
CalChamber
CCWC
California Coalition on Workers' Compensation
CAJPA
California Association of Joint Powers Authorities
California Business Properties Association
Agricultural Council of California
Western Growers
Fresh produce from our families to yours
American Property Casualty Insurance Association
INSURING AMERICA
apci.org
PRISM
Public Risk Innovation, Solutions, and Management
California Farm Bureau.
Standing up for all farmers and ranchers
California Food Producers
WTNA
WESTERN TREE NUT ASSOCIATION
CALIFORNIA RESTAURANT ASSOCIATION
NFL
NISEI FARMERS LEAGUE
WINE INSTITUTE
California Cotton Ginners and Growers Association
CALIFORNIA STRAWBERRY COMMISSION
NFIB
FAMILY BUSINESS ASSOCIATION OF CALIFORNIA
FAMILY WINEMAKERS of CALIFORNIA
California Seed Association
CALIFORNIA BEAN SHIPPERS ASSOCIATION
California Pear Growers Association
CALIFORNIA ASSOCIATION OF WHEAT GROWERS
CALIFORNIA GRAIN & FEED ASSOCIATION
BOMA California
CALIFORNIA STATE FLORAL ASSOCIATION
SWCLC
Southwest California Legislative Council
A coalition of the Temecula Valley, Murrieta, Lake Elsinore Valley, Wildomar & Menifee Chambers of Commerce
CALIFORNIA FRESH FRUIT ASSOCIATION
NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
NAIOP OF CALIFORNIA
IMPERIAL VALLEY REGIONAL CHAMBER
AFRICAN AMERICAN FARMERS OF CALIFORNIA
Association of California Egg Farmers
PACIFIC EGG & POULTRY ASSN
Industry's Voice of the West
The Chamber NEWPORT BEACH
Garden Grove Chamber of Commerce
SIMI VALLEY CHAMBER
The Heartbeat of Business
SANTEE CHAMBER OF COMMERCE
LCF
LA CAÑADA FLINTRIDGE CHAMBER OF COMMERCE
CUPERTINO CHAMBER OF COMMERCE
Rancho Mirage Chamber of Commerce
RMCC
Center of Valley Business
GREATER High Desert CHAMBER OF COMMERCE
ADELANTO • APPLE VALLEY • HESPERIA • VICTORVILLE
CORONA CHAMBER OF COMMERCE
FONTANA CHAMBER OF COMMERCE
MODESTO Chamber OF COMMERCE
SANTA MARIA VALLEY Chamber
Chamber of Commerce | Visitors Bureau | Economic Development
GREATER CONEJO VALLEY CHAMBER OF COMMERCE
TULARE CHAMBER of COMMI
The Chamber
Long Beach Area Chamber of Commerce
LODI 100 CELEBRATION CHAMBER
HUNTINGTON BEACH Chamber of Commerce
San Pedro CHAMBER of COMMERCE
More To Sea redondo BEACH Chamber of Commerce
danville area CHAMBER OF COMMERCE
SOUTH BAY ASSOCIATION OF CHAMBERS of COMMERCE
BREA CHAMBER
GREATER COACHELLA VALLEY CHAMBER
TRI-COUNTY CHAMBER ALLIANCE
SAN LUIS OBISPO | SANTA BARBARA | VENTURA
AED
Associated Equipment Distributors

September 16, 2025

The Honorable Governor Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

SUBJECT: **AB 1336 (ADDIS) FARMWORKERS: BENEFITS**
REQUEST FOR VETO

Dear Governor Newsom:

The California Chamber of Commerce and the organizations listed below respectfully **REQUEST** your **VETO** of **AB 1336 (Addis). AB 1336** is nearly identical to SB 1299 (Cortese) (2024), which was vetoed last year. **AB 1336** suffers from the same issues as SB 1299. There is no data to support the proposed presumption. Further, the presumption would apply even in situations where any link between the employer's conduct and a heat-related illness or injury is tangential, at best, and **AB 1336** mandates that WCAB evaluate employer compliance with regulations created by a different state agency.

There is No Evidence Supporting the Proposed Workers' Compensation Presumption

AB 1336 would create a presumption that a heat-related illness or injury is occupational if the employer fails to comply with any one of the dozens of heat illness prevention standard provisions in Sections 6721 or 3395 of Title 8 of the California Code of Regulations.[1] It applies regardless of any causal link to the claim at issue and regardless of whether a citation was issued.

