

April 26, 2019

The Honorable R. Alexander Acosta  
Secretary of Labor  
United States Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

Loren Sweatt  
Deputy Assistant Secretary of Labor  
Occupational Safety and Health Administration  
United States Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

Dear Secretary Acosta and Deputy Assistant Secretary Sweatt,

This Workers Memorial Week, we the undersigned organizations call on you to take swift action to protect workers from the growing dangers of climate change and rising temperatures in the workplace. During this week we remember those who have suffered or died on the job and renew the fight for safe workplaces. The Occupational Safety and Health Administration has an obligation to prevent future heat-related injuries, illnesses and fatalities by issuing a heat stress standard for outdoor and indoor workers.

Heat is the leading weather-related killer, and it is becoming more dangerous as 18 of the last 19 years were the hottest on record.<sup>1</sup> Excessive heat can cause heat stroke and even death if not treated properly. It also exacerbates existing health problems like asthma, kidney failure, and heart disease. Workers in agriculture and construction are at highest risk, but the problem affects all workers exposed to heat, including indoor workers without climate-controlled environments.

Heat stress killed 815 U.S. workers and seriously injured more than 70,000 workers from 1992 through 2017, according to the Bureau of Labor Statistics.<sup>2</sup> However, this is likely a vast underestimate, given that injuries and illnesses are underreported in the U.S., especially in the sectors employing vulnerable and often undocumented workers.<sup>3</sup> Further, heat is not always recognized as a cause of heat-induced injuries or deaths and can be easily misclassified, because many of the symptoms overlap with other more common diagnoses.

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<sup>1</sup>*Severe Weather Awareness – Heat Waves*, NATIONAL WEATHER SERVICE (viewed on Apr. 17, 2019), <https://bit.ly/2CQ3X6u>; *It's Time to Protect Millions of Workers from Extreme Heat*, CITIZENVOX (viewed on Apr. 17, 2019), <https://bit.ly/2uPafwL>; John Schwartz and Nadja Popovich, *It's Official: 2018 was the Fourth-Warmest Year on Record*, THE NEW YORK TIMES (Feb. 6, 2019), <https://nyti.ms/2HX8s2t>.

<sup>2</sup> *Occupational injuries/illnesses and fatal injuries profiles*, BUREAU OF LABOR STATISTICS (viewed on Apr. 17, 2019) <https://bit.ly/2VVCGW6>. Serious injuries are defined as those resulting in at least one day away from work.

<sup>3</sup> Common factors for underreporting include: records of injuries are based on incomplete self-reporting and do not include significant worker populations, including small farms with fewer than 11 employees, and; many employees do not report due to fear of retaliation, including the threat of being fired or deported. Public Citizen, *Extreme Heat and Unprotected Workers*, 27-28 (Jul. 17, 2018), <https://bit.ly/2NoqhFo>.

Behind the statistics are individual workers who will never return home after a hard day's work, or who will be forever changed from irreversible injuries and illnesses:

- In 2018, Peggy Frank, a 63-year-old mail carrier for the United States Postal Service, died from hyperthermia (an abnormally high body temperature) in her non-air-conditioned mail truck on a day that reached 115 degrees.<sup>4</sup>
- In 2012, Mark Rainey, a temporary employee of A.H. Sturgill Roofing Inc., died from heat stroke after engaging in strenuous labor in hot working conditions on his first day on the job.<sup>5</sup>
- In 2011, Verizon denied field technician Brent Robinson's request to be released from a job after he reported feeling sick while working in extreme heat. Later that day he fell unconscious and died.<sup>6</sup>
- In 2011, an Amazon warehouse employee contacted OSHA to report that 15 workers had collapsed when the warehouse heat index – a measure that includes humidity – exceeded 100 degrees.<sup>7</sup>
- In 2008, Maria Isabel Vasquez Jimenez, a pregnant teen farmworker, died from heat exhaustion after laboring more than nine hours without accessible shade or water.<sup>8</sup>

In citation reports under its general duty clause, OSHA recommends that employers implement heat stress prevention programs. However, as these tragic fatalities demonstrate, most employers will not implement practices to prevent heat stress in their workplace unless they are required to do so. A federal heat stress standard would help to prevent countless illnesses and deaths caused by heat, benefiting workers and employers alike. In its absence, rising temperatures are projected to cause an increase in heat-related workplace illness, a dramatic loss in labor capacity, decreased productivity, and an increase in workers compensation and hospital-related costs.<sup>9</sup>

