

Introduced by Senator CorteseFebruary 15, 2024

An act to amend Section 62.5 of, and to add Section 3212.81 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1299, as introduced, Cortese. Farmworkers: benefits.

Existing law establishes a workers' compensation system to compensate employees for injuries sustained in the course of their employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of employment. Existing law authorizes the Department of Industrial Relations to expend moneys that have been appropriated for the administration and enforcement of laws under its jurisdiction, as well as for the maintenance of any commission or office of the department, as specified.

Existing law establishes the Workers' Compensation Administration Revolving Fund within the State Treasury. Existing law requires the director to levy a surcharge upon employers in order to fund, among other things, the Workers' Compensation Administration Revolving Fund. Upon appropriation by the Legislature, existing law authorizes funds to be expended for, among other things, the Return-to-Work Program and the enforcement of the insurance coverage program.

This bill would create a disputable presumption that a heat-related injury that develops within a specified timeframe after working outdoors for an employer in the agriculture industry that fails to comply with heat illness prevention standards, as defined, arose out of and came in the course of employment. The bill would require the appeals board to

find in favor of the employee if the employer fails to rebut the presumption. The bill would specify that compensation awarded for heat-related injury to farmworkers is to include, among other things, medical treatment and disability. The bill would establish the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of \$5,000,000 derived from nongeneral funds of the Workers’ Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The intent and purpose of this act is to prevent increasing
4 farmworker heat-related injury, illness, and death, as climate
5 change raises temperatures. It is the intent of the Legislature that
6 all agricultural employers consider the climate change heat-related
7 needs of farmworkers and do whatever is necessary to prevent
8 injury, illness, and death, consistent with existing laws and
9 regulations. It is not the intent of this act to change any existing
10 heat-related regulation.

11 (b) Farmworkers are facing climate change in a climate of fear
12 as heat-related injury, illness, and death increases.

13 (c) The largest agricultural counties in California are
14 experiencing record-breaking heat waves. In 2002, the City of
15 King City in the County of Monterey broke its hottest temperature
16 ever recorded at 116 degrees. The City of Fresno recorded an
17 all-time high at 114 degrees. The City of Stockton in the County
18 of San Joaquin shattered its 1988 record of 106 degrees by reaching
19 112 degrees. The City of Napa set a record at 114 degrees. The
20 City of Modesto in the County of Stanislaus topped its prior record
21 at 106 degrees. In 2023, the City of Paso Robles reached an all-time
22 high of 112 degrees, breaking the old record of 108 degrees set in
23 2010.

24 (d) According to the United States Department of Labor,
25 approximately 77 percent of farmworkers were born outside the
26 United States and many do not speak English. Fear of retaliation

1 and being fired for work-related injuries strongly discourages
2 farmworkers from reporting heat-related injuries or violations by
3 their employers.

4 (e) From 2018 to 2019, the number of farmworker heat-related
5 deaths increased approximately 130 percent. In 2022, the office
6 of the Governor noted that “Extreme heat ranks amongst the
7 deadliest of all climate change hazards, with structural inequities
8 playing a significant role in the capacity of individuals, workers,
9 and communities to protect and adapt to its effects.”

10 SEC. 2. Section 62.5 of the Labor Code is amended to read:

11 62.5. (a) (1) The Workers’ Compensation Administration
12 Revolving Fund is hereby created as a special account in the State
13 Treasury. Money in the fund may be expended by the department,
14 upon appropriation by the Legislature, for all of the following
15 purposes, and may not be used or borrowed for any other purpose:

16 (A) For the administration of the workers’ compensation
17 program set forth in this division and Division 4 (commencing
18 with Section 3200), other than the activities financed pursuant to
19 paragraph (2) of subdivision (a) of Section 3702.5.

20 (B) For the Return-to-Work Program set forth in Section 139.48.

21 (C) For the enforcement of the insurance coverage program
22 established and maintained by the Labor Commissioner pursuant
23 to Section 90.3.

24 (D) *For the Farmworker Climate Change Heat Injury and Death*
25 *Fund, which is hereby created, for the purpose of paying any*
26 *administrative costs related to Section 3212.81. The fund shall*
27 *consist of a one-time transfer of five million dollars (\$5,000,000)*
28 *derived from nongeneral funds of the Workers’ Compensation*
29 *Administration Revolving Fund.*

30 (2) The fund shall consist of surcharges made pursuant to
31 paragraph (1) of subdivision (f).

32 (b) (1) The Uninsured Employers Benefits Trust Fund is hereby
33 created as a special trust fund account in the State Treasury, of
34 which the director is trustee, and its sources of funds are as
35 provided in paragraph (1) of subdivision (f). Notwithstanding
36 Section 13340 of the Government Code, the fund is continuously
37 appropriated for the payment of nonadministrative expenses of the
38 workers’ compensation program for workers injured while
39 employed by uninsured employers in accordance with Article 2
40 (commencing with Section 3710) of Chapter 4 of Part 1 of Division

1 4, and shall not be used for any other purpose. All moneys collected
2 shall be retained in the trust fund until paid as benefits to workers
3 injured while employed by uninsured employers.
4 Nonadministrative expenses include audits and reports of services
5 prepared pursuant to subdivision (b) of Section 3716.1. The
6 surcharge amount for this fund shall be stated separately.

