

CAPITOL ALERT

Capitol Alert

California has heat regulations for farmworkers. Is another law needed for employers to comply?

BY MATHEW MIRANDA AND WILLIAM MELHADO

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Farmworkers pick strawberries May 19, 2023, on the Ramos Farm on Ranport Road outside of Watsonville, about two miles from the Buena Vista Migrant Center. XAVIER MASCAREÑAS *Sacramento Bee* file

California lawmakers are advancing legislation that would expedite worker compensation claims for farmworkers when agricultural employers are not complying with heat safety standards.

[Senate Bill 1299](#), authored by Sen. Dave Cortese, D-San Jose, proposes a new approach for handling such claims in the agriculture industry. The proposal ties eligibility for workers' compensation coverage with adherence to California's heat rules. Under the bill, claims would be presumed work-related unless proven otherwise.

Approved claims cover costs including medical care, lost wages benefits and death benefits to family members.

The bill is designed to promote employer compliance with added financial pressure, Cortese said. It also seeks to partially circumvent [chronic understaffing at Cal-OSHA](#), the state agency dedicated to enforce workplace standards. Determination of these agricultural claims would shift to a separate agency.

"We're just trying to get an outcome," said Cortese, a former farmworker and also represents parts of Santa Cruz. "We're trying to get compliance. And if one worker protection system helps promote compliance in another worker protection system, then why not?"

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SB 1299 is backed by the historic labor union United Farm Workers, which argues dangerous working conditions and employer non-compliance add urgency to the bill. A 2005 California law requires that [agricultural employers provide shade, hydration access, rest breaks and heat illness prevention training](#).

But nearly half of farmworkers say their employers never presented a plan to

prevent heat illness as mandated by law, according to a [2022 study from the UC Merced Community and Labor Center](#). One in six workers reported not receiving the minimum number of rest breaks.

“Too many farmworkers are working during these dangerous temperatures without access to the water, shade, and rest that California nominally guarantees farmworkers under its existing outdoor heat safety regulations,” said UFW President Teresa Romero in a written statement. “These existing regulations save lives — but only if they are truly complied with.”

Agricultural associations and some insurance carriers oppose the legislation. They argue Cal-OSHA’s standards shouldn’t be used to enforce the workers’ compensation system. The proposed changes are also “unlikely to have an appreciable impact on agricultural worker safety,” according to the California Workers’ Compensation Institute, an Oakland-based insurer organization.

The institute’s analysis of the bill found less than 1% of California agricultural workers’ comp claims involved heat injuries.

For Cortese, this low number of claims supports the bill.

“Why would they worry about accelerating the review of those claims?” Cortese said. “I think they know that there are latent claims out there. There’s claims that some workers won’t bring.”

He noted in some instances workers do not report claims for fear of retaliation. There’s also a lack of staffing to investigate these issues, Cortese said.

An investigation by The Sacramento Bee found that Cal-OSHA employees are tasked with investigating complaints with unreasonably heavy workloads.

The vacancies endanger millions of California workers because the state is failing to promptly investigate cases that concern workers’ health and safety, said Garrett

Brown, a retired Cal-OSHA industrial hygienist who has served as an unofficial watchdog since leaving the department.

“When you have more than 50% vacancy, you don’t have the resources to do proper inspections,” Brown said. “Even if you mobilize during a heatwave, it means that other inspections, complaints and accidents have to go on the back burner until the heatwave is over.”

Brown said two areas of staff shortage — a lack of field inspectors and a lack of staff who are bilingual — put farmworkers, many of whom speak Spanish, at higher risks of heat-related health issues.

Under SB 1299, the Workers’ Compensation Appeals Board would determine if Cal-OSHA heat illness standards have been violated.

The bill faces two hurdles: the state’s budget deficit and a potentially unsupportive Gov. Gavin Newsom.

The legislation proposes using an initial \$5 million to establish the Farmworker Climate Change Heat Injury and Death Fund, which would pay costs related to administering the heat injury presumption.

Similar presumption bills for other industries have repeatedly been vetoed by Newsom in recent years. In 2023, the governor vetoed legislation that suggested adding presumption for skin cancer as a workers’ compensation injury for state game wardens and park rangers.

“Presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee’s work,” Newsom said in his veto statement.

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CORRECTION: This story has been updated to specify the area Sen. Dave Cortese represents.

CORRECTED AUG 8, 2024

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