The solutions to heat stress are common sense: water, rest in a shaded or climate-controlled location, and acclimatization to the heat, among other measures. The National Institute for Occupational Safety and Health issued criteria for a heat standard in 1972, updating it in 1986 and 2016. Last summer, more than 130 organizations and former OSHA administrators petitioned OSHA for a heat stress standard, receiving bicameral congressional support.<sup>10</sup> Meanwhile, California, Washington, Minnesota and the U.S. military have issued heat protections. In the absence of a federal standard on heat, OSHA must rely on its “catch-all” general duty clause. While the general duty clause provides a general requirement that employers provide safe workplaces, it is more difficult to enforce than a dedicated standard. Notably, from

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<sup>4</sup> Laura Newberry, *U.S. Postal Service Fined \$150,000 after Heat-Related Death of Woodland Hills Mail Carrier*, LOS ANGELES TIMES (Jan. 10, 2019), <https://lat.ms/2ZILeHO>.

<sup>5</sup> *Secretary of Labor v. A.H. Sturgill Roofing, Inc.*, Citation 589300.015/01001, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Jan. 16, 2013), <http://bit.ly/2NcZqfe>.

<sup>6</sup> Heat Stress, a Burning Issue for Outside Telecom Techs, CWA NEWS (Mar. 26, 2012), <http://bit.ly/2Nc7ehm>.

<sup>7</sup> David Streitfeld, *Inside Amazon's Very Hot Warehouse*, THE NEW YORK TIMES (Sept. 19, 2011), <https://nyti.ms/2V5Vkxh>.

<sup>8</sup> Sasha Khokha, *Teen Farmworker's Heat Death Sparks Outcry*, NATIONAL PUBLIC RADIO (Jul. 13, 2018), <https://n.pr/2Lj7udN>.

<sup>9</sup> SIDNEY SHAPIRO & KATHERINE TRACY, PUBLIC LAW AND CLIMATE DISASTERS OCCUPATIONAL HEALTH AND SAFETY LAW (Rosemary Lyster *et al.* eds., 1<sup>st</sup> ed., Edward Elgar Pub, 2018), <https://amzn.to/2QTBWxJ>; U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II* (Nov. 2018), <https://nca2018.globalchange.gov/>.

<sup>10</sup> Letter from Public Citizen *et. al.* to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (Jul. 17, 2018), <https://bit.ly/2wjJSzy>. Press Release, Public Citizen, *As Climate Heats Up, Government Must Protect Workers From Heat* (July 17, 2018) <https://bit.ly/2LJIHoD>.

2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under its general duty clause.<sup>11</sup>

It is likely to become even more difficult to protect workers from heart stress under the general duty clause in light of the 2019 Occupational Safety and Health Review Commission's decision in *Secretary of Labor v. A.H. Sturgill Roofing, Inc.* During Mr. Rainey's first day on the job as a temporary worker for A.H. Sturgill, he was admitted to the hospital with a core body temperature of 105 degrees after working in direct sunlight for five hours. He ultimately died from heat stroke. OSHA cited the company for a heat citation under the general duty clause. In a split decision, the Commission reversed the citation. The majority asserted, "The Secretary's failure to establish the existence of an excessive heat hazard here illustrates the difficulty in addressing this issue in the absence of an OSHA standard."<sup>12</sup> OSHA has a single acceptable course of action in response to this decision: promulgate a heat standard to put employers on notice of what they must do to protect workers, and enforce the standard.

The OSHA website cautions, "Every year, thousands of workers become sick from occupational heat exposure, and some are fatally injured. **These illnesses and fatalities are preventable.**"<sup>13</sup> With rising temperatures, we cannot afford for further inaction. This Workers Memorial Week, we call on OSHA to heed its own warnings and issue a comprehensive heat stress standard without delay.

