



March 30, 2026

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

RE: H7966 - 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 H7966 - AN ACT RELATING TO HEALTH AND SAFETY -- DIVISION OF OCCUPATIONAL HEALTH, which would require employers to protect employees from extreme temperatures through rest breaks, PPE, training, and equipment. H8311 also mandates quarterly training for supervisors to recognize and mitigate heat- and cold-related risks.¹

While we can agree that extreme temperatures can cause adverse health effects in the workplace, the Alliance has many substantive concerns with this proposed legislation. The concerns focus on flexibility for individual employers, and the need for a separate standard for the construction industry which has unique and discrete concerns which will be discussed below.

As a threshold matter, workplace safety and health issues are generally a matter of Federal jurisdiction as specifically delineated in Section 18 of the Occupational Safety and Health Act (OSH Act) of 1970. Section 18(b) of the OSH Act states, in part that “any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard” must “submit a State plan for the development of such standards and their enforcement.” However, in Section 18(a) of the OSH Act Congress also reserved for a state

¹ This testimony was prepared by occupational safety and health subject matter experts from Littler Mendelson, PC. The undersigned thanks Felicia K. Watson, Esq. (<https://www.littler.com/people/felicia-k-watson>) and Peter Vassalo, Esq. (<https://www.littler.com/people/peter-vassalo>) for contributing their knowledge and expertise on this important issue. The undersigned also thanks Littler Associate Mia Acheson for her research assistance.

the ability to “assert jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect.”

Because the Occupational Safety and Health Administration (OSHA) has yet to formally promulgate a safety and health standard related to workplace heat hazards, a state or local entity such as Rhode Island can regulate this area. However, there are other aspects of the legislation which would clearly be preempted under OSH Act Section 18 requirements. Two specific provisions are readily apparent:

- Section 23-106-8 Recordkeeping: Because OSHA has promulgated a comprehensive recordkeeping regulation that requires documentation of employee injuries and illnesses, this section is preempted by Federal OSHA.
- Section 23-106-9. Retaliation prohibited. This section should also be preempted by Federal OSHA under the OSH Act as there are already comprehensive anti-retaliation provisions in place.

In addition, following a review of the Rhode Island Department of Health’s (DOH) authorities, it is unclear how this legislation would be enforced in practice. There appear to be competing priorities between the DOH that regulates epidemiological concerns including epidemic exposures, as well as a parallel Division of Occupational Safety whose mission is even more unclear. This structure does not appear to provide any sort of due process for an employer who may be cited for a violation of H7966 if it becomes law. It is even more unclear how this will be applied under existing Rhode Island law. Conversely, federal OSHA has a well-defined enforcement scheme composed of a formal inspection, referral, and appeals process to the statutorily created Occupational Safety and Health Review Commission consisting of administrative law judges and commissioners with expertise in occupational safety and health.

Aside from the obvious due process issues with respect to enforcement, there is an ongoing rulemaking proceeding within federal OSHA to promulgate a comprehensive heat illness and injury prevention standard. Through development of such a standard, as opposed to state legislation, OSHA not only provides notice to and receives extensive comments from affected stakeholders, but rulemaking proceedings also require OSHA to gather evidence and determine economic and technical feasibility as well as whether the effects of heat illness in the workplace are “significant”. There is no evidence that the Rhode Island legislature has undertaken any similar analysis.

Last summer, OSHA conducted hearings on its August 24, 2024 proposed Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings standard (“Heat standard” or “OSHA NPRM”) (89 Federal Register 70698). The vast majority of the testimony, as well as post

hearing comments to the rulemaking record, demonstrated a common theme – that any approach to addressing workplace heat hazards must be performance-oriented and flexible enough to allow employers to tailor their heat prevention programs to the unique circumstances of their worksites. While the core concepts to a heat program including the incorporation of a “water, rest, and shade” regimen, how these controls are implemented should take into account the myriad conditions present at an individual worksite. OSHA is required by law to analyze and address each comment submitted to the rulemaking record and provide a rationale as to why a comment is adopted or rejected.

