

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
SB 1299 (Cortese) – As Amended March 21, 2024

**SENATE VOTE:** 29-9

**SUBJECT:** Farmworkers: benefits

**SUMMARY:** Creates a rebuttable presumption that a heat-related injury arose out of the course of employment where an employer in the agriculture injury, as defined, failed to comply with existing heat standards. Specifically, **this bill:**

- 1) Provides that these provisions apply to an employer, as defined in Section 3300, and in the agriculture industry listed and covered in Section 3395 of Title 8 of the California Code of Regulations.
- 2) Provides that an employee's heat-related injury, illness, or death shall be presumed to arise out of and in the course of employment if the employer fails to comply with heat illness prevention standards, as provided.
- 3) Requires the Workers' Compensation Appeals Board (WCAB) to find in accordance with the presumption unless controverted by other evidence.
- 4) 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.
- 5) Requires compensation awarded under the provisions of this bill to include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers compensation law.
- 6) Establishes the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of \$5 million from the Workers' Compensation Administration Revolving Fund for the purpose of administrative costs relative to the provisions of this bill.
- 7) Makes various findings and declarations related to the intent of this bill and the conditions faced by farmworkers in relation to climate change.

**EXISTING LAW:**

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)

- 2) Establishes presumptions that certain injuries or conditions are work-related for specified public safety officers. Those injuries or conditions that are presumed to be work-related for specified public safety officers include:

- a) Cancer;
- b) Heart trouble, pneumonia, or hernia;
- c) Tuberculosis;
- d) Exposure to a biochemical substance; or
- e) Meningitis.

The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers compensation law. These presumptions tend to run for 5 to 10 years commencing on their last day of employment, depending on the injury and the peace officer classification involved. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded. (Labor Code Sections (LAB) 3212 to 3213.2)

- 3) Provides that the presumptions listed above are rebuttable and may be controverted by evidence. However, unless controverted, the WCAB must find in accordance with the presumption. (LAB 3212 to 3213.2)
- 4) Defines an “employer” as:
- a) The State and every State agency;
  - b) Each county, city, district, and all public and quasi-public corporations and public agencies therein;
  - c) Every person including any public service corporation, which has any natural person in service; or
  - d) The legal representative of any deceased employer. (LAB 3300)
- 5) Provides that an employer in the agriculture industry is subject to the provisions of the heat illness standards. (8 CCR Section 3395)
- 6) Establishes the Division of Workers’ Compensation (DWC) and 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. (LAB 3200)
- 7) Creates the Workers’ Compensation Administration Revolving 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. (LAB 62.5)
- 8) Requires every employer to carry workers’ compensation insurance through an insurer or by self-insuring with the consent of DIR. (LAB 3700)

- 9) Specifies that upon knowledge of an injury, the employer or their agent shall provide a workers' compensation claim to the injured employee and within one working day of the claim filing, shall authorize medical treatment up to \$10,000 for 90 days or until the claim is rejected. (LAB 5402)
- 10) Establishes the Division of Occupational Safety and Health (CalOSHA) within DIR to, among other things, propose, administer, and enforce occupational safety and health standards. (LAB 6300 et seq.)
- 11) Requires CalOSHA to investigate the employment 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 CalOSHA 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, summarily investigate the complaint of serious violation within three working days. (LAB 6309)
- 12) Establishes heat illness prevention standards applicable to agriculture and the transportation or delivery of agricultural products, as specified. Standards include:
  - a) Provision of cool potable water as close as practicable to areas where employees work;
  - b) Access to shade, with ventilation of cooling when temperatures exceed 80 degrees Fahrenheit (F);
  - c) Implementation of high heat procedures when temperatures equal or exceed 95 F;
  - d) Assurance of a ten minute per two hour cool down break when temperatures exceed 95 F, which may be taken with a meal break or rest period;
  - e) Implementation of emergency response procedures and effective communication by voice, observation, or electronic means is maintained;
  - f) Observation of employees during temperatures of 80 F and above to monitor acclimatization;
  - g) Employee and supervisor training on heat illness detection, prevention, and occurrence; and
  - h) Establishment, implementation, and maintenance of a heat illness prevention plan, either as part of the employer's written Injury and Illness Program or maintained in a separate document. (8 CCR Section 3395; LAB 6721)
- 13) 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. (Government Code Section 15562.5)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) *Purpose.* According to the author:

Some of the largest agricultural counties in the state are experiencing record-breaking heat waves. In 2022, King City in Monterey County broke its hottest temperature ever recorded at 116 degrees. Fresno recorded an all-time high at 114 degrees. The increased

frequency of extreme heat conditions, and its growing risks to workers, highlight the importance and necessity of employer compliance with California's outdoor heat regulations to keep workers safe. SB 1299 promotes compliance with the existing outdoor heat regulation through a rebuttable presumption for heat-related injury and death. Farm workers who suffer injury, illness, or death while working for a noncompliant employer will be treated and compensated expeditiously.

