

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JULY 2, 2012

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2346**

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**Introduced by Assembly Member Butler**

February 24, 2012

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An act to amend Section 6330 of, and to add Chapter 10 (commencing with Section 6720) to Part 1 of Division 5 of, the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as amended, Butler. Agricultural employee safety: heat-related illness.

(1) Existing law permits the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt occupational health and safety standards to protect the welfare of employees. The Division of Occupational Safety and Health enforces occupational safety and health standards and orders. Certain violations of these standards and orders are crimes.

This bill would prescribe specified duties on employers to reduce the risk of heat illness among agricultural employees, to be enforced by the division. The bill would impose specified civil penalties, and create a private right of action, for violations of these requirements. The bill would impose a state-mandated local program because certain violations of the bill's requirements would be a crime under existing provisions

of law. The bill would require the Director of Industrial Relations to provide an annual report to the Legislature regarding the enforcement of the requirements.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. This act may be known, and shall be cited, as the
- 2 Farm Worker Safety Act of 2012.
- 3 SEC. 2. Section 6330 of the Labor Code is amended to read:
- 4 6330. (a) The director shall prepare and submit to the
- 5 Legislature, not later than March 1, an annual report on the division
- 6 activities. The report shall include, but need not be limited to, the
- 7 following information for the previous calendar year:
- 8 (1) The amount of funds allocated and spent in enforcement,
- 9 education and research, and administration by the division.
- 10 (2) Total inspections made, and citations issued by the division.
- 11 (3) The number of civil penalties assessed, total amount of fines
- 12 collected, and the number of appeals heard.
- 13 (4) The number of contractors referred to the Contractors' State
- 14 License Board for hearing, pursuant to Section 7109.5 of the
- 15 Business and Professions Code, and the total number of these cases
- 16 resulting in suspension or revocation of a license.
- 17 (5) The report from the division prepared by the Bureau of
- 18 Investigations for submission to the director pursuant to Section
- 19 6315.3.
- 20 (6) Recommendations for legislation that improves the ability
- 21 of the division to provide safety in places of employment.
- 22 (7) (A) The number of complaints received charging a violation
- 23 of Chapter 10 (commencing with Section 6720), and the number
- 24 of those complaints that did not result in an onsite inspection.
- 25 (B) The amount of initial penalties imposed for a violation of
- 26 Chapter 10 (commencing with Section 6720), the amount by which
- 27 those penalties were reduced through amendment, the amount by

1 which those penalties were reduced through informal settlement,  
2 the amount by which those penalties were reduced through formal  
3 settlement, the amount by which those penalties were reduced by  
4 decision of the appeals board, other than a decision approving a  
5 formal settlement, and the amount by which those penalties were  
6 reduced by any other means.

7 (C) The amount of penalties collected for a violation of Chapter  
8 10 (commencing with Section 6720).

9 (b) The report shall be made to the Speaker of the Assembly  
10 and the Chairperson of the Senate Committee on Rules, for  
11 assignment to the appropriate committee or committees for  
12 evaluation.

13 SEC. 3. Chapter 10 (commencing with Section 6720) is added  
14 to Part 1 of Division 5 of the Labor Code, to read:

15

16 CHAPTER 10. AGRICULTURAL EMPLOYMENT

17

18 6720. For the purpose of this chapter, the following terms have  
19 the following meanings:

20 (a) "Acclimatization" means temporary adaptation of the body  
21 to work in the heat that occurs gradually when a person is exposed  
22 to the heat.

23 (b) "*Areas where employees are working*" includes the physical  
24 locations where labor is being performed, and excludes restrooms.

25 ~~(b)~~

26 (c) "Employee" means an agricultural employee.

27 ~~(c)~~

28 (d) "Employer" means an agricultural employer.

29 ~~(d)~~

30 (e) "Environmental risk factors for heat illness" means working  
31 conditions that create the possibility that heat illness could occur,  
32 including air temperature, relative humidity, radiant heat from the  
33 sun and other sources, conductive heat sources such as the ground,  
34 air movement, workload severity and duration, and protective  
35 clothing.

