

SENATE, No. 4243

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 14, 2023

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes occupational heat stress standard and “Occupational Heat-Related Illness and Injury Prevention Program” in DOLWD.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the Department of Labor and Workforce
2 Development establishing an occupational heat stress standard
3 and heat-related illness and injury prevention program and
4 supplementing Title 34 of the Revised Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. The Legislature finds and declares:

10 a. Heat is the leading weather-related killer, and it is becoming
11 more dangerous as 18 of the last 19 years were the hottest years on
12 record. Excessive heat can cause heat stroke and even death if not
13 treated properly. It also exacerbates existing health problems like
14 asthma, kidney failure, and heart disease. Workers in agriculture
15 and construction are at highest risk, but the problem affects all
16 workers exposed to heat, including indoor workers without climate-
17 controlled environments.

18 b. Heat stress killed 815 United States workers and seriously
19 injured more than 70,000 workers from 1992 through 2017,
20 according to the United States Department of Labor, Bureau of
21 Labor Statistics.

22 c. To date, three states, California, Oregon, and Washington,
23 have state occupational safety and health standards that cover
24 outdoor heat exposure. Minnesota has a state standard that covers
25 indoor heat exposure. The United States military has also issued
26 heat protections.

27 d. The Occupational Safety and Health Administration (OSHA)
28 in the United States Department of Labor has not adopted a heat
29 stress standard.

30 e. In the absence of a heat stress adopted by OSHA, New
31 Jersey may through legislation and regulation adopt a heat stress
32 standard for the protection of employees against heat-related illness
33 and injury that applies to employers and employees in this State
34 both in private and public employment.

35
36 2. As used in this act:

37 “Commissioner” means the Commissioner of the Department of
38 Labor and Workforce Development or the commissioner’s designee.

39 “Department” means the Department of Labor and Workforce
40 Development.

41 “Employ” means to suffer or to permit to work.

42 “Employee” means any individual employed by an employer.

43 “Employer” means any individual, partnership, association,
44 corporation, and the State and any county, municipality, or school
45 district in the State, or any agency, authority, department, bureau, or
46 instrumentality thereof acting directly or indirectly in the interest of
47 an employer in relation to an employee.

1 “Excessive heat” means levels of outdoor or indoor exposure to
2 heat that exceed the capacities of the human body to maintain
3 normal body functions and may cause heat-related injury or illness,
4 including those that lead to death.

5 “Heat-related illness” means a medical condition resulting from
6 the inability of the body to rid itself of excess heat, including heat
7 rash, heat cramps, heat exhaustion, heat syncope, and heat stroke.

8 “Heat stress” means the net load to which a worker is exposed
9 from the combined contributions of metabolic heat, environmental
10 factors, and clothing worn which result in an increase in heat
11 storage in the body, causing body temperature to rise to sometimes
12 dangerous levels.

13 “Occupation” means any occupation, service, trade, business,
14 industry or branch or group of industries or employment or class of
15 employment in which employees are employed.

16 “Occupational safety and health standard” means a regulation or
17 rule that requires the following: a condition that is reasonably
18 appropriate or necessary to make employment and places of
19 employment safe and healthful; or the adoption or use of a means,
20 method, operation, practice, or process that is reasonably
21 appropriate or necessary to make employment and places of
22 employment safe and healthful.

23 “Place of employment” means a place in or about which an
24 employee is allowed.

25

26 3. a. On or before June 1, 2024, the commissioner shall
27 establish by rule a heat stress standard that contains the following:

28 (1) A standard that establishes heat stress levels for employers
29 that, if exceeded, trigger actions by employers to protect employees
30 from heat-related illness and injury.

31 (2) A requirement that each employer develop, implement, and
32 maintain an effective heat-related illness and injury prevention plan
33 for employees.

34 b. The heat-related illness and injury prevention plan referred
35 to in subsection a. of this section shall, to the extent permitted by
36 federal law, be developed and implemented with the meaningful
37 participation of employees and employee representatives, including
38 collective bargaining representatives; shall be tailored and specific
39 to the hazards in the place of employment; shall be in writing in
40 both English and in the language understood by a majority of the
41 employer’s employees, if that language is not English; and shall be
42 made available at a time and in a manner set forth by the
43 commissioner in rule, to employees, employee representatives,
44 including collective bargaining representatives, and to the
45 commissioner.