Importantly, it does not introduce any new workers' compensation benefits beyond what is already provided for under existing laws. Furthermore, its provisions do not extend to employers who are already in compliance.

- 2) *Workers' compensation and presumptions broadly.* At its core, like other complex systems of justice, the California workers' compensation system is based on a very simple premise. If a worker is injured on a job, the employer must pay for the worker's medical treatment, including monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise, sometimes known as the "grand bargain," has stood the test of time for more than 100 years and served California remarkably well – according to recent research of the California Workers' Compensation Institute (CWCI) and RAND, more than 90% of all workers' compensation claims and requests for medical treatment are approved.

In a discussion about the expansion of presumptions within the workers' compensation system, it is important to understand what presumptions are and what they do. Presumptions, in essence, shift the dynamic of a claim from a worker having the burden of proving that their injury is work-related to an employer having the burden to prove the injury is not work-related.

Presumptions have never been intended to create work-related injuries when, in fact, the injuries in question are not work-related. Rather, presumptions of compensability have been adopted, some many decades ago, to reflect unique circumstances where injuries or illnesses appear to logically be work-related, but it is difficult for the injured worker to prove it is work-related. There has clearly been some slippage over time from a rigorous application of this rationale, but it remains the underlying premise of presuming injuries or illnesses to be work-related.

As a matter of law, employers have the opportunity to rebut the presumption, and establish that the injury or condition was not the result of employment. As a practical matter, however, presumptions are rarely rebutted.

Presumptions benefit the worker by removing a potential hurdle to treatment and minimizing the delay between a worker's injury and their ability to receive care. Historically, presumptions have also been useful for occupational injuries whose causes could be difficult to precisely pinpoint; this was the case in presumptions for cancer in firefighters, who may have been exposed from any number of burning or crumbling buildings.

There is, however, a limit to what presumptions can actually accomplish. There is virtually no difference between an employee who accesses workers' compensation with a presumption and without one; that is to say, a presumption alone does not increase the quality of care that is received and within industries with a low rate of rejected workers' compensation claims,

there is little positive benefit. On the other hand, removing an employer's ability to put claims through the normal process of medical verification has the potential to incentivize fraud, since that verification process's main purpose is to determine whether an injury is occupational.

- 3) *How the presumption created by this bill is different.* This bill takes a novel approach to presumptions in that it only requires the presumption to apply if the agricultural employer has violated CalOSHA heat illness prevention standards. The presumption in this bill would only be triggered in those instances where an agricultural employer was found to have violated the heat illness prevention standards. Therefore, before the presumption applies WCAB would need to determine, as a matter of fact, whether CalOSHA heat illness standards were violated by the agricultural employer. Under existing presumptions WCAB does not make a determination of fact before the presumption applies – the presumption applies as soon as the injury occurs at which time the employer can then attempt to rebut it.

As discussed more below, it is unclear whether WCAB's role in making the determination required under this bill would cause potential conflicts with CalOSHA's own investigation and determination related to whether heat illness standard were violated.

An argument can be made that a workers' compensation presumption would help ensure employer compliance with the CalOSHA heat illness prevention standards. However, presumptions have never been used to incentivize behavior or in a punitive manner. This would be another departure from the traditional approach and rationale for presumptions.

Additionally this bill would expand presumptions to the private sector. With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm's way.

The only other time presumptions have been expanded to the private sector is under the narrow, temporary circumstances for the COVID-19 presumption, which sunset on January 1, 2024. (SB 1159 (Hill) Chapter 18, Statutes of 2020; AB 1751 (Daly) Chapter 758, Statutes of 2022)

- 4) *Issues related to WCAB.* As previously mentioned, this bill would require WCAB to make a factual determination of whether CalOSHA heat illness standards have been violated before the presumption applies. It is unclear what would happen if WCAB has to make their determination while the CalOSHA board is also considering a potential violation and making their own determination, and in that event what happens if WCAB's determination is contrary to the one made by CalOSHA. This could create ongoing confusion related to the heat illness standards and how they are interpreted and applied.

Additionally, while WCAB has some existing authority to determine if an employer has violated CalOSHA this happens in the context of compensation determinations. Therefore, while WCAB has some familiarity with CalOSHA standards it is generally not their role to determine if a violation of CalOSHA standards have occurred. The principal core function of WCAB is to serve as the statewide administrative law court of appeal for workers' compensation claims. Generally, WCAB only hears those claims that are appealed following

a decision by a DWC administrative law judge. Therefore, this bill would grant additional authority and responsibilities to WCAB.