We are unaware of any data demonstrating that there is a need for a presumption for agricultural workers for heat-related illnesses and injuries. Indeed, a recent CWCI study of an identical bill last year (SB 1299 (Cortese)) shows that agriculture claims are accepted at a rate of 89% - which is higher than other industries, including other outdoor industries.[2]

[1] Proposed section 3212.81 provides that any injury "resulting" from an employer's failure to comply with applicable heat standards would fall under the presumption. If the worker has demonstrated that an injury "resulted" from their job, they have already met their burden of proof under the workers' compensation system and that injury would be covered without the need for a presumption.
[2] That study is attached.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation, regardless of fault. If there is ever a dispute in evidence, the law requires the evidence to be viewed in favor of the worker. As this Legislature and Administration have recognized many times, presumptions should be established *sparingly*. As the Senate Committee on Labor, Public Employment, and Retirement has said:

> [T]he creation of presumptive injuries is an exceptional deviation that uncomfortably exists within the space of the normal operation of the California workers' compensation system. Rather than permit the existing system to operate in its normal course, the Legislature places its thumb on the scale: for these peace officers, for these injuries, employer must accept liability (barring unusual circumstances). As this essentially creates a set-aside microsystem within the larger workers' compensation system of automatic indemnity payments, the Legislature has historically decided to keep the number of presumed injuries and individuals who could qualify for such presumptions limited. If these exceptions were not limited, they would essentially consume and undermine the entire system, as it would create a situation where a small class of workers has more and more access to the workers' compensation system in a manner that other workers (some similarly situated) do not enjoy.[3]

Your administration has correctly noted in its veto messages that presumptions should only be created where there is clear and convincing evidence of the need for one:

> A presumption is not required for an occupational disease to be compensable. Such 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. Although well-intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence.[4]

The CWCI study demonstrates that only **0.65%** of all agriculture claims involved heat-related injuries or illnesses. That low number is consistent with other outdoor occupations. Again, 89% of agriculture claims are accepted, which is *higher* than the average for all other industries.

The reason presumptions are so rarely enacted is because a presumption essentially forces an employer to cover an injury regardless of whether it does in fact fall under the purview of workers' compensation. For example, here the presumption would also apply even if the alleged violation was tangential to any potential injury. If just one supervisor did not receive the required training, the presumption would apply to any heat-related illness or injury for any employee, even one that has no interaction with that supervisor. And pursuant to proposed section 3212.81(b), it would apply to any illness or injury that develops during the pay period, which could be up to 31 days under Labor Code section 205.

<u>An Identical Bill Was Vetoed Last Year</u>

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. We have strong concerns about having determinations made by the Workers Compensation Appeals Board (WCAB), an

[3] Senate Committee on Labor, Public Employment, and Retirement Analysis of SB 893 (2020)
[4] AB 334 Veto Message (2022)

entity that specializes in workers' compensation claims, not workplace safety.[5] Indeed, this was one of the reasons for the veto of SB 1299 (Cortese) just last year.

AB 1336 Would Increase State Costs

AB 1336 appears to task judges at WCAB with the responsibility of determining whether an employer has violated a heat illness prevention standard. By our count, there are 73 applicable heat illness prevention requirements. A violation of a single one of those could trigger the presumption. Determining whether there has been a violation will be extremely time intensive for WCAB judges and staff. Cal/OSHA inspectors (who are experts in this field) generally spend hours performing inspections and must review medical reports, conduct interviews, review site data and reporting, and more. While our preliminary audits show very few claims related to heat are filed, under **AB 1336** each and every claim filed will now be increasingly more time and labor intensive given the volume of not only the medical documentation and QME reports, but now the heat illness standards inspection reports. The complexity of each allegation will likely require multiple hearings to determine the validity of the claim (i.e., whether the presumption applies), especially considering this is not WCAB's expertise. The judges are not the only state employees involved in these hearings. There will also be significant time spent by WCAB staff as well— preparing documentation, filings, assisting injured workers through the process, and ensuring that hearings run smoothly and on time. That additional time and resources will impose costs on the department.

Additionally, each of the 286 WCAB judges would need training on heat illness prevention standards and compliance, which is an addition cost of time and resources. They would likely need to be trained by Cal/OSHA itself, imposing an independent and additional cost on that department.

It is also unclear whether the proposed fund would help with any of those costs. While we appreciate the intent behind the proposed Farmworker Climate Change Heat Injury and Death Fund is to assist workers who suffer occupational injuries, the bill does not say what the fund would cover. The language provides that it will fund "paying any administrative costs related to Section 3212.81". It is unclear if that is the workers' costs or if it is the state's administrative costs.

Further, the fund is coming from the Workers' Compensation Administration Revolving Fund. The Workers' Compensation Administration Revolving Fund is funded through workers' compensation assessments paid by all employers, not only agriculture, including public entities. Generally, other industry-specific funds are funded by that industry alone.[6]

For these reasons, we respectfully **REQUEST your VETO of AB 1336 (Addis).**

Sincerely,

Ashley Hoffman
Senior Policy Advocate
California Chamber of Commerce

[5] A similar concern was raised in opposition to AB 594 (Maienschein) (2023), which originally authorized public prosecutors to enforce health and safety standards under the purview of Cal/OSHA. Amendments were taken to address those concerns because it is a specialized subject. See Assembly Committee on Judiciary Analysis of AB 594 (2023) at page 7.

