

February 11, 2025

Honorable Arthur J. Corvese  
Chairman, House Labor Committee  
Rhode Island State House  
82 Smith Street  
Providence, RI 02903

RE: H 5305 - AN ACT RELATING TO HEALTH AND SAFETY -- DIVISION OF  
OCCUPATIONAL HEALTH

Dear Chairman Corvese and Honorable Members of the Committee:

As the Executive Director of Rhode Island Business Leaders Alliance (the "Alliance"), I am grateful for the opportunity to provide the House Labor Committee with this written testimony in response to H5305 - AN ACT RELATING TO HEALTH AND SAFETY -- DIVISION OF OCCUPATIONAL HEALTH, which requires employers to protect employees from extreme temperatures through rest breaks, PPE, training, and equipment, and mandates quarterly supervisor training, to recognize and mitigate heat- and cold-related risks.

The Alliance is a group of Rhode Island business leaders, trade associations, and educational institutions who are concerned about seeing the Ocean State ranked at the bottom of national business climate surveys year after year and want to do something about it. We have come together in an unprecedented alliance with a positive, forward-looking vision for our state: to revitalize Rhode Island's struggling economy and to create broad-based economic growth and opportunity for all Rhode Islanders. Our group's ambitious goal is nothing short of the wholesale transformation of Rhode Island into a national model of economic competitiveness.

The Alliance is a partnership with Littler Mendelson, PC ("Littler"), the world's largest labor and employment law practice focused on employers. Littler's Workplace Policy Institute ("WPI"), the nation's most powerful and influential government relations and public policy practice group, has played an instrumental role in the Alliance's strategic direction. We are grateful for their thought leadership and subject matter expertise in areas such as this.

To be clear, the Alliance supports common sense legislative efforts to incentivize employers to improve working conditions for their employees voluntarily and without the need for burdensome and expensive employer mandates. For this reason, the Alliance opposes the new employer mandate embodied in H5305.

H5305 appears to borrow some of the more controversial elements of the federal Occupational Safety and Health Administration's ("OSHA") proposed nationwide heat illness rule which is

currently under regulatory review and may be rescinded. For example, OSHA's proposed heat illness rule and H5305 utilize a one-size-fits-all approach that applies the same broad standard regardless of employer size or industry. The administrative burdens under the proposed OSHA rule and H5305 are also similar. *De minimis* changes have been made to adapt OSHA's nationwide rule to Rhode Island.

H5305 is of concern to the business community for the following reasons:

- H5305 is a solution in search of a problem. There is no evidence that Rhode Island employees are being injured or becoming ill due to their exposure to extreme temperatures. To prepare this testimony, the Alliance reviewed over 100 publicly-available workplace inspection reports prepared by OSHA's Providence Area Office for the period January 1, 2023 through present, focusing only on inspections in which one or more violations of the Occupational Safety and Health Act (the "OSH Act") was found.

The Alliance failed to uncover even a single instance in which OSHA cited a Rhode Island employer for failing to take adequate precautions to protect employees from extreme temperatures. The likely reason for the lack of citations? Most Rhode Island employers already have effective policies and procedures in place to protect their employees from extremes of heat or cold. Most Rhode Island employers already provide their employees with access to unscheduled paid rest breaks, adequate shade, warming or cooling stations, drinking water, personal protective equipment, and other protections from extreme temperatures to comply with their legal obligations under the OSH Act's General Duty Clause.<sup>1</sup>

- H5305 requires employers to provide quarterly training to managerial and supervisory employees on how to recognize the signs and symptoms of overexposure to extreme temperatures. However, the signs and symptoms of heat-related illness are not always obvious and can mirror those of many other non-heat related illnesses, such as flu or COVID-19. Compliance with H5305 will be difficult.

Essentially, H5305 forces managers and supervisors to assume that any potential symptom of heat illness that occurs during a period of extreme temperatures is, in fact, heat-related or risk liability for failing to "perform any of the duties required by" H5305. The only other alternative would be to ask employees intrusive questions about their health that are likely prohibited by federal and state laws like the Americans with Disabilities Act ("ADA"). Under the EEOC's

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<sup>1</sup> The General Duty Clause demands employers must protect employees from any serious hazard once they are aware of it – whether OSHA's rules specifically address it or not.

enforcement guidance on disability-related inquiries under the ADA, it is unlawful to ask an employee whether they are currently taking any prescription drugs or medication or monitoring their use of medication during periods of extreme temperatures.

- H5305 fails to account for the fact that protecting employees from extreme temperatures requires their active participation. For example, an employee's underlying health conditions (e.g., obesity, heart disease, diabetes, COPD) or poor behavioral choices (e.g., consuming alcohol before their work shift, consuming caffeinated beverages instead of water) may increase their susceptibility to extremes of heat or cold—even if their employer provides them with adequate rest breaks, shade, potable drinking water, PPE, etc. By creating a private right of action for employees who believe that their employer has failed to live up to “any of the duties required by” H5305, employers acting in good faith could be held liable if an employee becomes ill during a period of “extreme temperatures” due to unknown personal risk factors that are entirely beyond the employer's control.
- H5305 embodies a “one-size-fits-all” approach. Section 23-1.1-1 of the Rhode Island General Laws defines an “employer” as “a person, firm, corporation, partnership, association, receiver, or trustee in bankruptcy having one or more persons in his, her, or its employ, a state agency, or an agency of a political subdivision of the state, or any person acting directly or indirectly in the interest of an employer.” H5305 would cover any Rhode Island employer with at least one employee, without taking into consideration the employer's size, resources, and industry.

One size does not fit all when legislating in the area of workplace health and safety. Any effective approach to addressing extreme temperature risks must be flexible, reflecting differences based on employer size and industry. The standard that applies to a multinational corporation with vast compliance resources should not apply to a small business with a handful of employees and a limited budget. The standard that protects employees from extreme temperatures in a climate controlled manufacturing facility should differ from the standard that protects employees working on a farm or at an outdoor construction site.

If the General Assembly is going to legislate in the area of extreme temperature safety, it must do so based on its own independent assessment of the risks facing employees here in Rhode Island workplaces. As stated above, there is no publicly available data from OSHA's Providence Area Office demonstrating that Rhode Island employers are not taking seriously their legal obligation to protect employees from extreme temperatures. Additionally, by modeling H5305 on OSHA's proposed nationwide heat illness rule, the bill sponsors are preventing Rhode Island from

developing a thoughtful and workable standard that reflects differences in employer size, resources, and industry.

If you have any questions regarding this testimony or need additional information, please do not hesitate to contact me.

Very truly yours,

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