
Comments – Draft Standard for Comment – Assembly Bill 2243 Heat Illness Prevention

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Good afternoon,

The organizations listed below appreciate the opportunity to submit the following comments via e-mail on the agency's draft standard for Heat Illness Prevention proposed pursuant to AB 2243 (E. Garcia), 2022. We also associate ourselves with the comments submitted by Rob Moutrie at the California Chamber of Commerce.

We have two primary concerns with this proposed regulation:

1. The exception at the bottom of pages 1 and 3 is much appreciated. But it needs to be reworked to recognize that for an agricultural employee, this is the norm, and not an exception. This is for an employee who has consistently worked under the same or similar conditions as the employer's working conditions within the prior 14 days.
2. The restrictions for work for new employees or for a returning employee who has been away for more than 14 days need to be clear relative to whether the employee is to receive wages for periods where the proposed regulation prohibits the employee from working.

Employees Working Under Similar Conditions Within the Prior 14 Days:

In an agricultural workplace, it is uncommon where a new employee for any given employer has not worked under similar working conditions within the prior 14 days. This is especially true for migrant and seasonal ag employees. As the exception is currently drafted, the employer would need to demonstrate the past employment history of the employee. As employees don't carry that kind of documentation with them, we ask that the exception be based on an employee certification instead of an employer demonstration.

Below are two drafts of potential alternative amendments.

EXCEPTION to subsections (g)(3)(A) and (g)(3)(B): The requirements of subsections (g)(3)(A) and (g)(3)(B) do not apply if the employee **certifies to the employer that they have** consistently worked under the same or similar conditions as the employer's working conditions within the prior 14 days.

or

EXCEPTION #1 to subsections (g)(3)(A) and (g)(3)(B): The requirements of subsections (g)(3)(A) and (g)(3)(B) do not apply if the employer can demonstrate the employee consistently worked under the same or similar conditions as the employer's working conditions within the prior 14 days.

EXCEPTION #2 to subsections (g)(3)(A) and (g)(3)(B): The requirements of subsections (g)(3)(A) and (g)(3)(B) do not apply to an agricultural employee if the employee certifies to the employer that they have consistently

worked under the same or similar conditions as the employer's working conditions within the prior 14 days.

Compensation for New Employees or Returning Employees:

In the various provisions of California law that limit the number of hours an employee can work, the employer is not required to pay the employee for hours where the employee is not allowed to work. For example, the law allowing minors to gain work experience limits the number of work hours an employee can work. This is based on age and whether the work occurs on a school day. Those employees are paid only for the hours they work.

We do not believe it is the intent of the proposed regulation to require that a new employee or a returning employee who has been away for more than 14 days is to receive wages for periods where the proposed regulation prohibits that employee from working. We ask that this be clarified.

Conclusion

Our two concerns are pretty straightforward, and we thank you for your consideration of these concerns. If you have any questions or need additional information, please let us know.

We look forward to working with you on these issues.

Thank you,

American Pistachio Growers
California Association of Winegrape Growers
California Avocado Commission
CA Cotton Ginners & Growers Assn.
California Farm Bureau
California Rice Commission
California State Beekeepers Association
California Walnut Commission
Grower-Shipper Assn. of Central CA
Western Tree Nut Association

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