The current legislation does not take into account any of the above circumstances, nor does it provide a meaningful opportunity for stakeholders to provide input and information on feasibility. Instead, the legislation includes prescriptive and objective criteria that does not address unique site-specific circumstances. Such criteria includes:

- A definition of “extreme temperatures” that sets threshold temperatures at or above ninety degrees Fahrenheit (90° F), or at or below thirty degrees Fahrenheit (30° F), without any data to demonstrate that these thresholds represent serious health hazards. In its Heat standard, OSHA uses the term “high heat” of 90 degrees, not extreme. The OSHA NPRM contains no scientific or otherwise supporting determination/basis for classifying a temperature of 90 degrees F as “extreme heat”;
- A requirement for access to paid rest breaks, adequate shade, warming or cooling stations, drinking water, personal protective equipment, and other protections from extreme temperatures in regard to heat and cold, without determining whether the above defined extreme temperatures actually merit this level of intervention;
- Specific requirements for acclimatization (new employees and existing employees newly assigned to heat work, or absent from heat work for more than seven (7) days, shall work only twenty percent (20%) of their normal duration of their first day and shall gradually increase work duration over a two (2) week period);
- The size of shaded areas (the amount of shade shall be at least enough to accommodate the number of employees on recovery or rest breaks, with a minimum of four square feet (4 sq. ft.) per resting employee);
- The temperature of available drinking water (cooled to sixty-six degrees Fahrenheit through seventy-seven degrees Fahrenheit (66°F - 77°F) or cold thirty-five degrees Fahrenheit through sixty-five degrees Fahrenheit (35°F - 65°F) in temperature).

- A highly prescriptive requirement that employees who spend more than sixty (60) minutes per day or shift in employer provided vehicles, or whose worksite is considered an employer-provided vehicle, shall be provided with adequate air conditioning inside such vehicle. The air conditioning shall be maintained in accordance with the manufacturer's instructions and shall be capable of keeping temperatures below eighty degrees Fahrenheit (80°F)
- A requirement that all employers designate a named specially trained temperature safety coordinator to implement and monitor a written heat or cold plan, including their name. This proposed provision does not take into account practical difficulties such as a coordinator leaving the company or is absent from work. There are also economic issues as well in cases where a small business is unable to expand payroll to hire a specific person for this role. At the very least, the legislation should be flexible enough to allow for a "competent person" to monitor heat and cold hazards which would enable an employer to have multiple employees aware of these hazards.

As commenters noted to OSHA, many employers have effectively handled workplace heat hazards for years, and their expertise in these hazards should be taken into account. Over and over again, flexibility is the key to an effective program. Within the concept of flexibility is training. Effective training should emphasize employees' personal risk factors, and how different behaviors can affect an employee when working in high heat conditions. These could include age, overall health, whether they have recently consumed caffeinated drinks or alcoholic beverages, medications, and a host of other factors. The training provisions of H7966, however, take none of these factors into account. Instead, H7966 requires an employer's supervisors and managers to complete a standardized Department of Health created online public tutorial program quarterly. Not only is this overly burdensome and should only be required annually before the onset of either warm or cold temperatures, it provides employers with no guidance on how to tailor heat programs to their specific circumstances which would lead to programmatic gaps. Indeed, the proposed legislation ignores the need for particularized training among different employers. As with OSHA's NPRM, the legislation's once-size-fits-all approach to standardized training will not achieve the purported goals of the legislation, which at bottom is to protect employees.