36 ~~(e)~~

37 (f) "Farm operator" includes both of the following:

38 (1) A person who owns the real property used in the farming  
39 operation, except that, when the real property is leased, the owner  
40 is considered a farm operator only if he or she gains something of

1 benefit from the farming operation beyond the reasonable and  
2 customary rent or cost of leasing the property.

3 (2) A person who leases the real property used in the farming  
4 operation.

5 ~~(f)~~

6 (g) "Farming operation" shall be liberally construed to include  
7 farming in any of its branches, and includes the production,  
8 cultivation, growing, harvesting, packing, whether in a field,  
9 packing shed, or any other location, or shipping of any agricultural  
10 or horticultural commodities, including commodities defined as  
11 agricultural commodities in Section 1141j(f) of Title 12 of the  
12 United States Code; any activity necessary to the operation of a  
13 dairy farm, as defined in Section 32505 of the Food and  
14 Agricultural Code; the raising of livestock, bees, furbearing  
15 animals, or poultry; and any practices, including any forestry or  
16 lumbering operations, performed by a farm operator or in a farm  
17 operation as an incident to or in conjunction with these farming  
18 operations, including preparation for market and delivery to storage  
19 or to market or to carriers for transportation to market.

20 ~~(g)~~

21 (h) "Heat illness" means a serious medical condition resulting  
22 from the body's inability to cope with a particular heat load, and  
23 includes heat cramps, heat exhaustion, heat syncope, and heat  
24 stroke.

25 ~~(h)~~

26 (i) "Personal risk factors for heat illness" means factors such as  
27 an individual's age, degree of acclimatization, health, water  
28 consumption, alcohol consumption, caffeine consumption, and  
29 use of prescription medications that affect the body's water  
30 retention or other physiological responses to heat.

31 ~~(i)~~

32 (j) "Shade" means complete blockage of direct sunlight. One  
33 indicator that blockage is sufficient is when objects do not cast a  
34 shadow in the area of blocked sunlight. Shade is not adequate when  
35 heat in the area of shade defeats the purpose of shade, which is to  
36 allow the body to cool.

37 ~~(j)~~

38 (k) "Temperature" means the dry bulb temperature in degrees  
39 Fahrenheit obtainable by using a thermometer to measure the  
40 outdoor temperature. Except where otherwise indicated, the

1 temperature measurement shall be taken in an area where there is  
2 no shade. The bulb or sensor of the thermometer shall be shielded,  
3 with the hand or some other object, from direct contact by sunlight  
4 while taking the measurement.

5 6721. (a) This chapter applies to the control of the risk of  
6 occurrence of heat illness among agricultural employees. This  
7 chapter is not intended to exclude the application of any section  
8 of Title 8 of the California Code of Regulations. This chapter  
9 applies to all outdoor places of agricultural employment.

10 (b) (1) (A) Each employee shall have continuous, ready access;  
11 as close as possible and at a distance of no more than 10 feet from  
12 where he or she is working, to fresh, pure, and suitably cool potable  
13 drinking water meeting the requirements of Title 8 of the California  
14 Code of Regulations, which does not have an unpalatable smell  
15 or taste. ~~The~~

16 (B) *The water shall be located as close as practicable to the*  
17 *areas where employees are working, and shall be at a distance of*  
18 *not greater than 200 feet from any employee at any time other than*  
19 *when the employee is using a restroom or traveling between the*  
20 *restroom and an area where employees are working. If an*  
21 *employee is working on a crop that is planted in a row longer than*  
22 *400 feet and the water is located within 10 feet of each end of the*  
23 *row where the employee is working, the water shall be deemed to*  
24 *be at a distance of not greater than 200 feet from the employee.*