[6] For example, DIR has a Garment Restitution Fund for garment workers who are unable to collect unpaid wages. That is funded by registration fees paid by garment manufacturers.

African American Farmers of California
Agricultural Council of California
American Property Casualty Insurance Association (APCIA)
Associated Equipment Distributors
Association of California Egg Farmers
Brea Chamber of Commerce
Building Owners and Managers Association (BOMA)
California Association of Joint Powers Authorities (CAJPA)
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Business Properties Association (CBPA)
California Chamber of Commerce
California Citrus Mutual
California Coalition on Workers' Compensation (CCWC)
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California Grain and Feed Association
California Hispanic Chambers
California League of Food Producers (CLFP)
California Pear Growers Association
California Restaurant Association
California Seed Association
California State Floral Association
California Strawberry Commission
California Walnut Commission
Carlsbad Chamber of Commerce
Chino Valley 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
Gateway Chambers Alliance
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 Cañada Flintridge Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi District Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
NAIOP California
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
Nisei Farmers League
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce

Orange County Business Council
Pacific Egg & Poultry Association
Paso Robles and Templeton Chamber
Porterville Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
San Pedro Chamber of Commerce
Santa Barbara South Coast 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 Growers Association
Western Tree Nut Association
Wine Institute

AH:kas

Attachment: CWCI SB1299 Impact Analysis

LEGISLATIVE IMPACT ANALYSIS

Senate Bill 1299 (Cortese):

Evaluating the Proposed Rebuttable Presumption for Heat-Related Injuries for Agricultural Workers in the California Workers' Compensation System

California Workers' Compensation Institute

Gideon Baum and Steve Hayes

JUNE 2024

EXECUTIVE SUMMARY

Senate Bill (SB) 1299 is a measure currently pending before the California Assembly that would create a rebuttable presumption of compensability if:

1) an outdoor agricultural worker suffers a heat-related injury, illness, or death;
2) the agricultural worker is covered by Cal/OSHA's outdoor heat illness prevention standard;[1] and
3) a Workers' Compensation Appeals Board (WCAB) judge determines that the agricultural worker's employer violated the Cal/OSHA outdoor heat illness prevention standard.

This report examines the population of agricultural workers covered by the legislation, measures the percentage of workers' compensation claims filed by agricultural workers that involve heat-related injuries, and compares the percentage of heat-related claims in the agriculture sector to the percentage in non-agricultural workers covered by the high-heat procedures in the Cal/OSHA Outdoor Heat Illness Prevention Standard. Finally, the analysis considers the impact of the legislation on the California workers' compensation system.

Key Findings:

1) Despite global warming and climate change, there are very few agricultural heat-related illness claims. From 2019 to 2023, there were 659 workers' compensation claims filed by agricultural workers that were due to heat-related illness. Less than 1 percent (0.65%) of workers' compensation claims from agricultural workers involve heat-related injuries and illnesses, which is comparable to other industries covered by the Cal/OSHA high heat procedures[2], such as landscaping (0.65%), construction (0.67%) and mining, oil and gas extraction (0.56%).

2) The small percentage of claims involving heat-related injuries and illness is likely associated with the success of Cal/OSHA's existing outdoor heat illness prevention standard, which was enacted in 2005.

3) While several studies found that increases in temperature led to increases in injuries overall, a recent UCLA study that focused on California exclusively found that this phenomenon largely ceased with the implementation of the Cal/OSHA Outdoor Heat Illness Prevention Standard in 2005.

4) Outdoor agricultural workers have a workers' compensation claim denial rate of 11.0%—lower than the 12.4% to 13.3% denial rates for other outdoor occupations covered by the Cal/OSHA outdoor heat standard, and lower than the 14.7% denial rate for all claims.

5) The presumption created by SB 1299 would shift the initial determination of whether a Cal/OSHA heat injury illness standard violation occurred from the Occupational Safety and Health Appeals Board (OSHAB) to the WCAB. Given the lack of subject matter expertise on the part of WCAB judges, as well as the challenge of determining violations without citations from Cal/OSHA, the administrative burden and frictional costs of SB 1299 will be significant.

[1] California Code of Regulations, Title 8, Section 3395. Heat Illness Prevention in Outdoor Places of Employment.

[2] The list of industries covered by the high-heat procedures is in subdivision (a) of the Cal/OSHA Heat Illness Prevention standard. The high-heat procedures are in subdivision (e).

BACKGROUND

Senate Bill (SB) 1299 was introduced in 2024 to address workers' compensation claims for outdoor agricultural workers. Specifically, SB 1299 would create a rebuttable presumption of compensability, if:

a) an outdoor agricultural worker suffers a heat-related illness, injury, or death;

b) the agricultural worker is covered by the Cal-OSHA outdoor heat illness prevention standard[3]; and

c) the agricultural worker's employer violated the Cal-OSHA outdoor heat illness prevention standard.

