

AMENDED IN SENATE MARCH 21, 2024

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL

NO. 1299

Introduced by Senator Cortese

February 15, 2024

An act to amend Section 62.5 of, and to add Section 3212.81 to, the Labor Code, relating to workers' compensation.**LEGISLATIVE COUNSEL'S DIGEST**

SB 1299, as amended, Cortese. Farmworkers: benefits.

Existing law establishes a workers' compensation system to compensate employees for injuries sustained in the course of their employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of employment. Existing law authorizes the Department of Industrial Relations to expend moneys that have been appropriated for the administration and enforcement of laws under its jurisdiction, as well as for the maintenance of any commission or office of the department, as specified.

Existing law establishes the Workers' Compensation Administration Revolving Fund within the State Treasury. Existing law requires the director to levy a surcharge upon employers in order to fund, among other things, the Workers' Compensation Administration Revolving Fund. Upon appropriation by the Legislature, existing law authorizes funds to be expended for, among other things, the Return-to-Work Program and the enforcement of the insurance coverage program.

This bill would create a disputable presumption that a heat-related injury that develops within a specified timeframe after working outdoors for an employer in the agriculture industry that fails to comply with heat illness prevention standards, as defined, arose out of and came in the course of employment. The bill would require the appeals board to find in favor of the employee if the employer fails to rebut the presumption. The bill would specify that compensation awarded for heat-related injury to farmworkers is to include, among other things, medical treatment and disability. The bill would establish the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of \$5,000,000 derived from nongeneral funds of the Workers' Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption. The bill would make related findings and declarations.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) The intent and purpose of this act is to prevent increasing farmworker heat-related injury, illness, and death, as climate change raises temperatures. It is the intent of the Legislature that all agricultural employers consider the climate change heat-related needs of farmworkers and do whatever is necessary to prevent injury, illness, and death, consistent with existing laws and regulations. It is not the intent of this act to change any existing heat-related regulation.
- (b) Farmworkers are facing climate change in a climate of fear as heat-related injury, illness, and death increases.
- (c) The largest agricultural counties in California are experiencing record-breaking heat waves. In ~~2002~~, 2022, the City of King City in the County of Monterey broke its hottest temperature ever recorded at 116 degrees. The City of Fresno recorded an all-time high at 114 degrees. The City of Stockton in the County of San Joaquin shattered its 1988 record of 106 degrees by reaching 112 degrees. The City of Napa set a record at 114 degrees. The City of Modesto in the County of Stanislaus topped its prior record at 106 degrees. In 2023, the City of Paso Robles reached an all-time high of 112 degrees, breaking the old record of 108 degrees set in 2010.
- (d) According to the United States Department of Labor, approximately 77 percent of farmworkers were born outside the United States and many do not speak English. Fear of retaliation and being fired for work-related injuries strongly discourages farmworkers from reporting heat-related injuries or violations by their employers.
- (e) From 2018 to 2019, the number of *suspected and confirmed* farmworker heat-related deaths increased approximately 130 percent. In 2022, the office of the Governor noted that “Extreme heat ranks amongst the deadliest of all climate change hazards, with structural inequities playing a significant role in the capacity of individuals, workers, and communities to protect and adapt to its effects.”

SEC. 2. Section 62.5 of the Labor Code is amended to read:

62.5. (a) (1) The Workers’ Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for all of the following purposes, and may not be used or borrowed for any other purpose:

(A) For the administration of the workers’ compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to paragraph (2) of subdivision (a) of Section 3702.5.

(B) For the Return-to-Work Program set forth in Section 139.48.

(C) For the enforcement of the insurance coverage program established and maintained by the Labor Commissioner pursuant to Section 90.3.

(D) For the Farmworker Climate Change Heat Injury and Death Fund, which is hereby created, for the purpose of paying any administrative costs related to Section 3212.81. The fund shall consist of a one-time transfer of five million dollars (\$5,000,000) derived from nongeneral funds of the Workers’ Compensation Administration Revolving Fund.

(2) The fund shall consist of surcharges made pursuant to paragraph (1) of subdivision (f).

(b) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of

subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(4) Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers' Compensation Administration Revolving Fund created under this section, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.

(c) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4751) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) The Occupational Safety and Health Fund is hereby created as a special account in the State Treasury. Moneys in the account may be expended by the department, upon appropriation by the Legislature, for support of the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform as set forth in this division, and Division 5 (commencing with Section 6300).

(2) On and after the effective date of the act amending this section to add this paragraph in the 2013–14 Regular Session of the Legislature, any moneys in the Cal-OSHA Targeted Inspection and Consultation Fund

and any assets, liabilities, revenues, expenditures, and encumbrances of that fund, less five million dollars (\$5,000,000), shall be transferred to the Occupational Safety and Health Fund. On June 30, 2014, the remaining five million dollars (\$5,000,000) in the Cal-OSHA Targeted Inspection and Consultation Fund, or any remaining balance in that fund, shall be transferred to, and become part of, the Occupational Safety and Health Fund.

(e) The Labor Enforcement and Compliance Fund is hereby created as a special account in the State Treasury. Moneys in the fund may be expended by the department, upon appropriation by the Legislature, for the support of the activities that the Division of Labor Standards Enforcement performs pursuant to this division and Division 2 (commencing with Section 200), Division 3 (commencing with Section 2700), and Division 4 (commencing with Section 3200). The fund shall consist of surcharges imposed pursuant to paragraph (3) of subdivision (f).

(f) (1) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent Injuries Benefits Trust Fund, and the Occupational Safety and Health Fund. The total amount of the surcharges shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. The regulations shall require the surcharges to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(2) The surcharge levied by the director for the Occupational Safety and Health Fund, pursuant to paragraph (1), shall not generate revenues in excess of fifty-seven million dollars (\$57,000,000) on and after the 2013–14 fiscal year, adjusted for each fiscal year as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations. For the 2013–14 fiscal year only, the revenue cap established in this paragraph shall be reduced by an amount equivalent to the balance transferred from the Cal-OSHA Targeted Inspection and Consultation Fund established in Section 62.7, less any amount of that balance loaned to the State Public Works Enforcement Fund, to the Occupational Safety and Health Fund pursuant to subdivision (d).

(3) A separate surcharge shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Labor Enforcement and Compliance Fund. The total amount of the surcharges shall be allocated between employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. In no event shall the total amount of the surcharges paid by employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(4) The surcharge levied by the director for the Labor Enforcement and Compliance Fund shall not exceed forty-six million dollars (\$46,000,000) in the 2013–14 fiscal year, adjusted as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations.

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(5) ~~The~~ regulations adopted pursuant to paragraph (1) to (4), inclusive, shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 3. Section 3212.81 is added to the Labor Code, to read:

3212.81. (a) If 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, fails to comply with the heat illness prevention standards set forth in Section 6721 and in Section 3395 of Title 8 of the California Code of Regulations, any resulting heat-related injury to the employee shall be presumed to arise out of and in the course of employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board shall find in accordance with it. Heat illness prevention standards include, but are not limited to, the following:

- (1) Establishing, implementing, and maintaining an effective Heat Illness Prevention Plan and making it available at the worksite in English and the language understood by a majority of employees and providing effective heat illness prevention.
 - (2) Recognition and response training as required by Section 3395 of Title 8 of the California Code of Regulations.
 - (3) ~~Failing to provide~~ *Providing* access to shade and water and a cooldown rest period as required by Section 3395 of Title 8 of the California Code of Regulations.
- (b) “Injury” as used in this section includes 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.
- (c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.