

# OSHA

## UP TO DATE®



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## Debate over heat stress bill goes before House subcommittee

Questions about how to protect workers from heat-related illnesses took center stage during a July 11 hearing convened by the House Workforce Protections Subcommittee.

Much of the discussion focused on H.R. 3668, introduced July 10 by Rep. Judy Chu (D-CA). The bill would direct OSHA to create, within 42 months, a final standard that mandates workers in high-heat environments – indoors or outdoors – have paid breaks in cool spaces, access to water and limited exposure to heat. It also would require employers to educate workers on risk factors and procedures for responding to symptoms of heat-related illnesses.

California, Minnesota, Washington state and the U.S. military have adopted their own heat protection standards.

“Extending those protections to all workers should be common sense,” Chu said in a July 11 press release. “Passage of this bill will ensure that all workers benefit from safe conditions whenever they work in excessive heat environments, no matter where they live.”

Subcommittee Chair Rep. Alma Adams (D-NC) cited data from the Bureau of Labor Statistics showing that, from 1992 to 2016, 783 workers were killed and nearly



70,000 were injured as a result of “excessive environmental heat.”

The Republicans on the subcommittee expressed concerns about a one-size-fits-all approach to preventing heat-related illnesses, given the varied climates across the country. They also touted the use of OSHA’s General Duty Clause. The clause, however, requires the agency to check off each part of a four-part test before citing an employer:

1. The employer failed to keep the workplace free of a hazard to which its employees were exposed.

2. The hazard was recognized.

3. The hazard was causing or was likely to cause death or physical harm.

4. A feasible and useful method to correct the hazard was available.

Adams also pointed to the Occupational Safety and Health Review Commission’s decision in February regarding A.H. Sturgill Roofing Co. In that case, a 60-year-old roofing worker’s death in August 2012 resulted from “complications from heatstroke.” The commission

– article continues on p. 4

## Acosta resigns as secretary of labor

Embattled Secretary of Labor R. Alexander Acosta announced his resignation July 12 amid the fallout over his involvement in financier Jeffrey Epstein's plea deal in a 2008 sexual abuse case in Florida.

Deputy Secretary of Labor Patrick Pizzella, a longtime Department of Labor official who served under Presidents Ronald Reagan, George W. Bush and Barack Obama, is slated to lead DOL on an interim basis starting July 19.

"I called the president this morning and I told him that I thought the right thing was to step aside," Acosta, standing next to President Donald Trump, told reporters at the White House. "Cabinet positions are

temporary trusts. It would be selfish for me to stay in this position and continue talking about a case that's 12 years old."

Scrutiny of the plea deal resurfaced when Epstein was arrested July 6 for the sex trafficking of minors. Epstein, a prominent investment banker, in 2008 was convicted of soliciting a 14-year-old girl for prostitution and was sentenced to 18 months in the Palm Beach County Jail. He served only 13 months.

That deal negotiated by Acosta, then a federal prosecutor, shut down an ongoing FBI probe, an investigation by the *Miami Herald* revealed in November.

Acosta defended his actions most recently during a July 11 news conference,

as well as during a May 2 Senate appropriations hearing.

"The grand jury in the county recommended a single charge that would have resulted in no jail time," Acosta said during the hearing, "that would have resulted in no registration (as a sex offender) at all."

Before the Epstein controversy renewed, Acosta was reportedly drawing scrutiny from the White House about DOL's slower-than-desired pace of deregulation. Still, Acosta had the outward support of the president to the end, with Trump telling reporters on the White House lawn, "I will say it loud and clear: Alex Acosta was a great secretary of labor."

### OSHA ALLIANCES

*The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to [osha.gov/dcsp/alliances/index.html](https://osha.gov/dcsp/alliances/index.html).*

## Site Safety LLC

**Date of alliance:** May 24, 2019

The Puerto Rico Occupational Safety and Health Administration of the Department of Labor and Human Resources and the Site Safety LLC acknowledge the value of establishing a



collaborative relationship to promote safer and healthier workplaces for employers and employees in Puerto Rico.

PR OSHA and Site Safety LLC hereby agree to forge an alliance aimed at providing employers and employees in industries of high occupational risk with the knowledge, information, and guidance on safety and health, as well as access to training resources that may aid in the protection of the safety and health of employees, and to reduce and prevent

the exposure to occupational safety and health hazards.

#### **Outreach and communication:**

- To join efforts aimed at the preparation of informative material on the recognition and prevention of occupational hazards, and the use of mechanisms to convey such information through electronic and printed media. Likewise, a link to PR OSHA's webpage will be created on Site Safety LLC's website.
- To share informative material (posters, brochures, leaflets, computer graphics and so forth) that may be posted in public locations and used in jointly coordinated training and educational programs, workshops and forums.

#### **Training and education**

- To develop, organize, convene, and participate in training and educational programs, forums, workshops, or

debates aimed at employers, employees and the general public to promote the understanding of the rights and responsibilities of employers and employees pursuant to Act No. 16 of Aug. 5, 1975, as amended, including PR OSHA's complaint procedures.