What is a Rebuttable Presumption?

For more than 100 years, the California workers' compensation system has operated as a "grand bargain" that provides injured workers with workers' compensation benefits, including medical care and temporary and permanent disability indemnity benefits. Employers in turn are protected against tort lawsuits for work-related injuries.

As the legislature recognized that certain occupations had comparatively higher levels of risk for injury or occupation-related medical conditions, they debated modifications to the workers' compensation system through the inclusion of presumptions for those occupations and those medical conditions.

With traditional, or non-presumptive injuries, the claims administrator has the duty to investigate whether the reported claim is work related. If the investigation shows the injury is not work related, the claims administrator can deny the claim. The employee has the burden of proving that an industrial injury occurred.

A rebuttable presumption shifts the burden of proof to the employer in workers' compensation claims. Once the employee shows that they meet the requirements for a specific presumption, the employer must prove the injury or condition was not caused by work.

Presumptions and Public Policy

The Legislature has historically been hesitant to create new workers' compensation presumptions. Outside of a handful of limited exceptions, all current workers' compensation presumptions apply exclusively to law enforcement and firefighters and only for a specific set of injuries or conditions such as hernias, cancer, and heart disease. Generally, when discussing the public policy reasons why a rebuttable presumption should be extended to peace officers and firefighters, the Legislature has focused on a few key points:

1) Lack of hazard abatement – uniquely, peace officers and firefighters are required to run towards occupational hazards, including fires, accidents, and violent confrontations. While personal protective equipment may be used to abate or partially abate certain hazards, it cannot abate all occupational hazards.

2) High incidence of injury – as one would expect if hazard abatement is limited, the rate of injury for peace officers and firefighters is higher than for similarly situated workers.

[3] For a full description of the Cal-OSHA outdoor heat illness standard, see https://www.dir.ca.gov/title8/3395.html.

3) High rate of claim denials – as a presumption impacts the industrial liability for a claim, a presumption is unnecessary if the types of claims subject to the presumption are commonly accepted.

Since SB 1299 would establish a private sector, industry-specific presumption triggered by a violation of the Cal/OSHA outdoor heat illness prevention standard, this legislation would mark a significant departure from industrial presumptions in current law, both in the population covered and the operation of the presumption.

OBJECTIVE

This report seeks to answer five questions:

1) How many heat-related claims were filed by agricultural workers from 2019 through 2023?

2) Is the abatement of heat illness feasible for agricultural workers?

3) Is the percentage of workers' compensation claims involving heat-related injuries and illnesses higher for outdoor agricultural workers than for workers in other industries covered by the Outdoor Heat Illness Prevention Standard, such as construction and the oil and gas industry?

4) Do agricultural workers have a higher rate of injury claim denials compared to workers in similar industries covered by the outdoor heat illness prevention standard?

5) How would the trigger of the SB 1299 presumption (a violation of the Cal-OSHA outdoor heat illness prevention standard) impact the operation of the presumption and enforcement of the standard?

RESULTS

To answer these five questions, the authors compiled claims data from the Division of Workers' Compensation's Workers' Compensation Information System (WCIS)[4] for the injury years of 2019 through 2023. This created an initial data set of more than 3.2 million claims.

1. How many heat-related claims were filed by agricultural workers from 2019 through 2023?

Starting with the data set of more than 3.2 million claims, the authors utilized the Workers' Compensation Insurance Rating Bureau of California (WCIRB) "Search for a Classification Code" tool[5] to isolate worker classifications related to the Farms industry group. This process resulted in a list of 100,777 claims.

[4] WCIS is a state mandated database of all occupational injuries and is considered a complete resource of all workers' compensation system injuries.
[5] https://www.wcirb.com/products-and-services/classification-search

Next, the claims were classified by their nature of injury codes to identify those involving heat prostration, angina pectoris, myocardial infarction, and vascular loss, provided that the injury occurred between May and October. This yielded 659 claims—or 0.65% of the 100,777 agricultural claims—that involved heat-related injuries or illnesses during the 5-year study period (Exhibit 1).