46 c. The heat-related illness and injury prevention plan referred
47 to in subsection a. of this section shall at a minimum contain
48 procedures and methods for the following:

- 1 (1) initial and regular monitoring for employee exposure to heat
- 2 to determine whether an employee's exposure has been excessive;
- 3 (2) providing potable water with a temperature of less than 15
- 4 degrees Celsius or 59 degrees Fahrenheit;
- 5 (3) providing paid rest breaks and access to shade, cool-down
- 6 areas or climate-controlled spaces;
- 7 (4) providing an emergency response for any employee who has
- 8 suffered injury as a result of being exposed to excessive heat;
- 9 (5) acclimatizing employees to areas where exposure to heat is
- 10 present;
- 11 (6) limiting the length of time an employee may be exposed to
- 12 heat during the workday;
- 13 (7) for outdoor and indoor non-climate-controlled environments,
- 14 implementation of a heat alert program to provide notification to
- 15 employees when the National Weather Service forecasts that a heat
- 16 wave is likely to occur in the following day or days, and when that
- 17 notification occurs, also taking the following actions:
- 18 (a) postponing tasks that are not urgent until the heat wave is
- 19 over;
- 20 (b) increasing the total number of workers to reduce the heat
- 21 exposure of each worker;
- 22 (c) increasing rest allowances;
- 23 (d) reminding workers to drink liquids in small amounts
- 24 frequently to prevent dehydration; and
- 25 (e) to the extent practicable, monitoring the environmental heat
- 26 at job sites and resting places;
- 27 (8) preventing hazards, including through the use of:
- 28 (a) engineering controls that include the isolation of hot
- 29 processes, the isolation of employees from sources of heat, local
- 30 exhaust ventilation, shielding from a radiant heat source, the
- 31 insulation of hot surfaces, air conditioning, cooling fans,
- 32 evaporative coolers, and natural ventilation;
- 33 (b) administrative controls that limit exposure to a hazard by
- 34 adjustment of work procedures or work schedules, including
- 35 acclimatizing employees, rotating employees, scheduling work
- 36 earlier or later in the day, using work-rest schedules, reducing work
- 37 intensity or speed, changing required work clothing and using relief
- 38 workers; and
- 39 (c) personal protective equipment, including water-cooled
- 40 garments, air-cooled garments, reflective clothing, and cooling
- 41 vests;
- 42 (9) coordinating risk assessment efforts, plan development, and
- 43 implementation with other employers who have employees who
- 44 work at the same work site; and
- 45 (10) allowing employees to contact the employer directly and
- 46 efficiently to communicate if the employee feels like the employee
- 47 is suffering from a heat-related illness.

1 d. The heat-related illness and injury prevention plan referred to
2 in subsection a. of this section shall contain at a minimum annual
3 training and education to employees who may be exposed to high
4 heat levels, including training and education regarding the
5 following:

- 6 (1) the identification of heat-related illness risk factors;
- 7 (2) personal factors that may increase susceptibility to heat-
8 related illness;
- 9 (3) signs and symptoms of heat-related illness;
- 10 (4) different types of heat-related illness;
- 11 (5) the importance of acclimatization and consumption of fluids;
- 12 (6) available engineering control measures;
- 13 (7) administrative control measures;
- 14 (8) the importance of reporting heat-related symptoms being
15 experienced by an employee or another employee;
- 16 (9) record-keeping requirements and reporting procedures;
- 17 (10) emergency response procedures; and
- 18 (11) employee rights under this act and department rules
19 promulgated to implement this act.

20 e. The heat-related illness and injury prevention plan referred
21 to in subsection a. of this section shall contain at a minimum special
22 training and education to employees who are supervisors, in
23 addition to the training and education provided to all employees
24 under subsection d. of this section, which shall include training and
25 education regarding the following:

- 26 (1) proper procedures a supervisor is required to follow under
27 this section with respect to the prevention of employee exposure to
28 excessive heat;
- 29 (2) how to recognize high-risk situations, including how to
30 monitor weather reports and weather advisories and how to avoid
31 assigning an employee to a situation that could predictably
32 compromise the safety of the employee; and
- 33 (3) proper procedures including emergency response procedures
34 to follow when an employee exhibits signs or reports symptoms
35 consistent with possible heat-related illness.

36 f. The heat-related illness and injury prevention plan referred
37 to in subsection a. of this section shall require that the education
38 and training referred to in subsections d. and e. of this section:

- 39 (1) be provided by an employer for each new employee before
40 starting a job assignment;
- 41 (2) provide employees opportunities to ask questions, provide
42 feedback, and request additional instruction, clarification, or
43 another follow-up;
- 44 (3) be provided by an individual with knowledge of heat-related
45 illness prevention and of the plan of the employer required under
46 subsection a. of this section; and
- 47 (4) be appropriate in content and vocabulary commensurate to
48 the language, education level, and literacy of the employees.