- To develop, organize, convene, or participate in training and educational programs, forums, workshops, or debates on occupational safety and health topics, such as the recognition and prevention of hazards in the workplace for employers and employees of high-risk industries in Puerto Rico.
- To promote that more people apply for the services of the Consultation Program of PR OSHA for guidance in the subject of safety and health at the workplace.

Download the alliance agreement at [sb-m.ag/2K3V4aD](https://sb-m.ag/2K3V4aD).

## In Other News...

### DOL, OSHA announce members of construction advisory committee

The Department of Labor has named the 15 members of its Advisory Committee on Construction Safety and Health.

According to a June 17 *Federal Register* notice, the committee members are:

#### Employee representatives:

- Palmer L. Hickman, Electrical Training Alliance
- Randall A. Krocka, Sheet Metal Occupational Health Institute Trust
- Mark S. Mullins, Elevator Industry Work Preservation Fund
- Richard Tessier, United Union of Roofers, Waterproofers & Allied Workers Representative, Research and Education Joint Trust
- Christina Trahan Cain, North America's Building Trades Unions

#### Employer representatives:

- Kevin Cannon, Associated General Contractors of America (ACCSH chair)
- Fravel Combs, M. A. Mortenson Co.
- Cindy DePrater, Turner Construction Co.
- Greg Sizemore, Associated Builders and Contractors
- Wesley L. Wheeler, National Electrical Contractors Association

#### Public representatives:

- Christopher Fought, General Motors LLC
- R. Ronald Sokol, Safety Council of Texas City

#### State representatives:

- Christopher Mabry, North Carolina Department of Labor
- Charles Stribling, Kentucky Labor Cabinet Department of Workplace Standards

#### Federal representative:

- G. Scott Earnest, NIOSH

## OSHA STANDARD INTERPRETATIONS

*OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.*

### Silica in construction, integrated water delivery system, exposure assessment, medical surveillance, respiratory protection

**Standards:** 1926.1153(c)(1), 1926.1153(d)(2)(vi) and 1926.1153(h)(1)(i)

**Date of response:** March 4, 2019

*(Continued from the July issue of OSHA Up To Date.)*

You have specific questions regarding the requirements of OSHA's respirable crystalline silica standard for the construction industry (29 CFR 1926.1153).

**Question:** *With respect to 29 CFR 1926.1153(d)(2)(vi), Employee Notification of Assessment Results, when does OSHA consider an exposure assessment to be completed, and when does the five-working-day period for notification start? Does this notification start time change if the employer uses a third party to perform the exposure assessment, rather than conducting the exposure assessment internally?*

**Response:** The preamble to the RCS standard states that, for employers following the performance option in paragraph (d)(2)(ii) of the standard for construction, the five-day period for employee notification "commences when the employer completes an assessment of employee exposure levels." (81 FR 16769). The exposure assessment under the performance option is considered completed when the employer has characterized an employee's 8-hour time-weighted average (TWA) exposure to RCS based on air monitoring data, objective data or a combination of the two.

For employers following the scheduled monitoring option in paragraph (d)(2)(iii) of the standard for construction, the five-day period for notification "commences when monitoring results are received by the employer." (81 FR 16769). If the employer is using a third party to perform the exposure assessment, the employer is considered to have "received" the monitoring results when the consultant communicates the monitoring results to the employer. Similarly, if the employer is conducting the assessment internally, the employer is considered to have "received" the monitoring results when the laboratory communicates the results to the employer. However, employers should exercise due diligence to avoid unreasonable delay in receiving results from the consultant or the laboratory. In addition, employers should note that the standard does not provide employers with extra time to study the results, meet with employees to discuss them, perform quality assurance checks on the results, draft a formal report or complete similar actions. (See 81 FR 16769).

**Patrick J. Kapust, Acting Director**  
Directorate of Enforcement Programs

*(To be continued in the September 2019 issue of OSHA Up To Date.)*

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-03-04](https://www.osha.gov/laws-regs/standardinterpretations/2019-03-04).

# OSHA

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ruled that the heat index that day didn't reach the "caution" level on the National Weather Service's heat advisory chart. It concluded OSHA "failed to demonstrate that the work was strenuous or that the workers were exposed to heat index values within any of the NWS warning levels for a 'prolonged' period of time."

Bryan Little, director of labor affairs for the California Farm Bureau Federation, called for a collaborative approach between OSHA and employers. "We hope the agency will benefit from what we learned in California in the creation and refining of our heat illness prevention standard," Little said. "The law will be better if it's simple, collaborative and flexible."

The hearing also included testimony from:

- Thomas Bernard, a professor in the University of South Florida College of Public Health
- Kevin Cannon, senior director of safety and health services for the Associated General Contractors of America
- Ronda McCarthy, a physician with health care provider Concentra in Waco, TX, who also testified on behalf of the American College of Occupational and Environmental Medicine
- Arturo Rodriguez, former president of United Farm Workers
- Javier Rodriguez, staff member at the Warehouse Worker Resource Center in Ontario, CA

### Get the safety message to the front line.



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