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SENATE BILL NO. 411

Offered January 8, 2020

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A BILL to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to the protection of employees; standards for heat illness prevention.

Patron—Hashmi

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 40.1-44.2 as follows:
§ 40.1-44.2. Standards for heat illness prevention.

A. As used in this section:

"Acclimatization" means the gradual, temporary adaptation of the body to work in the heat when a person is exposed to heat.

"Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing, and personal protective equipment worn by employees.

"Heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load and includes heat cramps, heat exhaustion, heat syncope, and heat stroke.

"Heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

"Landscaping" means providing landscape care and maintenance services or installing trees, shrubs, plants, lawns, or gardens, or providing these services in conjunction with the design of landscape plans.

"Landscaping" includes the construction, installation, or maintenance of walkways, retaining walls, decks, fences, ponds, and similar structures.

"Oil and gas extraction" means operating or developing oil and gas field properties, exploring for crude petroleum or natural gas, mining or extracting of oil or gas, or recovering liquid hydrocarbons from oil or gas field gases.

"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

"Potable water" means water that is suitable for drinking purposes found in Occupational Safety and Health Administration (OSHA) standard 29 C.F.R. 1910.141(a)(2).

"Rest period" means a cool-down period made available to an employee to prevent heat illness.

"Shade" means the complete blockage of direct sunlight that allows the body to cool. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and does not deter or discourage access or use.

"Temperature" means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer to measure the outdoor temperature in an area where there is no shade.

B. The Safety and Health Codes Board shall adopt regulations establishing reasonable standards as provided in this section that are designed to protect employees from heat illness while engaged in outdoor work. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all outdoor places of employment, except that only employers engaged in the following industries shall be required to comply with the standards established pursuant to subsection E:

1. Agriculture;

2. Construction;

3. Landscaping;

4. Oil and gas extraction; or

5. Transportation or delivery of agricultural products, construction materials, or other heavy materials, including furniture, lumber, freight, cargo, cabinets, and industrial or commercial materials, except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

C. Such standards shall require each employer to provide water as follows:

1. Employees shall be permitted to have access to potable drinking water at all times.

2. The water shall be located as close as practicable to the areas where employees are working.

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59 3. Where drinking water is not plumbed or otherwise continuously supplied, it must be provided in
60 sufficient quantity, from the beginning to the end of the work shift, to supply at least one quart of
61 drinking water per employee per hour.

62 4. Employers may begin the shift with smaller quantities of water if effective procedures are
63 established for replenishment during the shift as needed.

64 5. The water provided shall be filtered, fresh, pure, suitably cool, and shall be provided to employees
65 free of charge.

66 6. The frequent drinking of water, as described in subdivision I 1 c (3), shall be encouraged. The
67 water shall be located as close as practicable to the areas where employees are working and shall not
68 in any event be farther than 400 feet walking distance from an employee's work area.

69 D. Such standards shall require each employer to provide access to shade as follows:

70 1. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer
71 shall ensure there are one or more areas with shade provided and maintained at all times while
72 employees are present that are either open to the air or provided with ventilation or cooling. The
73 amount of shade provided shall be at least enough to accommodate the number of employees on rest
74 periods, so that they can sit in a normal posture fully in the shade without having to be in physical
75 contact with each other. The shade shall be located as close as practicable to the areas where
76 employees are working. Subject to the same specifications, the amount of shade present during meal
77 periods shall be at least enough to accommodate the number of employees on the meal period who
78 remain onsite.

79 2. When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit, employers
80 shall either provide shade in accordance with subdivision 1 or provide timely access to shade upon an
81 employee's request.

82 3. Employees shall always be allowed and encouraged to take a cool-down rest period in the shade
83 for preventative measures, including but not limited to protecting themselves from overheating. An
84 individual employee who takes a preventative cool-down rest (i) shall be asked if the employee is
85 experiencing symptoms of heat illness; (ii) shall be encouraged to remain in the shade; and (iii) shall
86 not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event
87 less than five minutes in addition to the time needed to access the shade.

88 4. Notwithstanding the provisions of subdivisions 1 and 2, except for employers in the agricultural
89 industry, cooling measures other than shade, including the use of misting machines, may be provided in
90 lieu of shade if the employer is able to demonstrate that these measures are at least as effective as
91 shade in allowing employees to be cooled.