1 g. A requirement that each employer shall maintain the
2 following:

3 (1) records related to the heat-related illness and injury
4 prevention plan referred to in subsection a. of this section, including
5 heat-related illness risk and hazard assessments and identification,
6 evaluation, correction and training procedures;

7 (2) data on all heat-related illnesses, injuries and fatalities that
8 have occurred at the place of employment, including but not limited
9 to: the type of heat-related illness or injury experienced and
10 symptoms experienced, the cause of death, the time at which
11 manifestation of illness, injury, or death occurred, environmental
12 measures, including temperature and humidity levels, at time of
13 manifestation of illness, injury or death, a description of the
14 location where the manifestation of illness, injury or death
15 occurred; and

16 (3) data on environmental and physiological measurements
17 related to heat.

18 h. A requirement that each employer make the records and data
19 referred to in subsection g. of this section available, on request for
20 examination and copying at no cost, to employees, their authorized
21 representatives, including collective bargaining representatives, and
22 to the commissioner.

23 i. Employers shall be required to comply with the provisions
24 of the heat stress standard promulgated by rule in accordance with
25 this section 30 days after the rules containing the heat stress
26 standard are adopted.

27 j. Notwithstanding the provisions of the "Administrative
28 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
29 contrary, the commissioner may adopt, immediately upon filing
30 with the Office of Administrative Law, the heat stress standard
31 required by this section, which shall be effective for a period not to
32 exceed 365 days from the date of the filing. Before the expiration
33 of the heat stress standard, the commissioner shall thereafter amend,
34 adopt, or readopt the rules in accordance with the requirements of
35 P.L.1968, c.410 (C.52:14B-1 et seq.).

36

37 4. An employer may not discriminate or retaliate against an
38 employee for:

39 a. Reporting a heat-related illness or injury concern to, or
40 seeking assistance or intervention with respect to heat-related health
41 symptoms from, the employer, local emergency services, the federal
42 government, the State, or a local government; or

43 b. Exercising any other rights of the employee under this act.

44

45 5. There shall be established a rebuttable presumption of
46 retaliation if an employer takes an adverse action against an
47 employee within 90 days of any conduct protected under this act.

1 6. None of the provisions of this act shall be construed to
2 diminish the rights, privileges, or remedies of any employee under a
3 collective bargaining agreement.
4

5 7. There shall be established, within the Department of Labor
6 and Workforce Development, an "Occupational Heat-related Illness
7 and Injury Prevention Program," which shall be responsible for
8 enforcing the provisions of this act, and the heat stress standard
9 promulgated by rule pursuant to this act, and which shall provide
10 outreach and education to employers and employees regarding this
11 act and the heat stress standard.
12

13 8. The commissioner shall have the authority to:

14 a. Investigate and ascertain compliance with this act in any
15 place of employment in the State;

16 b. Enter and inspect the place of business or employment of
17 any employer in the State for the purpose of examining and
18 inspecting any or all records of any employer that in any way relate
19 to or have a bearing upon the question of compliance with this act;
20 copy any or all of those records as the commissioner may deem
21 necessary or appropriate; question any workers; and conduct any
22 tests to determine whether this act has been violated; and

23 c. Require from any employer full and correct statements in
24 writing, including sworn statements, with respect to compliance
25 with this act as the commissioner may deem necessary or
26 appropriate.
27

28 9. When the commissioner finds that an employer has violated
29 this act or the rules promulgated by the department to implement
30 this act, the commissioner may assess and collect an administrative
31 penalty of not less than \$500 and not more than \$5,000 per
32 violation, pursuant to a schedule of penalties established by the
33 commissioner through rules in accordance with the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any
35 administrative penalty assessed under this section against a
36 corporation, partnership, limited liability company, or sole
37 proprietorship, shall be effective against any successor entity that is
38 engaged in the same or equivalent trade or activity, and has one or
39 more of the same principals or officers, as the corporation,
40 partnership, limited liability company, or sole proprietorship against
41 which the administrative penalty was assessed.
42

43 10. When determining the amount of the administrative penalty
44 imposed under section 9 of this act, the commissioner shall consider
45 factors, which shall include the history of previous violations by the
46 employer, the seriousness of the violation, the good faith of the
47 employer and the size of the employer's business. No
48 administrative penalty shall be levied pursuant to this section unless

1 the commissioner provides the alleged violator with notification of
2 the violation and of the amount of the penalty and an opportunity
3 within 15 days following the receipt of the notice to request a
4 hearing before the commissioner.