25 (C) *The temperature of the water shall be 70 degrees or lower,*  
26 *or the water shall contain ice that has not completely melted, at*  
27 *all times.* ~~The~~

28 (D) *The water shall be provided to the each employee free of*  
29 *charge.*

30 (2) ~~Each~~ *In addition to the water access required by paragraph*  
31 *(1), each employee shall be provided with a canteen for his or her*  
32 *individual use for the temporary storage and drinking of water, or*  
33 *with a cup of at least 8-ounce but no more than 32-ounce capacity*  
34 *for his or her individual use for the drinking of water. The canteens*  
35 *or cups shall be provided to the employees free of charge and*  
36 *replaced or cleaned and sanitized after each work shift. Each*  
37 *employee shall be encouraged to keep any canteen with him or*  
38 *her during work.*

39 (3) Where drinking water is not plumbed or otherwise  
40 continuously supplied, it shall be provided in a sufficient quantity

1 at the beginning of the work shift to provide at least one quart per  
2 employee per hour for drinking for the entire shift. Water shall be  
3 available at all times in sufficient quantities to provide at least one  
4 quart per employee per hour for the remainder of the work shift.

5 (4) The frequent drinking of water, as described in this section,  
6 shall be encouraged and permitted. At no time shall any employer  
7 state or imply that an employee will face a negative consequence  
8 for the frequent drinking of water or for stopping work to drink  
9 water. Each employee shall be compensated for the time taken to  
10 access water. For an employee working on a piece-rate basis,  
11 compensation during the pay period in which time was taken to  
12 access water shall be determined based upon the employee's  
13 average piece-rate wage.

14 (c) (1) The employer shall have and maintain one or more areas  
15 with shade at all times while employees are present that are either  
16 open to the air or provided with ventilation or cooling. The shaded  
17 area shall be located as close as practicable to the areas where  
18 employees are working, and ~~in no event~~ shall be at a distance of  
19 *not* greater than 200 feet ~~away~~ from any employee *at any time*  
20 *other than when the employee is using a restroom or traveling*  
21 *between the restroom and an area where employees are working.*  
22 *If an employee is working on a crop that is planted in a row longer*  
23 *than 400 feet and shaded areas are located within 10 feet of each*  
24 *end of the row where the employee is working, the shaded areas*  
25 *shall be deemed to be at a distance of not greater than 200 feet*  
26 *from the employee.* Canopies, umbrellas, and other temporary  
27 structures or devices may be used to provide shade in combination,  
28 if they completely block direct sunlight and the temperature in the  
29 area of shade is significantly lower than the ambient temperature  
30 outside of that area.

31 (2) The amount of shade provided shall be enough to  
32 accommodate all of the employees on the shift at any time, so that  
33 the employees can all sit fully in the shade without having to be  
34 in physical contact with each other. An employer shall provide  
35 seating or ground covering sufficient to prevent each of the  
36 employees from being in contact with bare soil and to insulate  
37 each of the employees from the heat of the ground.

38 (d) (1) Each employee shall be encouraged and permitted to  
39 take rest breaks in the shade at any time when he or she feels the  
40 need to do so to protect himself or herself from overheating. At

1 no time shall any employer state or imply that an employee will  
2 face any negative consequence for taking a rest break in the shade  
3 or for stopping work to take a rest break in the shade. An employee  
4 who takes a rest break shall be encouraged and permitted to  
5 continue resting in the shade as long as necessary to ensure that  
6 any signs or symptoms of heat illness have resolved, but in no  
7 event for less than 10 minutes in addition to the time needed to  
8 access the shade. Rest in the shade shall be permitted at all times.

9 (2) The employer shall implement additional high-heat  
10 procedures when the temperature equals or exceeds 80 degrees.  
11 These procedures shall be in addition to, and not instead of, any  
12 other procedures required by this chapter, and shall include all of  
13 the following:

14 (A) Requiring that each employee take a rest break at least every  
15 two hours for a minimum of 15 minutes per break.