Exhibit 1. Heat-Related Injuries for Agriculture Class Codes (2019 – 2023)

Job Classification	Total Claims	Heat-Related Injuries	Share of Total Claims
0005 - Nurseries–propagation/cultivation	10,665	57	0.53%
0016 - Orchards–citrus/deciduous fruits	12,999	69	0.53%
0035 - Florists–cultivating/gardening	4,444	15	0.34%
0040 – Vineyards	16,495	143	0.87%
0041 - Potato Crops	524	4	0.76%
0044 - Cotton Farms	174	1	0.57%
0045 - Orchards–nut crops	6,262	34	0.54%
0079 - Strawberry Crops	9,688	124	1.28%
0171 - Field Crops	4,455	48	1.08%
0172 - Truck Farms	17,626	121	0.69%
0034 - Poultry Raising/Egg Production	4,034	11	0.27%
0036 - Dairy Farms	9,735	18	0.18%
0038 - Stock Farms	1,162	5	0.43%
0050 - Farm Machinery Operation	2,514	9	0.36%
Total:	100,777	659	0.65%

2. Is the abatement of heat illness feasible for agricultural workers?

Heat illnesses and injuries related to high heat are an occupational hazard for all workers, including agricultural workers. Workers who are exposed to high heat conditions can develop heat-related injuries such as heat stroke and heat exhaustion, and the exposure can also make other workplace injuries more common.[6] A recent study from the Workers' Compensation Research Institute (WCRI) looked at data from 24 states (not including California) and found that the injury rate increases with the temperature for all workers and that the injury rate is 8% higher on 100 degree days when compared to days that are 65-70 degrees.[7]

In California, the Cal/OSHA outdoor heat illness prevention standard serves as one of the primary methods of abating heat illness. The standard requires, among other things, access to shade and water, active monitoring for employees who need to acclimatize to heat, training for both employees and supervisors, and the creation of a heat illness plan. High heat procedures must be initiated if the temperature exceeds 85 degrees, and if the temperature crosses 95 degrees, agricultural workers must

[6] Jacklitsch, et al. "Occupational Exposure to Heat and Hot Environments", DHHS (NIOSH) Publication No. 2016-106, February 2016. https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf

[7] Negrusa, et al. "Impact of Excessive Heat on the Frequency of Work-Related Injuries", Workers' Compensation Research Institute (WCRI), WC-24-18. May 2024, Page 25.

take a mandatory 10-minute cool down break every two hours.[8] The standard also requires employers to inform their workers that they may exercise their rights under the outdoor heat illness prevention standard without fear of retaliation and to advise them of procedures for acclimatization and appropriate first aid and emergency response to heat illness.

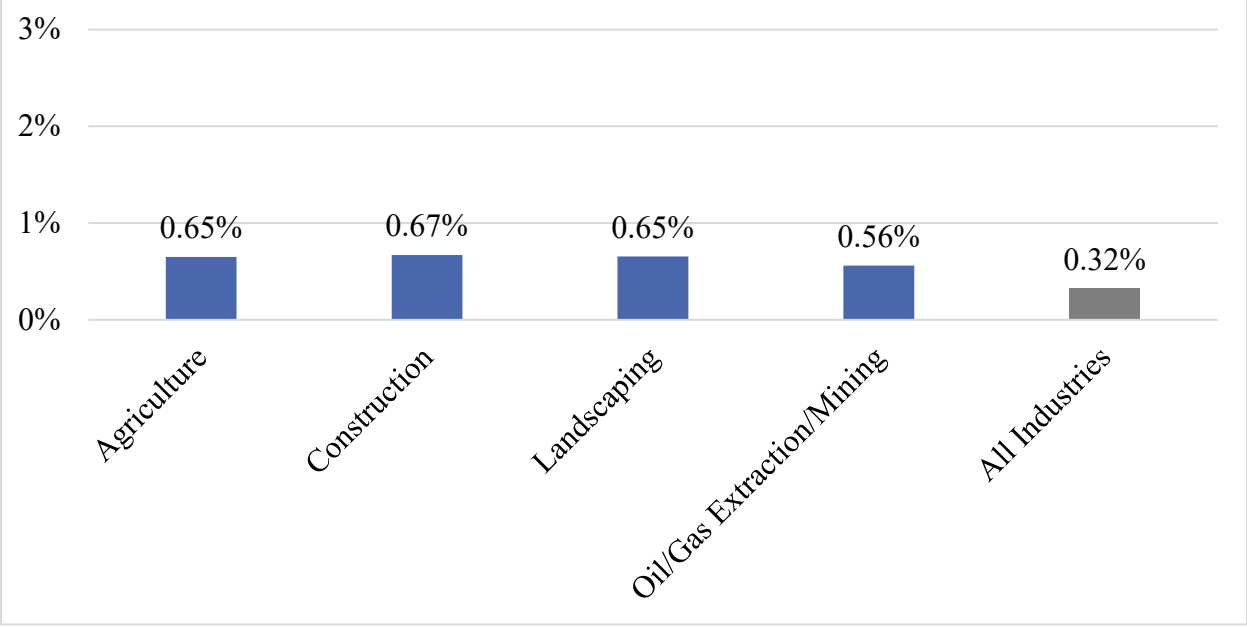
Does the Cal/OSHA outdoor heat illness standard succeed in reducing heat illness injuries?

