

BULLETIN

No. 24-05

June 17, 2024

As state lawmakers debate a bill (SB 1299, Cortese) to create a presumption of compensability for farmworkers who claim heat-related injuries if a workers' compensation judge (WCJ) finds their employer failed to comply with Cal/OSHA's outdoor heat illness prevention standard, a CWCI analysis shows there were only 659 heat-related injury claims filed by farmworkers in the past 5 years (0.65% of all agricultural claims), questioning the rationale for a presumption.

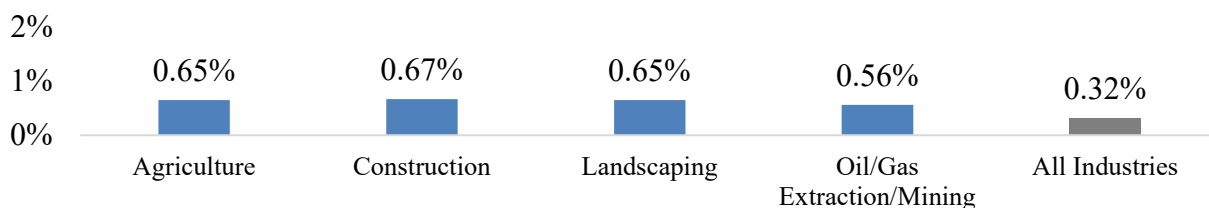
Workers' compensation presumptions, which shift the burden of proving that an injury is work-related from the claimant to the employer, have historically been limited to public safety officers suffering specific types of injuries such as hernias, cancer, and heart disease that often arise due to the inherent risks associated with police and firefighters' occupational exposures. In contrast, in non-presumptive claims, the claims administrator investigates whether the injury is work related, and if they find it is not, they can deny the claim and the worker has the burden of proving it was a work injury. Historically, policymakers have created presumptions to address situations where there is an inability to abate hazardous work conditions, a high incidence of injury compared to similarly situated employees, and a high rate of claim denials.

Over the past decade state legislators have passed several bills that would have created private sector presumptions, but except for a now expired COVID presumption, both Governor Brown and Governor Newsom have vetoed them. SB 1299, a United Farmworkers Union-backed bill is the latest attempt to extend presumptions into the private sector. In terms of the population covered and the operation of the presumption, which would be triggered by a violation of the Cal/OSHA standard, SB 1299 would be a major departure from presumptions that are currently in place. CWCI's analysis of SB 1299 examines five key issues:

- 1) How many heat-related claims were filed by agricultural workers from 2019 through 2023?
- 2) Is abatement of heat illness feasible for agricultural workers?
- 3) Is the percentage of workers' compensation claims involving heat-related injuries higher for outdoor agricultural workers than for other workers covered by the high-heat procedures in the Cal/OSHA outdoor heat illness prevention standard (such as construction and landscaping workers)?
- 4) Do agricultural workers have a higher rate of injury claim denials than workers in other industries subject to the high-heat procedures in the Cal/OSHA outdoor heat illness prevention standard?
- 5) How would the trigger of SB 1299 presumption (a WCJ's finding of a violation of the Cal/OSHA standard) impact the operation of the presumption and enforcement of the standard?

To gauge the scope of the issue, CWCI began its analysis with an initial database of more than 3.2 million AY 2019–2023 claims from DWC's Workers' Compensation Information System (WCIS), then isolated worker classifications related to the Farms industry group covered by Cal/OSHA's outdoor heat illness prevention standard. This process resulted in a dataset of 100,777 claims which were then classified by their nature of injury codes to further identify those injuries that involved heat prostration, angina pectoris, myocardial infarction, and vascular loss.

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



This produced a final count of 659 claims – or 0.65% of the 100,777 agricultural claims – that involved heat-related injuries or illnesses during the 5-year study period, a rate comparable to other industries that are subject to Cal/OSHA's outdoor heat illness prevention standard.