92 E. Such standards shall require each employer, when the temperature equals or exceeds 90 degrees
93 Fahrenheit, to implement high-heat procedures that:

94 1. Ensure that employees are able to contact their supervisor by any effective communications
95 vehicle when necessary.

96 2. Require effectively observing/monitoring employees for signs or symptoms of heat illness by
97 implementing two or more of the following:

98 a. Supervisor or designee observation of 20 or fewer employees;

99 b. Mandatory buddy system;

100 c. Regular communication with sole employee such as by radio or cellphone; or

101 d. Other effective means of observation.

102 3. Designate one or more employees on each worksite as authorized to call for emergency medical
103 services, and if no designated employees are available, allowing other employees to call on their behalf.

104 4. Require reminding employees throughout the work shift to stay properly hydrated.

105 5. For employees employed in agriculture, conduct pre-shift meetings before the commencement of
106 work to review the high heat procedures, encourage employees to drink plenty of water, and remind
107 employees of their right to take a cool-down rest when necessary.

108 F. Such standards shall require each employer to provide rest periods as follows:

109 1. An employer shall authorize, permit, and ensure that all employees take a rest period of five
110 minutes for every hour worked. An employer shall not require an employee to work during a rest
111 period. A rest period shall be counted as hours worked, for which there shall be no deduction from
112 wages.

113 2. When temperatures reach 90 degrees or above, the employer shall ensure that the employee takes
114 a minimum five-minute rest period every half hour.

115 3. If an employer fails to provide a rest period in accordance with this subsection, the employer
116 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
117 each workday that a required rest period is not provided.

118 G. Such standards shall require each employer to implement effective emergency response
119 procedures pursuant to which the employer shall:

120 1. Ensure that effective communication by voice, observation, or electronic means is maintained so

that employees at the worksite can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cellphone or text messaging device, may be used for this purpose only if reception in the area is reliable.

2. Respond to signs and symptoms of possible heat illness if a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee. The supervisor shall take immediate action commensurate with the severity of the illness, including but not limited to first aid measures and how emergency medical services will be provided. If they are the employee is exhibiting signs of symptoms severe enough to indicate heat illness, the employee shall not be sent home without being offered onsite first aid or provided with emergency medical services.

H. Such standards shall require each employer to provide for acclimatization as follows:

1. All employees shall be closely observed by a supervisor during a heat wave. For purposes of this subdivision only, "heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

2. An employee who has been newly assigned to a high heat area shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment.

I. Such standards shall require each employer to provide effective training that is:

1. For employees:

a. In a language the supervisor or employee understands;

b. Provided to each supervisor and non-supervisory employee before the employee begins work that may reasonably result in exposure to the risk of heat illness; and

c. On the following topics:

(1) The environmental and personal risk factors that contribute to or may increase the susceptibility to heat-related illness, including, but not limited to, medical conditions, water consumption, alcohol use, use of medications that affect the body's response to the heat, and burden caused by personal protective equipment;

(2) The employer's procedures for complying with the requirements of this standard, including the employer's responsibility to provide water, shade, cool-down rests, and access to first aid, as well as the employees' right to exercise their rights under this standard without retaliation;

(3) The importance of frequent consumption of water, up to four cups per hour, when the work environment is above 80 degrees and employees are likely sweating more than usual;

(4) The importance of acclimatization;

(5) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and emergency responses to the different types of heat illness;

(6) The importance of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in coworkers; and

(7) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be contacted and provided should they become necessary; and

2. For supervisors:

a. Provided to supervisors prior to supervising employees performing work that may reasonably result in exposure to the risk of heat illness; and

b. On the following topics:

(1) The topics required to be provided to employees listed in subdivision 1 c;

(2) The procedures the supervisor is required to follow to implement the applicable provisions in this section;

(3) The procedures the supervisor is required to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures; and

(4) The procedures for moving or transporting an employee to a place where the employee can be reached by an emergency medical service provider, if necessary.

J. The standards established pursuant to this section shall take into consideration the NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health in 2016.

K. The rules and regulations adopted by the Safety and Health Codes Board pursuant to this section shall be enforced as specified in §§ 40.1-49.3 through 40.1-49.7.

L. It is a violation of § 40.1-51.2:1 to discharge or discriminate in any other manner against employees for exercising their rights under this or any other provision offering occupational safety and health protection to employees.