As the heat illness standard began in 2005, and the study period begins in 2019, this question can be partially answered by the available data within this study. However, a recent study from UCLA found that while workplace injuries in California increased as the temperature increased, this trend halted with the adoption of the Cal/OSHA heat illness standard. Specifically, the study found that after 2005, the effect of increased injuries "above 90° F falls by roughly a third between 2000 and 2018."[9]

Noting the small number of agricultural heat illness injuries from 2019 to 2023 (as discussed above), as well as the UCLA study that found a statistically significant reduction in injuries with the introduction of the Cal/OSHA outdoor heat illness prevention standard, the data supports the conclusion that hazard abatement is both possible and common in the agricultural industry.

3. Is the percentage of workers' compensation claims involving heat-related injuries higher for outdoor agricultural workers than for workers covered by the high heat procedures[10] in the Cal/OSHA outdoor heat illness prevention standard[11]?

Exhibit 2. Heat-Related Injuries as a Percent of Workers' Comp Claims by Industry (2019 – 2023)



[8] Cal-OSHA outdoor heat illness standard, 8 CCR 3395. See https://www.dir.ca.gov/title8/3395.html.

[9] Park, et al. "Temperature, Workplace Safety, and Labor Market Inequality", UCLA Luskin School of Public Policy, page 26-27. https://ucla.app.box.com/s/14m6pj1algt7rwb8ihq4lyqjhm2ueejj

[10] Under the Cal/OSHA heat illness prevention standard, the agricultural, construction, landscaping, and oil and gas extraction industries must also follow a special set of procedures when the temperature is 95 degrees or higher.

[11] See Appendix A for the inventory of employee classification codes identified by the authors as subject to the Cal/OSHA heat standard.

As shown in Exhibits 1 and 2, between 2019 and 2023, agricultural workers subject to the Cal/OSHA outdoor heat illness prevention standard filed 659 heat-related claims, which represented 0.65% of all work-related injuries and illnesses claimed by agricultural workers. This percentage is significantly lower than other, more common agriculture injuries, such as strains (26.4%), contusions (16.1%), and lacerations (9.7%).[12]

Similarly, heat illness injuries account for only a small share of the injuries claimed by workers in the non-agricultural industries under the high heat procedures in the Cal/OSHA standard. Among all the outdoor occupations subject to the Cal/OSHA heat standard, less than one percent of workers' compensation claims involve heat-related injuries: Construction (0.67%), Landscaping (0.65%), and Oil/Gas Extraction (0.56%), while heat-related injuries accounted for only 0.32% of claims from all of California's indoor and outdoor industries. Additionally, the percentage of heat-related work injury claims from the public administration sector, which is not covered by the full Cal/OSHA Heat Illness Prevention Standard, and includes peace officers and firefighters, is also similar (0.59%). These findings are consistent with the recent research from UCLA, discussed above.

These findings are also consistent with Cal/OSHA data on heat illness inspections and injuries. From 2008 to 2023, Cal/OSHA investigated 1,526 potential cases of heat illness in all industries and in both the indoor and outdoor setting. Of those, 870 were confirmed to be cases of heat illness. Similarly, from 2009 to 2023, Cal/OSHA received 3,836 heat complaints in all industries,[13] but many of those complaints were in the indoor setting, outside of the legislative intent of SB 1299. For example, in 2023, more than half of all complaints (160 complaints out of 299 complaints total) were for the *indoor* setting. Based on their investigations, Cal/OSHA states that that for the 18 million employees in California, heat-related illness injuries for all indoor and outdoor industries total approximately 1,000 injuries per year.[14]

4. Do agricultural workers have a higher rate of injury claim denials when compared to other industries under the high heat procedures in the Cal/OSHA heat illness prevention standard?

Due to the small number of heat-related injuries across the selected class codes, the authors compared the overall denial rates for all injuries across the occupations covered by the high heat procedures in the Cal/OSHA heat illness prevention standard.