16 (B) Ensuring that effective communication by voice,  
17 observation, or electronic means is maintained so that employees  
18 at the worksite can immediately contact a supervisor when  
19 necessary. An electronic device, such as a cellular telephone or  
20 text messaging device, may be used for this purpose only if  
21 reception in the area is reliable.

22 (C) Using a buddy system, in which two workers are assigned  
23 to observe each other throughout the workday or a portion of the  
24 workday, to encourage each other to drink water and take rest  
25 breaks, and to watch for signs of heat illness. Each worker shall  
26 be trained to recognize the signs of heat illness in others.

27 (D) Supervisor observation of employees for decreases in  
28 alertness and signs or symptoms of heat illness. If a supervisor  
29 observes a decrease in alertness or signs or symptoms of heat  
30 illness, the supervisor shall take action as required under  
31 subdivision (e).

32 (E) Reminding employees throughout the work shift to drink  
33 plenty of water.

34 (F) Close supervision of a new employee for heat illness  
35 prevention by a supervisor or designee for the first 14 days of the  
36 employee's employment by the employer, unless the employer  
37 documents at the time of hire that the employee has been doing  
38 similar outdoor work for at least 10 of the past 30 days for four or  
39 more hours per day.

1 (3) Each employee shall be compensated for rest breaks taken  
2 pursuant to this section, and for rest periods or cool-down rest  
3 periods established by any applicable regulation or order of the  
4 Industrial Welfare Commission, the Division of Occupational  
5 Health and Safety, or the Occupational Safety and Health Standards  
6 Board. An employee working on a piece-rate basis shall be  
7 compensated at the employee's average piece-rate wage during  
8 the pay period in which the rest break, rest period, or cool-down  
9 rest period was taken.

10 (e) If a supervisor observes, or any employee reports, any signs  
11 of heat illness in an employee, the supervisor shall take immediate  
12 action to alleviate the symptoms, including providing the employee  
13 with water, a paid rest break in the shade, and appropriate first aid.  
14 The employee shall be provided access to medical aid consistent  
15 with the procedures established pursuant to subdivision (f).

16 (f) (1) An employer shall establish procedures for the following:

17 (A) Responding to signs of possible heat illness, including how  
18 emergency medical services will be provided.

19 (B) Contacting emergency medical services and, if necessary,  
20 transporting employees to a place where they can be reached by  
21 an emergency medical service provider.

22 (C) Ensuring that, in the event of an emergency, clear and  
23 precise directions to the worksite are provided to emergency  
24 responders.

25 (2) The procedures shall include designating a person to be  
26 available to ensure that emergency procedures are invoked when  
27 appropriate.

28 (3) The procedures shall be deemed insufficient, and therefore  
29 in violation of this subdivision, if either of the following occurs:

30 (A) An employee presents signs of heat illness and is not  
31 transported, commencing within five minutes of the onset of the  
32 heat stress signs, by air-conditioned automobile or ambulance to  
33 the nearest appropriate emergency medical service provider for  
34 appropriate medical care. *An employer is not subject to the*  
35 *requirement that the transportation commence within five minutes*  
36 *of the onset of the heat stress signs if the employer has developed*  
37 *a written alternative emergency response plan and obtained from*  
38 *the local fire department or other appropriate emergency service*  
39 *provider written approval of the plan prior to the date on which*  
40 *the employee presented signs of heat illness, and the employer*

1 *substantially complied with that plan when the employee presented*  
2 *signs of heat illness.*

3 (B) An employee presents suspected signs of heat illness and  
4 is sent home instead of being given onsite first aid and being  
5 transported by air-conditioned automobile or ambulance to the  
6 nearest appropriate emergency medical service provider and  
7 assessed and authorized for discharge by licensed medical  
8 personnel.