Rest break requirements also require flexibility. Strict mandatory rest break requirements could jeopardize the actual work being performed and undermine the safety of the worksite. The Rhode Island legislature must be mindful that it is not always feasible to pull workers away from a task once it has begun, as doing so could jeopardize the task itself, such as during a concrete pour that must have a worker managing the task until it is complete. Mandatory breaks can also jeopardize employee safety when there may not be enough workers to safely perform a task due to imposed rest breaks. Similarly, the process of taking a break itself can expose a worker to unnecessary

hazards, such as a roofer who must ascend or descend ladders to take a mandatory break. Mandatory breaks can deter workers from taking breaks when needed as they may feel the need to continue working until the designated time for their break has arrived. Instead, employers should encourage their employees to take rest breaks as needed to prevent overheating. In addition, mandating specific sizes of shaded areas does not take into account conditions at individual worksites and whether a 4 foot per square foot requirement per employee is even feasible as the amount of square footage for shade could easily outstrip the size of the jobsite depending on the number of employees present. At some jobsites, mandating shade can create a greater hazard, such as in road construction where it is infeasible to erect shade covers in the median of highways or on the roadside.

Relatedly, water requirements must not be overly prescriptive. Any requirement dictating the specific quantity of water to be made available for, or consumed by, each worker on a construction site would be unduly burdensome. For example, given the size and the number of workers on each construction site, between the general contractor employees and each subcontractor, it would be virtually impossible to keep track of each worker's water consumption. Instead, water availability requirements must be flexible and employers to replenish water supplies in manner that ensures employees will have an ample supply of water or other acceptable beverages. Furthermore, although employers should strive to maintain water supplies at reasonable temperatures, mandating specific temperatures would be infeasible on specific jobsites. This provision would also require employers to maintain a thermostat or other type of gauge to monitor water temperature. Note, not even Federal OSHA's Heat standard proposal contains such extreme requirements.

Returning workers and acclimatization also requires flexibility. The approach that would be mandated in the legislation - new employees and existing employees newly assigned to heat work, or absent from heat work for more than seven (7) days, shall work only twenty percent (20%) of their normal duration of their first day and shall gradually increase work duration over a two (2) week period) – does not take into account both the individual nature of a worksite as well as the levels of acclimatization specific to each worker. Heat affects each worksite, and the workers on that site, differently based on a combination of factors that are too nuanced to effectively address with a prescriptive set of requirements. Likewise, acclimatization schedules should not prevent already acclimatized workers from working. For example, in the construction industry workers are far more likely to be naturally acclimated to their work environment before starting a job than other workers due to the transient nature of the construction industry workforce with workers who move from job to job seamlessly. The legislation, without taking these factors into account, would require a seven-day reset each time a worker moves onto a new jobsite even if the heat conditions that they have been working in are the same. Therefore, acclimatization schedules must be flexible and focus on heat hazard awareness training and acclimatization protocols tailored to individual worksites.

New to H7966 is a hazard that OSHA has never proposed to regulate – exposure to cold temperatures. Similar to the standards the bill sponsors wish to adopt with respect to heat, the criteria surrounding “extreme cold hazards” are not based on any noted scientific or other workplace focused studies. Additionally, the definitions are so vague that it would be impossible for an employer to comply with the provisions. For instance, for an initial cold trigger, the bill sponsors would define extreme cold as being equal or below 30 degrees, but initial cold trigger means a windchill factor that reaches 30 degrees with 20 mile-per-hour winds. Additionally, this does not factor other conditions, such as relative humidity, into the analysis. Moreover, 30 degrees cannot be considered “extreme” when put into context with Rhode Island’s winter climate. If this arbitrary number is adopted, extreme cold temperatures would then trigger coverage for up to 7 months out of a given calendar year.

Finally, the proposed legislation does not take into account the differences in hazards between industries. For example, heat hazards in warehouses can be significantly different than in construction. Construction work in particular is simply too distinct from other general industries to be covered by the same rules. In addition, construction sites change continuously as projects begin, are built out, and wrap up. Sometimes construction sites are a purely outdoor environment, sometimes they become an indoor environment, but oftentimes construction sites are a combination of both environments. The administrative and engineering controls that construction employers implement must adapt as each project progresses. The proposed legislation fails to take these changing factors into consideration, illustrating why this legislation is inherently flawed.

For all the reasons discussed above, we respectfully ask that this ill-conceived legislation be withdrawn and that the General Assembly allow the ongoing OSHA rulemaking process, with its embedded processes that allow for robust consideration of notice and comment, to proceed accordingly

Respectfully submitted by:

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