It should also be noted that WCAB is currently facing an increased workload that has resulted in a backlog of cases. As a result, this year WCAB submitted a budget change proposal (BCP) requesting additional positions just to deal with the current backlog. According to the BCP, as of June 30, 2023 WCAB backlog totaled 745 cases. It is unclear how the additional workload this bill requires of WCAB would impact the existing workload issues at WCAB. The BCP only requests enough additional positions to enable WCAB to manage the existing workload and reduce the size and average age of the case backlog.

- 5) *CalOSHA enforcement of heat illness standards.* It is not being disputed that California's heat illness prevention standards 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 these requirements. 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 standards.

In 2019, CalOSHA conducted more than 4,000 heat-related inspections, and cited employers for noncompliance with the heat illness prevention standards in 47 percent of the inspections. However, complicating the state's ability to conduct inspections for enforcement and compliance are the persistent issues with staffing and funding faced by CalOSHA.

The author notes that this bill, by helping ensure compliance, could further reduce the amount of heat illness incidents and adverse health outcomes among California's farmworkers. However, there have been prior and ongoing efforts to ensure compliance with limited success and it is unclear if this bill would have the desired effect of encouraging compliance.

Employers are currently subject to various penalties for CalOSHA violations. On January 1, 2024, CalOSHA increased penalties for certain violations. According to DIR, for citations issued on or after January 1, 2024, the maximum penalties for violations classified as Regulatory, General, Willful, or Repeat are as follows:

- The maximum penalty for General and Regulatory violations, including Posting and Recordkeeping violations is \$15,873.
- The maximum penalty for Willful and Repeat violations is \$158,727.
- The minimum penalty for Willful violations is \$11,337.

It is unclear to what extent these penalties are levied and collected. Considering many employers continue to not comply with heat illness prevention standards it is also not clear if the penalties are serving as an appropriate deterrent.

In 2009, the United Farm Workers (UFW) sued the state of California and CalOSHA 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 CalOSHA 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

CalOSHA, conduct confidential internal audits of CalOSHA, taking farmworker testimony in the field during heat inspections, and focus on outdoor workplaces during periods of high heat, among other commitments.

As a result of this settlement, CalOSHA updated its heat illness prevention standards. However, since these lawsuits were settled the state has continued to experience record-breaking heat due to climate change and farmworker heat injuries and deaths have continued to occur.

6) *Recent legislation.*

- a) AB 2264 (Arambula) of 2024, would require an employee to obtain and maintain a heat illness prevention training certification from CalOSHA within 30 days after the date of hire and require an employer to reimburse the employee for training time. This bill was held in the Assembly Committee on Labor and Employment.
- b) SB 391 (Blakespear) of 2023, would have granted certain peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation the presumption that skin cancer is a work-related condition for purposes of making a workers' compensation claim, unless the presumption is rebutted. This bill was vetoed by Governor Newsom.
- c) SB 632 (Laird) Chapter 621, Statutes of 2023, extended the sunset, until January 1, 2029, for the existing presumption that a diagnosis of post-traumatic stress disorder (PTSD) for specified peace officers and firefighters is an occupational injury.
- d) AB 699 (Weber) of 2023, would have granted to year-round, full-time lifeguards employed by the City of San Diego in the Boating Safety Unit the same workers' compensation presumptive coverages currently afforded to firefighters and public safety officers. This bill was vetoed by Governor Newsom.
- e) AB 1145 (Maienschein) of 2023, would have extended an industrial injury rebuttable presumption for a diagnosis of a PTSD to certain state nurses, psychiatric technicians, and various medical social services specialists. This bill was vetoed by Governor Newsom.
- f) AB 1751 (Daly) Chapter 758, Statutes of 2022, extended the January 1, 2023, sunset date for the existing COVID-19 workers' compensation presumptions until January 1, 2024.
- g) AB 1643 (Rivas) Chapter 263, Statutes of 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.
- h) AB 2676 (Calderon) of 2012, would have made it a clear misdemeanor, punishable by jail time and fines, for failure to provide water and shade, as specified, to employees. This bill was vetoed by Governor Brown.
- i) AB 2346 (Butler) of 2012, would have, among other things, made growers and the farm labor contractors they hire jointly liable for failure to supply farm workers with shade and water. This bill was vetoed by Governor Brown.

- 7) *Arguments in support.* The Farmworker Advocacy Working Group write in support of this bill saying, “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.”
- 8) *Arguments in opposition.* A coalition of employers and insurers, including the California Chamber of Commerce oppose this bill. They write in opposition noting, “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.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Food and Farming Network  
 Californians for Pesticide Reform  
 Central California Environmental Justice Network  
 Central Coast Alliance United for A Sustainable Economy  
 Centro Binacional Para El Desarrollo Indigena Oaxaqueño (CBDIO)  
 Pesticide Action Network  
 United Food and Commercial Workers, Western States Council

### **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 Authorities  
 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 Canada 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  
Newport Beach Chamber of Commerce  
Nisei Farmers League  
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  
Western Growers Association

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