9 (g) (1) An employee shall not begin outdoor work unless the  
10 employee has received the training required by this paragraph.  
11 Effective training in the following topics shall be provided to each  
12 supervisory and nonsupervisory employee:

13 (A) The requirements of this section, including the employer's  
14 responsibility to provide water, shade, rest breaks, and access to  
15 medical aid as set forth in this section, and the prohibition on  
16 retaliation as set forth in Section 6723.

17 (B) The employer's procedures established pursuant to  
18 subdivision (f).

19 (C) The environmental and personal risk factors for heat illness,  
20 as well as the added burden of heat load on the body caused by  
21 exertion, clothing, and personal protective equipment.

22 (D) The importance of frequent consumption of small quantities  
23 of water, up to four cups per hour, when the work environment is  
24 hot and employees are likely to be sweating more than usual in  
25 the performance of their duties.

26 (E) The importance of acclimatization.

27 (F) The different types of heat illness and the common signs  
28 and symptoms of heat illness.

29 (G) The importance to each employee of immediately reporting  
30 to the employer, directly or through the employee's supervisor,  
31 symptoms or signs of heat illness in himself or herself, or in  
32 coworkers.

33 (2) A supervisor shall not be assigned to supervise employees  
34 unless the supervisor has received the training required by this  
35 paragraph. In addition to the training required by paragraph (1),  
36 effective training on the following topics shall be provided to each  
37 supervisory employee:

38 (A) The procedures the supervisor is to follow to implement  
39 the applicable provisions of this section.

1 (B) The procedures the supervisor is to follow when an  
2 employee exhibits symptoms consistent with possible heat illness,  
3 including emergency response procedures.

4 (C) How to monitor weather reports and how to respond to hot  
5 weather advisories.

6 6722. (a) (1) An employer shall maintain written procedures  
7 for complying with the requirements of this chapter. The written  
8 procedures shall be made available within 24 hours of a request  
9 made by a representative of the division, an employee, or a  
10 representative of an employee.

11 (2) Procedures for complying with the requirements of this  
12 chapter may be integrated into the employer's written Injury and  
13 Illness Prevention Program, or maintained in a separate document.

14 (b) (1) An employer shall certify by January 31 of each year,  
15 or on the first day of operation in any calendar year in which an  
16 employer begins an employment relationship after January 31, that  
17 the employer has adopted written procedures for complying with  
18 the requirements of this chapter, and has acquired and made  
19 available to the appropriate persons all materials and equipment  
20 necessary for providing employees with water, shade, and training  
21 in the prevention of heat illness. This certification shall be in  
22 writing, signed, and dated, and shall be made available within 24  
23 hours of a request made by a representative of the division, an  
24 employee, or a representative of an employee.

25 (2) If an employer is found not to have adopted written  
26 procedures for complying with the requirements of this chapter  
27 following certification, or is found to lack any of the materials and  
28 equipment necessary for providing employees with water, shade,  
29 and training in the prevention of heat illness following certification,  
30 there shall be a rebuttable presumption that the certification was  
31 false at the time it was made, and the employer shall be subject to  
32 penalties for fraud.

33 (c) Prior to the commencement of outdoor work at any worksite,  
34 the employer shall post in a manner readily visible and legible a  
35 sign setting forth the identity of the farm operator, the identity of  
36 the employer, the date, the number of employees of that employer  
37 in each crew at that worksite on that date, and the location at which  
38 the written procedures for complying with this chapter are  
39 maintained.

1 6723. (a) An employee shall not be discharged or penalized  
2 in any way for drinking water, taking a break to get water, taking  
3 a rest break in the shade, or taking any other action on behalf of  
4 himself or herself or his or her coworkers that is reasonably  
5 calculated to prevent heat illness.

6 (b) An employee shall not be discharged or penalized in any  
7 way for taking action to secure his or her employer's compliance  
8 with the requirements of this chapter, including directly or  
9 indirectly communicating with the employer about the requirements  
10 of this chapter or the prevention of heat illness, reporting a violation  
11 of this chapter or otherwise communicating with any person or  
12 entity about the employer's compliance with the requirements of  
13 this section, or participating in any way in any investigation or  
14 proceeding to enforce the requirements of this chapter.

