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Last month, AB 2243 (E. Garcia & L. Rivas, 2022) was chaptered, requiring the California Division of Occupational Health and Safety (Cal/OSHA) to consider adopting rules requiring (1) employers to distribute copies of heat-related illness prevention plans to all new employees and the first time each calendar year that temperatures hit 80 degrees Fahrenheit, (2) farmworkers to wear protective equipment when the air quality index (AQI) exceeds 300, and (3) the creation of acclimatization protocols for high heat events. Extreme heat and poor air quality pose numerous health risks for agricultural workers, many of whom are low-income people of color. In partnership with the office of Assemblymember Eduardo Garcia, UCLA's California Environmental Legislation and Policy Clinic provided research to support the introduction of AB 2243.

Cal/OSHA currently has regulations to protect outdoor workers from temperatures above 80 degrees, with additional, high heat protections taking effect at 95 degrees. The agency also developed an outdoor air quality regulation related to wildfire smoke. But, in light of increasing temperatures, prolonged heat waves, and more frequent and severe wildfires, both standards are ripe for updates.

AB 2243 was introduced to kickstart these regulatory rulemakings and create stronger protections for outdoor workers. The bill took several amendments during the legislative process, ultimately passing in a form that creates opportunities for advocates to push for more robust regulations by Cal/OSHA during its regulatory rulemaking processes. Ongoing progress at the agency level will be necessary to ensure that workers are fully protected during heat waves and other ultra-high heat conditions.

AB 2243's Journey through the Legislature

Initially, AB 2243 directed Cal/OSHA to consider:

- Creating an ultra-high heat threshold of 105 degrees Fahrenheit and additional protections for outdoor workers when the temperature surpasses this threshold. These protections could have included:
    - Mandatory, paid rest and recovery breaks every hour,
    - More accessible cool water in the areas where workers spend their shifts, and

    - Increased employee heat-related illness symptom monitoring by employers throughout the workday.
- Lowering the AQI level for PM 2.5 at which employees must wear respiratory equipment when exposed to wildfire smoke from 500 AQI to 200 AQI.

During the legislative process, additional provisions related to the provision of heat illness prevention plans and acclimatization were added. Cal/OSHA will consider whether employers will be required to share such plans with new employees upon hiring and remind existing employees annually. The goal is to educate employees about the signs and symptoms of heat-related illnesses and how to protect themselves and their coworkers. The Division will also consider regulations related to acclimatization to help employees adjust to working in higher temperatures and ultrahigh heat conditions. Substantial temperature changes can cause employees to experience heat-related illnesses even at lower temperatures in the absence of acclimatization opportunities.

Under the current wildfire smoke standard, respiratory protective equipment is mandatory when the Air Quality Index reaches 500, which is off-the-charts hazardous air quality. AB 2243 proposed lowering the standard to 200 (200-300 is very unhealthy) before settling on 301, which is hazardous. The bill also suggests eliminating the requirement for fit testing above 301 AQI, in a nod to some stakeholder concerns about the existing rule's requirement to conduct fit testing when AQI surpasses 500. And the bill recommends enforcing these standards for farmworkers, but not for other outdoor workers. Farmworker rights advocates expressed concern about the recommendation to eliminate fit testing above 500, as well as the exclusion of other outdoor workers.

Finally, the requirement to consider creating an ultra-high heat standard was eliminated toward the end of the session. This critical provision would have pushed Cal/OSHA to add a tier of protections when temperatures surpass 105 degrees. Recommended protections included mandatory hourly work breaks, accessible cool water, shade structures, and heat-related illness symptom monitoring for employees. The difference between 95 and 105 degrees is dramatic, especially for people engaged in rigorous work, underscoring a major opportunity for new protections.

Next Steps

Many factors contributed to the amendments, including opposition from businesses

and deference to Cal/OSHA's expertise in this arena. But the bottom line is that work remains to be done to ensure outdoor workers are robustly protected during extreme heat events. Cal/OSHA's regulatory rulemaking processes will provide a forum for creating these protections. Given the complexity of worker health and safety issues and increasing data on the impacts of extreme heat, these rulemaking processes can and should be an opportunity for Cal/OSHA to think deeply and work together with impacted communities. Stakeholder engagement, particularly from outdoor workers and organizations that represent them, will be critical in ensuring a sufficient suite of protections is adopted. While there is a great deal of work to be done, AB 2243 catalyzed these efforts and shed light on a serious issue impacting agricultural and other outdoor workers throughout the state.