5 If a hearing is requested, the commissioner shall issue a final
6 order upon the completion of the hearing. If no hearing is
7 requested, the notice shall become a final order upon expiration of
8 the 15-day period. Payment of the administrative penalty is due
9 when a final order is issued or when the notice becomes a final
10 order. Any administrative penalty imposed pursuant to this section
11 may be recovered with costs in a summary proceeding commenced
12 by the commissioner pursuant to the "Penalty Enforcement Law of
13 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as
14 a fine or penalty pursuant to this section shall be applied toward
15 enforcement of this act and administration costs of the
16 "Occupational Heat-related Illness and Injury Prevention Program"
17 established within the Department of Labor and Workforce
18 Development.

19

20 11. Any employer who willfully hinders or delays the
21 commissioner in the performance of the commissioner's duties in
22 the enforcement of this act, or fails to make, keep, and preserve any
23 records as required under the provisions of this act, or falsifies any
24 record, or refuses to make any record accessible to the
25 commissioner upon demand, or refuses to furnish a sworn statement
26 of the record or any other information required for the proper
27 enforcement of this act to the commissioner or otherwise violates
28 any provision of this act or of any departmental rule promulgated or
29 order issued under this act shall be guilty of a disorderly persons
30 offense and shall, upon conviction for a first violation, be punished
31 by a fine of not less than \$100 nor more than \$1,000 or by
32 imprisonment for not less than 10 nor more than 90 days, or by both
33 the fine and imprisonment and, upon conviction for a second or
34 subsequent violation, shall be punished by a fine of not less than
35 \$500 nor more than \$5,000 or by imprisonment for not less than 10
36 nor more than 100 days, or by both the fine and imprisonment.

37

38 12. a. If the commissioner determines, after either an initial
39 determination as a result of an audit of a business or an
40 investigation pursuant to this act, that an employer is in violation of
41 this act, the commissioner may issue a stop-work order against the
42 employer requiring cessation of all business operations of the
43 employer at one or more worksites or across all of the employer's
44 worksites and places of business. The stop-work order may be
45 issued only against the employer found to be in violation or non-
46 compliance. The commissioner shall serve a notification of intent
47 to issue a stop-work order on the employer at the place of business
48 or, for a particular employer worksite, at that worksite, at least

1 seven days prior to the issuance of a stop-work order. The stop-
2 work order shall be effective when served upon the employer at the
3 place of business or, for a particular employer worksite, when
4 served at that worksite. The stop-work order shall remain in effect
5 until the commissioner issues an order releasing the stop-work order
6 upon finding that the employer has come into compliance and has
7 paid any administrative penalty deemed to be satisfactory to the
8 commissioner, or after the commissioner determines, in a hearing
9 held pursuant to subsection b. of this section, that the employer did
10 not commit the act on which the order was based. The stop-work
11 order shall be effective against any successor entity engaged in the
12 same or equivalent trade or activity that has one or more of the
13 same principals or officers as the corporation, partnership, limited
14 liability company, or sole proprietorship against which the stop-
15 work order was issued. The commissioner may assess a civil
16 penalty of \$5,000 per day against an employer for each day that it
17 conducts business operations that are in violation of the stop-work
18 order. A request for hearing shall not automatically stay the effect
19 of the order.

20 b. An employer who is subject to a stop-work order shall,
21 within 72 hours of its receipt of the notification, have the right to
22 appeal to the commissioner in writing for an opportunity to be heard
23 and contest the stop-work order.

24 c. Within seven business days of receipt of the notification
25 from the employer, the commissioner shall hold a hearing to allow
26 the employer to contest the issuance of a stop-work order. The
27 department and the employer may present evidence and make any
28 arguments in support of their respective positions regarding the
29 findings of the audit or investigation. The commissioner shall issue
30 a written decision within five business days of the hearing either
31 upholding or reversing the employer's stop-work order. The
32 decision shall include the grounds for upholding or reversing the
33 employer's stop-work order. If the employer disagrees with the
34 written decision, the employer may appeal the decision to the
35 commissioner, in accordance with the "Administrative Procedure
36 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

37 d. If the employer does not request an appeal to the
38 commissioner in writing, the stop-work order shall become a final
39 order after the expiration of the 72-hour period.

40 e. The commissioner may compromise any civil penalty
41 assessed under this section in an amount the commissioner
42 determines to be appropriate.

43 f. Once the stop-work order becomes final, any employee
44 affected by a stop-work order issued pursuant to this section shall
45 be entitled to pay from the employer for the first ten days of work
46 lost because of the stop-work. Upon request of any employee not
47 paid wages, the commissioner can take assignment of the claim and
48 bring any legal action necessary to collect all that is due.