15 6724. (a) (1) This chapter shall be enforced by the division.

16 (2) The division shall treat a complaint alleging violation of this  
17 chapter, other than a complaint alleging a violation of only Section  
18 6722, as a complaint charging a serious violation within the  
19 meaning of Section 6309, and shall investigate all of these  
20 complaints through onsite inspection.

21 (3) During an onsite inspection of an outdoor place of  
22 agricultural employment, the division shall inform all employees  
23 of the prohibition on retaliation set forth in Section 6723. The  
24 division shall provide employees with written materials, in the  
25 language or languages spoken by the employees, setting forth a  
26 clear and concise summary of the requirements of this chapter and  
27 a means of contacting the division if the employer subsequently  
28 commits a retaliatory act or other violation of this chapter.

29 (4) An employer shall be designated as a high hazardous industry  
30 employer within the meaning of Section 6314.1 if the division  
31 receives a complaint against the employer from an employee or  
32 an employee's representative alleging a violation of this chapter,  
33 unless the division investigates the complaint within 24 hours and  
34 finds it to be without foundation, or the division issues a citation  
35 against the employer for a violation of this chapter, unless the  
36 citation is withdrawn in its entirety.

37 (5) The division shall require an employer to immediately  
38 correct any failure to provide water or shade as required by this  
39 chapter, regardless of the status of any related action or appeal.

1 (b) (1) ~~An~~ *In addition to any other available remedies, and,*  
2 *except as otherwise provided in this paragraph, irrespective of*  
3 *any action or omission of the division in the enforcement of this*  
4 *chapter, an employee affected by an employer's failure to comply*  
5 *with this chapter may bring ~~an~~ a civil action for ~~injunctive~~ any of*  
6 *the following:*

7 (A) *Injunctive relief ~~and is entitled to recover in a civil action~~*  
8 *all.*

9 (B) *All damages caused by the failure to comply, including*  
10 *interest on those damages, ~~and civil.~~*

11 (C) *If the failure to comply had a direct effect upon the health*  
12 *or safety of an employee, civil penalties as set forth in Section*  
13 *6725. This remedy shall be ~~in addition to any other available~~*  
14 *remedy.*

15 (2) ~~An employee may bring a civil action pursuant to this~~  
16 ~~subdivision notwithstanding any action taken or not taken by the~~  
17 ~~division in relation to the employer's compliance with this chapter.~~  
18 ~~However, an employee may recover the civil penalties set forth in~~  
19 ~~Section 6725 only, to the extent that the division has not imposed~~  
20 ~~and collected those penalties against the same employer for the~~  
21 ~~same alleged violation as of the date the civil action is filed.~~

22 (3)

23 (2) ~~Fifty percent of the~~ *any civil penalties recovered by the*  
24 *employee in a civil action brought pursuant to this subdivision*  
25 *shall be distributed to the division, with the remainder distributed*  
26 *to the employee. The entire amount of any damages recovered by*  
27 *the employee shall be distributed to the employee.*

28 (3) *Upon a showing in a civil action brought pursuant to this*  
29 *subdivision of an employer's failure to comply with any provision*  
30 *of this chapter, any prerequisites to the granting of injunctive relief*  
31 *shall be presumed to be satisfied.*

32 (4) ~~An employer who is found in violation to have violated any~~  
33 ~~provision of this chapter in a civil action brought pursuant to this~~  
34 ~~subdivision shall be designated a high hazardous industry employer~~  
35 ~~within the meaning of Section 6314.1, and that designation shall~~  
36 ~~be withdrawn only if the judgment *against the employer* is vacated~~  
37 ~~in its entirety.~~

38 (5) *An employee who prevails in a civil action brought pursuant*  
39 *to this subdivision is entitled to an award of reasonable attorney's*  
40 *fees and costs of suit, including expert witness fees.*