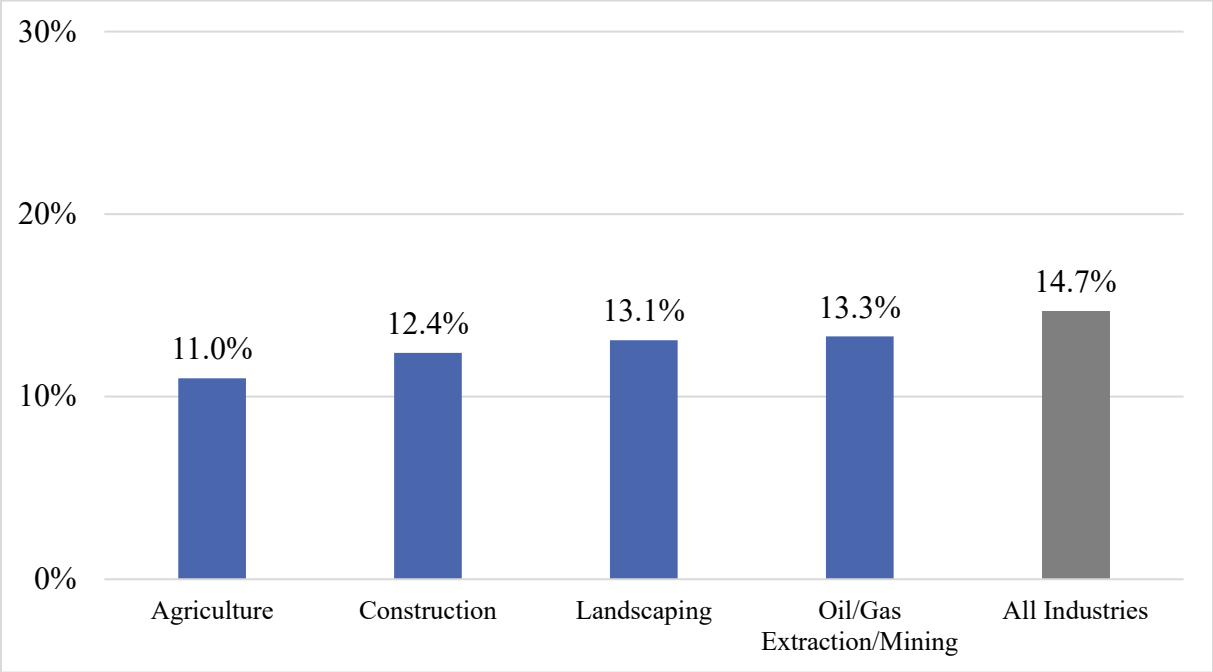
Exhibit 3 compares the overall denial rates for occupations that fall under the Cal/OSHA outdoor heat illness prevention standard. Here, the overall denial rate for submitted agricultural claims (11.0%) is lower than the denial rates for other industries subject to Cal/OSHA heat standard, as well as the overall denial rate for all California workers' compensation claims.

[12] Derived by the authors from the WCIS dataset.

[13] Email communication from Cal/OSHA to CWCI, June 2024.

[14] Cal/OSHA public remarks,10:20 timestamp. https://videobookcase.org/cal-osha/2024-04-24/.

Exhibit 3. Denial Rates for Claims by Industry (2019 – 2023)



5. How would the trigger of the SB 1299 presumption (a violation of the Cal/OSHA outdoor heat illness prevention standard) impact the operation of the presumption and enforcement of the standard?

As discussed above, heat-related illness claims comprise a small share of agricultural workers' occupational injury claims. This is comparable to non-agricultural workers covered by the high heat procedures. Historical data indicated a decline in these injuries following the adoption of Cal/OSHA's outdoor heat illness prevention law. This suggests that the presumption for agricultural industry workers in SB 1299 is distinct from existing presumptions. As SB 1299 applies to agricultural employers who have violated the Cal/OSHA heat illness prevention standard, some might argue that a workers' compensation presumption is necessary to encourage compliance with the law.

However, this raises several concerns:

First, workers' compensation presumptions have never been used in a punitive manner. The historic legislative focus has been on ensuring that injured workers who face an elevated risk of a hazard have their claims accepted without unnecessary litigation. As employers face higher workers' compensation insurance costs due to higher injury rates, there are existing processes to incentivize them to reduce injuries. Again, this would be a departure from existing presumptions.

Second, the creation of a workers' compensation presumption that is triggered by a violation of a Cal/OSHA standard could create conflicting determinations between the Occupational Safety and Health Appeals Board (OSHAB) and the Workers' Compensation Appeals Board (WCAB). Specifically, under SB 1299, the WCAB would need to address the threshold issue of whether the employer violated the heat illness standard. This determination may be made while another proceeding is occurring before

OSHAB, but the bill does not address what would happen if the WCAB found there was a violation, triggering the presumption, but OSHAB found there was no violation.

Finally, as SB 1299 does not require a heat illness citation from Cal/OSHA to trigger the presumption, the bill places the WCAB as the trier of fact on whether a violation of the Cal/OSHA heat illness prevention standard occurred. By placing the WCAB in the position of interpreting Cal/OSHA standards, SB 1299 requires the WCAB to depart from its area of expertise. Just as it would run counter to existing law for the OSHAB to determine permanent disability or apportionment, it would run counter to existing law to ask the WCAB to weigh in on a violation of Cal/OSHA standards.

CONCLUSION

In 2005, California became the first state to respond to the occupational hazard of outdoor heat by developing a heat illness prevention standard. California then strengthened this standard in 2015.[15] As of May 2024, only 4 other states have enacted variations on Cal/OSHA's heat-injury prevention standards for outdoor occupations.[16] Examination of the data reveals that this standard has been a historic worker safety innovation for farmworkers and other outdoor workers who are exposed to high heat conditions.