In addition, the Institute analysis found that the denial rate for agricultural claims over the past five years was 11%, which was lower than the rates for the other industries subject to the Cal/OSHA standard (which ranged from 12.4% to 13.3%), and materially lower than the overall denial rate of 14.6% for all California workers' compensation claims.

In 2005, California became the first state to enact an outdoor heat illness prevention standard, with significant amendments added in 2015 to bolster the standard and further protect outdoor workers, not only in agriculture, but in construction, landscaping, oil and gas extraction and mining, and other industries where workers are exposed to outdoor heat. Among other things, the standard requires employers to provide access to shade and water, active training and monitoring of employees, and mandatory cool-down breaks. Employers also must have a written heat illness plan, advise their employees of procedures for acclimatization and appropriate first aid and emergency response to heat illness, and inform them that they may exercise their rights under the standard without fear of retaliation. As of May 2024, California was one of only five states to have enacted these types of protections, with an additional standard set to take effect this summer to offer heat protection to indoor workers. The success of the Cal/OSHA outdoor heat prevention standard is evidenced both by the finding that only 0.65% of agriculture claims involve heat injuries and by a recent UCLA study which found that while work injuries in the state increase as the temperature increases, in the 13 years following the adoption of the Cal/OSHA heat illness standard (2006-2018), temperatures of 90+ degrees were associated with a third fewer heat injuries than they had been in the five years prior to the standard (2001-2005).

The Institute's analysis also notes that the proposal to establish a presumption triggered by a WCJ's determination that an agricultural employer violated Cal/OSHA's outdoor heat illness prevention standard raises several other issues:

First, Cal/OSHA data show that from 2008–2023, the agency investigated 1,525 serious work-related heat injury cases (requiring an inpatient stay) across all industries, of which 870 (57%) were confirmed. Thus, over the past 16 years, the number of serious work-related heat illness cases across all sectors that were confirmed by Cal/OSHA has averaged 54.4 per year (with 45 confirmed cases in 2023), so both the number of heat injury claims in the workers' compensation system and the number of serious heat injury cases confirmed by Cal/OSHA suggest widespread adherence to the standard, not only in agriculture, but in the other sectors that are subject to it. Thus, establishing a presumption for these types of injuries would yield little in terms of improving compliance with the heat standard or reducing heat injuries.

Second, the historic motive behind the creation of a presumption is to ensure that injured workers who face an elevated risk of injury have their claims accepted without unnecessary litigation. The analysis shows little evidence to support that this scenario exists for agricultural workers suffering heat injuries. SB 1299 would represent a significant departure from current presumptions and could open the door for other private sector workers to demand presumptions without supporting evidence of the need.

Third, establishing a presumption triggered by a violation of a Cal/OSHA standard could result in conflicting determinations between the Occupational Safety and Health Appeals Board (OSHAB) and the Workers' Compensation Appeals Board (WCAB), which would be responsible for determining the threshold issue of whether the heat illness prevention standard was violated. A WCAB determination could be made at the same time that OSHAB is conducting a hearing on potential violations, but the bill fails to address what would happen if the WCAB finds there was a violation and OSHAB finds there was not. Beyond that, SB 1299 would make the WCAB the trier of fact as to whether a violation of the Cal/OSHA standard occurred, requiring it to interpret the Cal/OSHA standards, which goes beyond a WCJ's area of expertise and would be inappropriate and run counter to existing law.

In the past Governor Newsom has taken a cautious approach toward proposals to expand workers' compensation presumptions, vetoing several bills that would have created or expanded presumptions, noting that "altering the burden of proof through a presumption should be provided sparingly and based upon 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... must be supported by clear and compelling evidence." In the case of SB 1299, CWCI's analysis indicates that such clear and compelling evidence is lacking. The analysis has been released as an Impact Analysis report which is available for free to the public and can be found under the Research tab at www.cwci.org.

BY/

Copyright 2024 California Workers' Compensation Institute

CWCI members may log in to www.cwci.org to view Bulletins and Research Reports. Nonmember subscribers may log in under Resources (subscriber files). Public information is also on the website and nonmembers may order Bulletin/Research subscriptions from the online store.