

October 9, 2023

The Honorable Patrick Testin
Chair, Senate Committee on Labor,
Regulatory Reform, Veterans and Military Affairs
Room 8, South, State Capitol
PO Box 7882
Madison, WI 53707

Richard Champagne
Acting Senate Chief Clerk
Room B20 Southeast, State Capitol
Madison, WI 53707-7882

The Honorable Warren R. Petryk
Chair, Assembly Committee on
Workforce Development
Room 103, West, State Capitol
Madison, WI 53708-8953

Edward A. Blazel
Assembly Chief Clerk
17 West Main Street, Room 401
Madison, WI 53703

RE: Clearinghouse Rule 23-030 Germane Modification: Migrant Labor

Dear Senator Testin, Representative Petryk, and Chief Clerks Champagne and Blazel:

Pursuant to s. 227.19 (4) (b) 3., Stats., the Department of Workforce Development (DWD) is submitting for legislative review the attached germane modification to the proposed rule for Clearinghouse Rule 23-030.

The germane modification includes a revised s. 180, which would repeal s. 179 of the proposed rule on January 1, 2025, thereby sunsetting s. 179, which creates s. DWD 301.09 (2m) (d) and (e):

DWD 301.09 (2m) (d) *Heat illness*. 1. 'Signs or symptoms.' a. If a supervisor observes or any worker reports any signs or symptoms of heat illness in any worker engaged in hand labor, the employer shall take immediate action commensurate with the severity of the illness.

b. The employer shall implement emergency response procedures if the signs or symptoms under subd. 1. a. are indicators of severe heat illness, such as decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior, or convulsions.

c. The employer shall monitor a worker engaged in hand labor who exhibits signs or symptoms of heat illness and, before allowing the worker to be left alone or return to the worker's housing, provide for first aid or emergency medical services in accordance with the heat illness prevention plan required under subd. 2.

2. 'Heat illness prevention plan.' An employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in English and in the language of occupants if other than English. The employer shall make the plan available at the migrant labor camp and, upon request, to representatives of the department. The plan shall include procedures for complying with sub. (2m) (b) and par. (e) and effective emergency response procedures that provide for all of the following:

a. Ensuring that effective communication by voice, observation, or electronic means is maintained so that workers engaged in hand labor can contact a supervisor or emergency medical services when necessary. An

electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

b. Responding to signs and symptoms of possible heat illness of workers engaged in hand labor, including first aid measures and procedures for providing emergency medical services.

c. Contacting emergency medical services and, if necessary, transporting workers engaged in hand labor to a place where they can be reached by an emergency medical services provider.

d. Ensuring that, in emergencies, clear and precise directions to the migrant labor camp are provided as needed to emergency responders.

(e) *Access to shade.* 1. When the outdoor temperature in a work area exceeds 80 degrees Fahrenheit, an employer shall maintain one or more areas with shade at all times while workers are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of workers resting or taking outdoor meals so that they can sit fully in the shade in a normal posture without being in physical contact with each other. The shade shall be located as close as practicable to the areas where workers are working.

2. When the outdoor temperature in a work area does not exceed 80 degrees Fahrenheit, an employer shall either provide shade that complies with subd. 1. or provide timely access to shade upon a worker's request.

3. An employer shall allow and encourage workers to take a preventative cool-down rest in the shade at any time when they feel the need to do so to protect themselves from overheating. If a worker takes a preventative cool-down rest, all of the following apply:

a. The worker shall be monitored and asked if the worker is experiencing symptoms of heat illness.

b. The worker shall be encouraged to remain in the shade.

c. The worker may not be ordered back to work until any signs or symptoms of heat illness have abated or until 5 minutes after the worker obtained access to the shade, whichever is later.

4. If a worker exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest under subd. 3., the employer shall provide appropriate first aid or emergency response as specified in the heat illness prevention plan established under par. (d) 2.

5. When the outdoor temperature in a work area equals or exceeds 95 degrees Fahrenheit, an employer shall implement high heat procedures that provide for all of the following to the extent practicable:

a. Ensuring that effective communication by voice, observation, or electronic means is maintained so that workers at a work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

b. Observing workers for alertness and signs or symptoms of heat illness.

c. Designating one or more employees at each work site as authorized to call for emergency medical services and allowing other employees to call for emergency medical services when no designated worker is available.

d. Reminding workers throughout the work shift to drink plenty of water.

e. Pre-shift meetings before the commencement of work to review the high heat procedures, encourage workers to drink plenty of water, and remind workers of their right under subd. 3. to take a preventative cool-down rest when necessary.

The germane modification also amends s. 198 to the proposed rule to include delayed effective dates for s. 109, DWD 301.07 (15) (c) related to toilet facilities, s. 114, DWD 301.07 (16) (c) related to shower facilities, and s. 180:

SECTION 197198. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats, except that SECTION 109 DWD 301.07 (15) (c), and SECTION 114 DWD 301.07 (16) (c) take effect on the first day of the 48th month following publication in the Wisconsin Administrative Register, and SECTION 180 takes effect on January 1, 2025.

The germane amendment adds notes to s. 109, DWD 301.07 (15) (c) related to toilet facilities and s. 114, DWD 301.07 (16) (c) related to shower facilities, to clearly notify camp operators of the delayed implementation dates for these provisions:

Note: Implementation of this section will be delayed until the first day of the 48th month following publication in the Wisconsin Administrative Register.

Finally, the germane amendment adds a note to s. DWD 301.09 (2m) (d) and (e) to clearly notify employers of the sunset date for sec. 179:

Note: This section will be repealed effective January 1, 2025.

DWD believes that delaying the implementation of s. 109, DWD 301.07 (15) (c) and s. 114, DWD 301.07 (16) (c) will further reduce potential impacts on small businesses and assist camp operators by providing an additional four years to evaluate potential implementation and compliance costs. DWD has also reviewed the migrant labor camp applications for the current season to further consider the effect of these provisions on camp operators. Of the 283 migrant labor camps that applied for certification from DWD last year, 30 were for dorm-style camps that used urinals and may be affected by this updated rule. All camps applying for certification from DWD already have showerheads in the ratio of 1 per 8 occupants- and, therefore, should not need to make any changes to comply with the new ratio in the updated rule. In addition, at the end of the four-year delayed implementation period, camp operators will still be able to apply for a variance to reduce implementation and compliance costs, either on a temporary or permanent basis under DWD 301.07(7), which DWD may grant if the variance is necessary to prevent a practical difficulty or unnecessary hardship.

Thank you for your consideration of this matter.

Sincerely,



Amy Pechacek
Secretary-designee