors related to protecting employees from excessive exposure to heat.

Regulating heat exposure is complex, as head of the Occupational Safety and Health Administration (OSHA), Assistant Secretary Doug Parker, acknowledged when he made clear that a proposed standard is likely still two to three years away. To issue a workable nationwide standard, the agency must consider region and climate, work setting, nature of work and individual tolerance. As such, heat exposure does not lend itself to a rushed, arbitrarily imposed process.

OSHA is already working on a standard for heat exposure, and the agency has far more expertise to develop a finely tuned standard than does Congress. H.R. 2193 would circumvent the opportunity for the regulated community to provide input and comments by imposing an interim final standard in an unrealistic time frame. The bill would also boot strap in state plan requirements that are based on one state's regional, demographic or political considerations. The interim final standard approach would bypass the requirements of the Administrative Procedure Act (APA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA) regulatory review process.

In addition to this bill forcing OSHA to issue an unworkable heat exposure standard, the ANS expands the amount of time OSHA has to bring a citation to four years from the occurrence of the violation, instead of the current six months, meaning that an employer could be subject to a citation for an alleged violation that happened many years ago involving employees no longer working for the employer.

The ANS also creates a right of private action for an employee to sue an employer in federal court if OSHA decides a whistleblower claim is without merit. If OSHA decides a claim does not warrant relief, that should end the matter, as section 11(c) currently establishes.

Finally, the ANS handcuffs the Occupational Safety and Health Review Commission (OSHRC) by forcing it to accept OSHA's interpretation of this act. The whole point of OSHRC is to have an independent special issue tribunal to adjudicate OSHA citations, not to have OSHRC rubber stamp OSHA's conclusions.

For these reasons CWS urges the Committee to oppose H.R. 2193. Attached are the comments CWS submitted in response to the Advanced Notice of Proposed Rulemaking OSHA issued on heat exposure. These comments give more detail to our concerns with a potential standard regulating heat exposure.

Sincerely,

The Coalition for Workplace Safety