From 2019 through 2023, 659 agricultural workers filed workers' compensation claims due to heat-related illnesses. This represented 0.65% of all agricultural worker claims – a percentage that is comparable to that of other workers who are subject to the high heat procedures. At the same time, agricultural workers' work injury claims were denied at a lower rate than claims from workers in other occupations that were also subject to the Cal/OSHA outdoor heat illness prevention standard. It appears that the Cal/OSHA standard for heat-injury abatement for outdoor occupations has mitigated the growing impact of climate change. Additionally, research from UCLA suggests that policies targeting the risk of high heat exposure can be used to abate the hazard of heat illness.[17]

Taken together, and noting the potential jurisdictional questions raised by requiring the WCAB to determine if a violation of a Cal/OSHA standard occurred, it is likely that SB 1299 would create more challenges than it would solve, entail significant administrative friction costs, and is unlikely to have an appreciable impact on the safety of agricultural workers.

[15] See Appendix B

[16] https://www.nrdc.org/resources/occupational-heat-safety-standards-united-states

[17] Park, et al. "Temperature, Workplace Safety, and Labor Market Inequality", UCLA Luskin School of Public Policy, page 26-27. https://ucla.app.box.com/s/14m6pj1algt7rwb8ihq4lyqjhm2ueejj

APPENDIX A

Construction, Landscaping, and Mining/Oil/Gas Extraction Class Codes Selected as Subject to the Cal/OSHA Heat Standard

Outdoor Construction
5506 - Street/Road Construction–paving
5507 - Street/Road Construction–grading
5552 - Roofing–low wage
5553 - Roofing–high wage
5632 - Steel Framing–light gauge–low wage
5633 - Steel Framing–light gauge–high wage
6003 - Pile Driving
6011 - Dam Construction
6204 - Drilling
6206 - Oil/Gas Wells–cementing
6213 - Oil/Gas Wells–specialty tool
6216 - Oil/Gas Lease Work
6218 - Excavation–low wage
6220 - Excavation–high wage
6233 - Oil/Gas Pipeline Construction
6235 - Oil/Gas Wells–drilling/redrilling
6237 - Oil/Gas Wells–wireline service
6251 – Tunneling
6258 - Foundation Preparation Work
6307 - Sewer Construction–low wage
6308 - Sewer Construction–high wage
6315 - Water Mains Construction–low wage
6316 - Water Mains Construction–high wage
6325 - Conduit Construction/Underground Wiring
6361 - Canal Construction
6364 - Irrigation Pipe Installation
6400 - Fence Construction
6834 - Boat Building/Repairing

Outdoor Landscaping
0042 - Landscape Gardening
0096 - Nut Hulling/Shelling/Processing
0106 - Tree Pruning/Repairing/Trimming
0251 - Irrigation/Drainage/Reclamation Works

Outdoor Mining/Oil Gas Extraction
1122 - Mining–surface
1123 - Mining–underground
1124 - Mining–underground–surface employees
1320 - Oil/Gas Lease Operators
1322 - Oil/Gas Well Servicing

1330 - Blasting
1452 - Mining–ore milling
1463 - Asphalt Works
1624 - Quarries
1710 - Stone Crushing

APPENDIX B

2015 Amendments to the OSHA Heat Standards

In 2015, the Occupational Safety and Health Standards Board (OSHSB) amended the heat illness prevention standard to add the following requirements:

- "Potable water" available to workers must be provided no cost and be fresh, pure, suitably cool and located within 400 feet unless prohibited by site conditions;
- Shade available when the temperature exceeds 80º f must accommodate all employees on break, and be located within 700 feet of employees unless that is not feasible;
- Employees taking a cool-down break must be encouraged to remain in the shade until symptoms abate and the employer must monitor them during the recovery period;
- The threshold temperature for initiating "high heat procedures" was reduced from 95º f to 85º f;
- High-heat procedures must include a means of observing employees for heat illness symptoms; a designated on-site employee to call for emergency medical services; and a pre-shift mtg to review high-heat precautions;
- A net 10-minute recovery period (which may be concurrent with other required breaks) for every 2 hours that an agricultural employee works continuously in temperatures of 95º f or above;
- Additional training to inform workers that they may exercise their rights under the heat illness standard without fear of retaliation, procedures for acclimatization, and appropriate first aid and emergency response to heat illness;
- The required written heat illness prevention procedures was renamed the "heat illness prevention plan" and new elements were added; and
- Supervisors must act immediately if a worker shows symptoms of heat illness and such workers home may not be sent home without first offering onsite first aid or providing emergency medical services.

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California Workers' Compensation Institute

The California Workers' Compensation Institute (CWCI), incorporated in 1964, is a private, nonprofit membership organization of insurers and self-insured employers. CWCI conducts and communicates research and analyses to improve California's workers' compensation system. CWCI members include insurers that collectively write 76 percent of California's workers' compensation direct written premium, as well as many of the largest public and private self-insured employers in the state. Additional information about CWCI research and activities is available on the Institute's website, www.cwci.org.

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