1 (c) An ~~enforcement~~ action or proceeding, *whether brought by*  
2 *the division or an employee*, may be brought pursuant to this  
3 section against all agricultural entities involved in the farming  
4 operation, including the farm operator. For purposes of this section,  
5 the acts or omissions of an agricultural employer shall be imputed  
6 to the farm operator on the real property used in whose farming  
7 operation the agricultural employer was acting at the time of the  
8 alleged violation of this chapter and that farm operator shall be  
9 jointly and severally liable with and to the same extent as the  
10 agricultural employer.

11 (d) A signed statement obtained by the division from an  
12 employee that is made under penalty of perjury is admissible in  
13 an administrative enforcement proceeding brought pursuant to this  
14 section.

15 6725. (a) For a violation of Section 6721 or 6723, the civil  
16 penalties shall be as follows:

17 (1) For each day on which the violation existed while one or  
18 more employees were working and the temperature did not exceed  
19 80 degrees, the penalty shall be the product of five hundred dollars  
20 (\$500) multiplied by the number of employees on the work crew  
21 at the time of the violation.

22 (2) For each day on which the violation existed while one or  
23 more employees were working and the temperature exceeded 80  
24 degrees but did not exceed 90 degrees, the penalty shall be the  
25 product of two thousand dollars (\$2,000) multiplied by the number  
26 of employees on the work crew at the time of the violation.

27 (3) For each day on which the violation existed while one or  
28 more employees were working and the temperature exceeded 90  
29 degrees but did not exceed 100 degrees, the penalty shall be the  
30 product of five thousand dollars (\$5,000) multiplied by the number  
31 of employees on the work crew at the time of the violation.

32 (4) For each day on which the violation existed while one or  
33 more employees were working and the temperature exceeded 100  
34 degrees, the penalty shall be the product of ten thousand dollars  
35 (\$10,000) multiplied by the number of employees on the work  
36 crew at the time of the violation.

37 (5) Notwithstanding paragraphs (1) to (4), inclusive, if the  
38 violation existed during any work shift when any employee  
39 suffered heat illness, the penalty shall be not less than fifty  
40 thousand dollars (\$50,000).

1 (6) Notwithstanding paragraphs (1) to (4), inclusive, no penalty  
2 shall exceed two hundred thousand dollars (\$200,000).

3 (b) (1) Except as otherwise provided in paragraph (2), for a  
4 violation of Section 6722, civil penalties shall be imposed in the  
5 amount of five hundred dollars (\$500) multiplied by the number  
6 of days the violation existed while employees were working.

7 (2) The penalty described in paragraph (1) shall not exceed ten  
8 thousand dollars (\$10,000).

9 (c) (1) A civil penalty imposed and calculated pursuant to  
10 subdivision (a) or (b) may be reduced by as much as 50 percent,  
11 if the violation did not exist during a work shift when an employee  
12 suffered heat illness. A reduction shall be based on the facts and  
13 circumstances of the violation, including the following  
14 considerations:

15 (A) The culpability of the employer.

16 (B) Whether an employee lacked access to water or shade at  
17 any time while the violation existed.

18 (C) The size, sophistication, and financial strength of the  
19 employer.

20 (D) The employer compliance history related to heat illness.

21 (E) The degree of injury caused by the employer’s current or  
22 past violations.

23 (F) Any efforts by an employee or other person to secure the  
24 employer’s compliance through means other than litigation.

25 (G) Any expenses incurred by employees, the division, and  
26 others in investigating the employer’s compliance.

27 (2) The employer has the burden of proving the existence of  
28 facts justifying a reduction of the penalty pursuant to this  
29 subdivision.

30 SEC. 4. The provisions of this act are severable. If any  
31 provision of this act or its application is held invalid, that invalidity  
32 shall not affect other provisions or applications that can be given  
33 effect without the invalid provision or application.

34 SEC. 5. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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