7 (2) Notwithstanding any other provision of law, all references
8 to the Uninsured Employers Fund shall mean the Uninsured
9 Employers Benefits Trust Fund.

10 (3) Notwithstanding paragraph (1), in the event that budgetary
11 restrictions or impasse prevent the timely payment of administrative
12 expenses from the Workers' Compensation Administration
13 Revolving Fund, those expenses shall be advanced from the
14 Uninsured Employers Benefits Trust Fund. Expense advances
15 made pursuant to this paragraph shall be reimbursed in full to the
16 Uninsured Employers Benefits Trust Fund upon enactment of the
17 annual Budget Act.

18 (4) Any moneys from penalties collected pursuant to Section
19 3722 as a result of the insurance coverage program established
20 under Section 90.3 shall be deposited in the State Treasury to the
21 credit of the Workers' Compensation Administration Revolving
22 Fund created under this section, to cover expenses incurred by the
23 director under the insurance coverage program. The amount of
24 any penalties in excess of payment of administrative expenses
25 incurred by the director for the insurance coverage program
26 established under Section 90.3 shall be deposited in the State
27 Treasury to the credit of the Uninsured Employers Benefits Trust
28 Fund for nonadministrative expenses, as prescribed in paragraph
29 (1), and notwithstanding paragraph (1), shall only be available
30 upon appropriation by the Legislature.

31 (c) (1) The Subsequent Injuries Benefits Trust Fund is hereby
32 created as a special trust fund account in the State Treasury, of
33 which the director is trustee, and its sources of funds are as
34 provided in paragraph (1) of subdivision (f). Notwithstanding
35 Section 13340 of the Government Code, the fund is continuously
36 appropriated for the nonadministrative expenses of the workers'
37 compensation program for workers who have suffered serious
38 injury and who are suffering from previous and serious permanent
39 disabilities or physical impairments, in accordance with Article 5
40 (commencing with Section 4751) of Chapter 2 of Part 2 of Division

1 4, and Section 4 of Article XIV of the California Constitution, and
2 shall not be used for any other purpose. All moneys collected shall
3 be retained in the trust fund until paid as benefits to workers who
4 have suffered serious injury and who are suffering from previous
5 and serious permanent disabilities or physical impairments.
6 Nonadministrative expenses include audits and reports of services
7 pursuant to subdivision (c) of Section 4755. The surcharge amount
8 for this fund shall be stated separately.

9 (2) Notwithstanding any other law, all references to the
10 Subsequent Injuries Fund shall mean the Subsequent Injuries
11 Benefits Trust Fund.

12 (3) Notwithstanding paragraph (1), in the event that budgetary
13 restrictions or impasse prevent the timely payment of administrative
14 expenses from the Workers' Compensation Administration
15 Revolving Fund, those expenses shall be advanced from the
16 Subsequent Injuries Benefits Trust Fund. Expense advances made
17 pursuant to this paragraph shall be reimbursed in full to the
18 Subsequent Injuries Benefits Trust Fund upon enactment of the
19 annual Budget Act.

20 (d) (1) The Occupational Safety and Health Fund is hereby
21 created as a special account in the State Treasury. Moneys in the
22 account may be expended by the department, upon appropriation
23 by the Legislature, for support of the Division of Occupational
24 Safety and Health, the Occupational Safety and Health Standards
25 Board, and the Occupational Safety and Health Appeals Board,
26 and the activities these entities perform as set forth in this division,
27 and Division 5 (commencing with Section 6300).

28 (2) On and after the effective date of the act amending this
29 section to add this paragraph in the 2013–14 Regular Session of
30 the Legislature, any moneys in the Cal-OSHA Targeted Inspection
31 and Consultation Fund and any assets, liabilities, revenues,
32 expenditures, and encumbrances of that fund, less five million
33 dollars (\$5,000,000), shall be transferred to the Occupational Safety
34 and Health Fund. On June 30, 2014, the remaining five million
35 dollars (\$5,000,000) in the Cal-OSHA Targeted Inspection and
36 Consultation Fund, or any remaining balance in that fund, shall
37 be transferred to, and become part of, the Occupational Safety and
38 Health Fund.

39 (e) The Labor Enforcement and Compliance Fund is hereby
40 created as a special account in the State Treasury. Moneys in the

1 fund may be expended by the department, upon appropriation by
2 the Legislature, for the support of the activities that the Division
3 of Labor Standards Enforcement performs pursuant to this division
4 and Division 2 (commencing with Section 200), Division 3
5 (commencing with Section 2700), and Division 4 (commencing
6 with Section 3200). The fund shall consist of surcharges imposed
7 pursuant to paragraph (3) of subdivision (f).