1 13. After each employer has, under section 3 of this act,
2 implemented a heat-related illness and injury prevention plan in
3 accordance with the requirements of the department's heat stress
4 standard, each employer shall on or before May 1 of each
5 subsequent year, or the next business day, if May 1 falls on a
6 Saturday, Sunday or holiday, review and subsequently release and
7 communicate to their employees and any authorized representatives
8 of their employees, including their collective bargaining
9 representatives, an updated version of the employer's heat-related
10 illness and injury prevention plan. Employers' heat-related illness
11 and injury prevention plans may not need revision, but employers
12 shall be required to conduct an annual review to determine whether
13 revisions are necessary.

14
15 14. The statute of limitations under this act shall be six years
16 after the alleged cause of action accrues.

17
18 15. a. Beginning immediately following enactment of this act,
19 in each instance in which a place of employment experiences
20 excessive heat, an employer shall:

21 (1) postpone tasks that are not urgent until the period of
22 excessive heat has ended;

23 (2) take all necessary measures to reduce the heat exposure of
24 each worker, including but not limited to, shortening work shifts by
25 increasing the number of shifts and the corresponding total number
26 of workers;

27 (3) increase rest allowances;

28 (4) permit workers to drink liquids in small amounts frequently
29 to prevent dehydration;

30 (5) monitor the environmental heat at job sites and resting
31 places;

32 (6) permit employees to contact the employer directly and
33 efficiently to communicate if they believe they are suffering from a
34 heat-related illness;

35 (7) conduct initial and regular monitoring for employee exposure
36 to heat to determine whether an employee's exposure has been
37 excessive;

38 (8) provide potable water with a temperature of less than 59
39 degrees Fahrenheit;

40 (9) provide paid rest breaks and access to shade, cool-down areas
41 or climate-controlled spaces;

42 (10) provide an emergency response for any employee who has
43 suffered injury as a result of being exposed to excessive heat;

44 (11) acclimatize employees to areas where exposure to heat is
45 present; and

46 (12) limit the length of time an employee may be exposed to heat
47 during the workday.

1 b. “Excessive heat” shall be defined by the commissioner
2 through the rules adopted pursuant to section 10 of this act;
3 provided, however, until rules are adopted, for the purposes of this
4 section, “excessive heat” shall mean:

5 (1) for an outdoor place of employment, a heat index at or above
6 90 degrees Fahrenheit according to the National Weather Service
7 Heat Index Chart; and

8 (2) for an indoor place of employment, the temperature equals or
9 exceeds 87 degrees Fahrenheit when employees are present; the
10 heat index equals or exceeds 87 degrees Fahrenheit when
11 employees are present; employees wear clothing that restricts heat
12 removal, and the temperature equals or exceeds 82 degrees
13 Fahrenheit; or employees work in a high radiant heat area and the
14 temperature equals or exceeds 82 degrees Fahrenheit.

15

16 16. This act shall take effect immediately, except that the
17 department rules establishing a heat stress standard shall be issued
18 on or before June 1, 2024.

19

20

21

STATEMENT

22

23 This bill requires the Commissioner of Labor and Workforce
24 Development to establish by rule a heat stress standard that contains
25 the following:

26 (1) a standard that establishes heat stress levels for employers
27 that, if exceeded, trigger actions by employers to protect employees
28 from heat-related illness and injury.

29 (2) a requirement that each employer develop, implement, and
30 maintain an effective heat-related illness and injury prevention plan
31 for employees.

32 The heat-related illness and injury prevention plan referred to
33 above is required, to the extent permitted by federal law, to be
34 developed and implemented with the meaningful participation of
35 employees and employee representatives, including collective
36 bargaining representatives; will be tailored and specific to the
37 hazards in the place of employment; will be in writing in both
38 English and in the language understood by a majority of the
39 employer’s employees, if that language is not English; and will be
40 made available at a time and in a manner set forth by the
41 commissioner in rule, to employees, employee representatives,
42 including collective bargaining representatives, and to the
43 commissioner.

44 The bill provides that the commissioner may issue a stop-work
45 order against the employer requiring cessation of all business
46 operations of the employer at one or more worksites or across all of
47 the employer’s worksites and places of business if the
48 commissioner determines, after either an initial determination as a

1 result of an audit of a business or an investigation pursuant to the
2 bill, that an employer is in violation of the bill's provisions.

3 Under the bill, after initially creating a heat-related illness and
4 injury prevention plan, employers will be required to conduct an
5 annual review to determine whether revisions to their plans are
6 necessary.

7 The bill imposes penalties and potential imprisonment for
8 violations of its provisions.