

HB 722 - Labor and Employment - Occupational Safety and Health - Heat Stress Standards - Support Testimony - Ann Rosenthal

Dear Chair Davis, Vice Chair Dumais, and members of the Economic Matters Committee:

Thank you for the opportunity to submit testimony in support of House Bill 722, which would require Maryland employers to develop and implement plans to protect their workers from the hazard of heat illness and death. As an attorney who has worked in the field of occupational safety and health for more than 40 years, most recently as the Associate Solicitor for Occupational Safety and Health in the U.S. Department of Labor (the chief legal position for occupational safety and health in the Federal government), I have seen far too many examples of workers sickened and killed from exposure to excessive heat.

The ways to protect these workers are well known, but there is currently no specific requirement for employers to provide those protections. This means that the only legal compulsion available is a citation under the General Duty Clause, far too often only after a worker has died. This is far from ideal, because the legal burden to prove a violation of the clause is much higher than the burden to prove that an employer has violated a specific requirement in a standard. As a result, OSHA (at both the state and federal levels) is less likely to issue a citation in the first instance, and if a citation is contested, the overworked and under-resourced government lawyers charged with litigating the case are more likely to settle the case without obtaining as full relief as would be available under a standard.

And even if the case is fully litigated, success is not guaranteed. *See, e.g. Secretary of Labor v. Sturgill Roofing*, OSHRC No 13-0224, decided Feb. 28, 2019, (copy attached, and found at

<https://www.oshrc.gov/assets/1/18/A.H. Sturgill Roofing Inc.%5E13-0224%5EComplete Decision signed%5E022819%5EFINAL.pdf?8324>) which vacated a heat stress citation that Federal OSHA had issued after a 60-year old roofing worker died of heat stroke on his first day of work. According to the Commission that decided the case, the Secretary did not prove that working on a sunny roof for more than two hours, with a heat index value in the mid-80s or higher, constituted sufficient exposure to “excessive heat” to violate the general duty clause. Comm’n decision at 7. It specifically noted “the difficulty in addressing this issue in the absence of an OSHA standard.” *Id.* at 7-8, fn 8. Indeed, one of the Commissioners in the majority would have gone even further, questioning whether exposure to excessive heat is even a hazard covered by the general duty clause

because exposure to heat is “inherent in the performance of outdoor work.” *Id.* at 23-24. If OSHA had had a standard similar to that required by HB 722 in place, these issues would not have mattered because the employer would have been required to have a program to make sure workers are acclimated to heat, and to have monitored conditions so it could have intervened earlier. If the employer had not done so, it could have been cited successfully for failing to have that program in place, or to comply with it. And this could have happened *before* any worker was harmed!

This standard is needed desperately. There are already an average of 30 days a year in which the heat index is over 90 degrees, which poses a hazard to exposed workers. With climate change, that number is expected to more than double in the next quarter century. *See* Union of Concerned Scientists; 2019, USC Killer Heat Data, found at <http://www.ucsusa.org/killer-heat>. Moreover, most outdoor jobs involve physical labor, which increases core body temperature and susceptibility to heat injury. Imagine that your job required you, instead of working in an air-conditioned office building, to spend eight hours a day performing hard physical labor, such as construction work or farmwork, outdoors under the hot sun on a ninety-plus degree day. I expect we would all want our employers to be required to make sure we were acclimated to the heat, and to provide us with adequate water, rest and shade. Many responsible employers already take these steps, but they do it voluntarily. Enacting this bill would even the playing field and require all employers to act the same way. Workers would not be at the mercy of less responsible employers, or of those who just might not realize the extent of the hazard or the importance of the protections required by HB 277. Therefore I urge you to pass this bill expeditiously.

Sincerely,

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