8 (f) (1) Separate surcharges shall be levied by the director upon
9 all employers, as defined in Section 3300, for purposes of deposit
10 in the Workers' Compensation Administration Revolving Fund,
11 the Uninsured Employers Benefits Trust Fund, the Subsequent
12 Injuries Benefits Trust Fund, and the Occupational Safety and
13 Health Fund. The total amount of the surcharges shall be allocated
14 between self-insured employers and insured employers in
15 proportion to payroll respectively paid in the most recent year for
16 which payroll information is available. The director shall adopt
17 reasonable regulations governing the manner of collection of the
18 surcharges. The regulations shall require the surcharges to be paid
19 by self-insurers to be expressed as a percentage of indemnity paid
20 during the most recent year for which information is available,
21 and the surcharges to be paid by insured employers to be expressed
22 as a percentage of premium. In no event shall the surcharges paid
23 by insured employers be considered a premium for computation
24 of a gross premium tax or agents' commission. In no event shall
25 the total amount of the surcharges paid by insured and self-insured
26 employers exceed the amounts reasonably necessary to carry out
27 the purposes of this section.

28 (2) The surcharge levied by the director for the Occupational
29 Safety and Health Fund, pursuant to paragraph (1), shall not
30 generate revenues in excess of fifty-seven million dollars
31 (\$57,000,000) on and after the 2013–14 fiscal year, adjusted for
32 each fiscal year as appropriate to fund any increases in the
33 appropriation as approved by the Legislature, and to reconcile any
34 over/under assessments from previous fiscal years pursuant to
35 Sections 15606 and 15609 of Title 8 of the California Code of
36 Regulations. For the 2013–14 fiscal year only, the revenue cap
37 established in this paragraph shall be reduced by an amount
38 equivalent to the balance transferred from the Cal-OSHA Targeted
39 Inspection and Consultation Fund established in Section 62.7, less
40 any amount of that balance loaned to the State Public Works

1 Enforcement Fund, to the Occupational Safety and Health Fund
2 pursuant to subdivision (d).

3 (3) A separate surcharge shall be levied by the director upon all
4 employers, as defined in Section 3300, for purposes of deposit in
5 the Labor Enforcement and Compliance Fund. The total amount
6 of the surcharges shall be allocated between employers in
7 proportion to payroll respectively paid in the most recent year for
8 which payroll information is available. The director shall adopt
9 reasonable regulations governing the manner of collection of the
10 surcharges. In no event shall the total amount of the surcharges
11 paid by employers exceed the amounts reasonably necessary to
12 carry out the purposes of this section.

13 (4) The surcharge levied by the director for the Labor
14 Enforcement and Compliance Fund shall not exceed forty-six
15 million dollars (\$46,000,000) in the 2013–14 fiscal year, adjusted
16 as appropriate to fund any increases in the appropriation as
17 approved by the Legislature, and to reconcile any over/under
18 assessments from previous fiscal years pursuant to Sections 15606
19 and 15609 of Title 8 of the California Code of Regulations.

20 The regulations adopted pursuant to paragraph (1) to (4),
21 inclusive, shall be exempt from the rulemaking provisions of the
22 Administrative Procedure Act (Chapter 3.5 (commencing with
23 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
24 Code).

25 SEC. 3. Section 3212.81 is added to the Labor Code, to read:

26 3212.81. (a) If an employer, as defined in Section 3300 and
27 in the agriculture industry listed and covered in Section 3395 of
28 Title 8 of the California Code of Regulations, fails to comply with
29 the heat illness prevention standards set forth in Section 6721 and
30 in Section 3395 of Title 8 of the California Code of Regulations,
31 any resulting heat-related injury to the employee shall be presumed
32 to arise out of and in the course of employment. This presumption
33 is disputable and may be controverted by other evidence, but unless
34 so controverted, the appeals board shall find in accordance with
35 it. Heat illness prevention standards include, but are not limited
36 to, the following:

37 (1) Establishing, implementing, and maintaining an effective
38 Heat Illness Prevention Plan and making it available at the worksite
39 in English and the language understood by a majority of employees
40 and providing effective heat illness prevention.

1 (2) Recognition and response training as required by Section
2 3395 of Title 8 of the California Code of Regulations.

3 (3) Failing to provide access to shade and water and a cooldown
4 rest period as required by Section 3395 of Title 8 of the California
5 Code of Regulations.

6 (b) “Injury” as used in this section includes any heat-related
7 injury, illness, or death that develops or manifests after the
8 employee was working outdoors during or within the pay period
9 in which an employee suffers any heat-related illness, injury, or
10 death.

11 (c) The compensation that is awarded for injury pursuant to this
12 section shall include full hospital, surgical, medical treatment,
13 disability indemnity, and death benefits, as provided by this
14 division.