Sincerely,

350 Spokane

Academic Health Resources

Alaska's Big Village Network

Alliance of Nurses for Healthy Environments

American Federation of State, County and Municipal Employees (AFSCME)

Animals Are Sentient Beings, Inc

Asbestos Disease Awareness Organization (ADAO)

Association of Farmworker Opportunity Programs

Association of Western Pulp and Paperworkers

Berkshire Environmental Action Team (BEAT)

Blinderman Construction

CAUSE

Center for Biological Diversity

Center for Progressive Reform

Child Labor Coalition

Chispa

Cocciardi and Associates, Inc.

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<sup>11</sup> CA has over 14 years of experience with a heat standard, confirming the practicality and effectiveness of such a standard. Its standard resulted in greater compliance by more employers and prevention of heat illness and death among workers in CA. Letter from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 17 (Jul. 17, 2018) <https://bit.ly/2wjJSzy>.

<sup>12</sup> *Secretary of Labor v. A.H. Sturgill Roofing, Inc.* 8 No. 13-0224 (OSHR Feb. 28, 2019), <https://bit.ly/2IItSe>.

<sup>13</sup> *Occupational Heat Exposure*, U.S. DEPARTMENT OF LABOR (viewed on Aug. 16, 2018) <https://bit.ly/1wVAwUN> (emphasis in original).

Collaborative Center for Justice  
Collective of Immigrant Resilience through Community Led Empowerment (CIRCLE)  
Project  
Columbia Legal Services  
Communication Workers of America  
Concerned Health Professionals of New York  
CR Research/Consulting  
CRLA Foundation  
Earth Ethics, Inc.  
Earthjustice  
Earthworks  
El Comite de Apoyo a los Trabajadores Agricolas  
Empire State Consumer Project  
Equitable Health Solutions  
Fair Farms  
Farmworker Association of Florida  
Farmworker Justice  
Fe y Justicia Worker Center  
FLAP- Farmworker and Landscaper Advocacy Project  
Food & Water Watch  
Food Empowerment Project  
Four Twenty Seven  
Franciscan Action Network  
Friends of the Earth  
Government Accountability Project  
Green America  
Greenpeace  
Greenpeace USA  
Hesperian Health Guides  
Hip Hop Caucus  
Interfaith Worker Justice  
Interfaith Worker Justice San Diego  
International Brotherhood of Teamsters  
IUE-CWA  
Justice in Motion  
Labor Network for Sustainability  
Labor Occupational Health Program  
Labor of Love Safety Training  
Laborers' Health & Safety Fund of North America  
League of Conservation Voters  
Mass Teachers Association  
MassCOSH (Massachusetts Coalition for Occupational Safety & Health)  
Migrant Clinicians Network  
Mississippi Workers' Center for Human Rights

National Child Labor Committee  
National Consumers League  
National Council for Occupational Safety and Health (National COSH)  
National Employment Law Project  
National Farm Worker Ministry  
National Hispanic Medical Association  
National Nurse Alliance of SEIU Healthcare  
Natural Resources Defense Council  
New Jersey Work Environment Council  
New Solutions: A Journal of Environmental and Occupational Health Policy  
New York Committee for Occupational Safety and Health  
North Carolina Council of Churches  
Occupational Health and Safety Section, American Public Health Association  
OneAmerica  
Oregon Environmental Council  
Oregon Physicians for Social Responsibility  
Oxfam  
PhilaPOSH  
Physicians for Social Responsibility  
Physicians for Social Responsibility, Arizona Chapter  
Physicians for Social Responsibility, Florida Chapter  
Physicians for Social Responsibility, Maine Chapter  
Physicians for Social Responsibility, New York Chapter  
Physicians for Social Responsibility, Pennsylvania Chapter  
Physicians for Social Responsibility, San Francisco Bay Area Chapter  
Physicians for Social Responsibility, Tennessee Chapter  
Progressive Democrats of America (PDA)  
Protecting Our Waters  
Public Citizen  
Public Justice Center  
Responsible Sourcing Network  
RICOSH  
SafeWork Washington  
Sierra Club  
South Florida Interfaith Worker Justice  
Student Action with Farmworkers  
UCLA-LOSH  
UFW Foundation  
Union of Concerned Scientists  
UNITE HERE International Union  
United Farm Workers  
United Food and Commercial Workers  
Vermont Public Health Assn  
Virginia Clinicians for Climate Action

Wasatch Clean Air Coalition  
Washington Physicians for Social Responsibility  
WeCount!  
Worker Justice Center of NY  
Workplace Fairness  
Worksafe