

**Order of the Wisconsin
Department of Workforce Development**

The Wisconsin Department of Workforce Development proposes an order to create DWD 301.09 (2m) (d) and (e), relating to migrant labor and affecting small business.

The statement of scope for this rule, SS 017-25, was approved by the Governor on March 6, 2025, published in Register No. 831A3, on March 17, 2025, and approved by the Department of Workforce Development on March 31, 2025. This emergency rule was approved by the Governor on April 24, 2025.

Finding of Emergency

The Department of Workforce Development (DWD) seeks to promulgate a new emergency rule in ch. DWD 301 for protecting migrant workers from heat illness. DWD promulgated permanent Clearinghouse Rule CR 23-030, effective February 1, 2024, creating s. 301.09 (2m) (d) and (e), which included provisions for monitoring heat illness, establishing a heat illness prevention plan, and providing shade and the opportunity to take breaks when temperatures exceed 80 degrees Fahrenheit. The provisions applied to operations in which migrant workers are engaged in field work.

The federal Occupational Safety and Health Administration (OSHA) was expected to promulgate a rule for protecting all workers from heat illness, not just migrant workers engaged in field work. By letter dated September 29, 2023, to DWD Secretary-designee Pechacek, the Chairs of the Senate Committee on Labor, Regulatory Reform, Veterans and Military Affairs and the Assembly Workforce Development and Economic Opportunities Committee recommended sunseting the heat illness prevention requirements in CR 23-030, effective January 1, 2025. In that same letter, the Chairs noted that, if OSHA withdrew or had not finished promulgating its regulations, DWD could file a permanent or emergency rule before the 2025 growing season gets underway. In response to the recommendation of the Chairs, DWD made a germane modification to Clearinghouse Rule CR 23-030 that repealed s. DWD 301.09 (2m) (d) and (e) effective January 1, 2025, that was promulgated into the final rule.

On August 30, 2024, OSHA issued a proposed rule regarding heat injury and illness prevention in outdoor and indoor work settings. See 89 Fed. Reg. 70698. On November 29, 2024, OSHA extended the public comment period for that proposed rule to January 14, 2025, with an informal public hearing on the proposed rule scheduled for June 16, 2025. See 89 FR 94631. On January 20, 2025, President Trump issued a memorandum for heads of executive departments and agencies regarding a regulatory freeze pending review. See 90 FR 8249. The memorandum prohibits the proposal or issuance of any rule until a department or agency head appointed by President Trump reviews and approves the rule. DWD intends to promulgate a permanent rule to align with OSHA regulations if they are implemented; however, given the comment period has been extended to June, and directives provided in President Trump's memorandum, OSHA does not yet have a final rule. The 2025 growing season is now underway and there are no heat protection rules in place that will protect migrant workers in the fields as temperatures climb in the summer months. As suggested by the Chairs in their September 29, 2023, letter, given the absence of a federal rule, an emergency rule is needed for the 2025 season to protect those migrant workers from heat illness and thereby immediately preserve the public peace, health, safety, or welfare.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted: Section 103.90 to 103.97, Stats.

Statutory Authority: Section 103.905 (1), Stats.

Explanation of Statutory Authority.

Section 103.905 (1), Stats. requires DWD to promulgate rules "for the enforcement an implementation of ss. 103.90 to 103.97," Stats., which is the Wisconsin Migrant Labor Law. This authority includes ensuring migrant labor camps and field work are safe for workers.

Related Statute or Rules: None

Plain Language Analysis.

Chapter DWD 301 includes requirements for certification of migrant labor contractors; migrant labor work agreements; certification of migrant labor camps; migrant labor camp standards; payment of wages to migrant workers; field sanitation standards; assessment of penalties for violations of the chapter; and notice of migrant labor rights. Clearinghouse Rule CR 23-030 made modifications to many of these requirements, including creating heat illness protection requirements in s. DWD 301.09 (2m) (d) and (e). The objective of the emergency rule is to temporarily reinstate for the 2025 growing season the heat illness protection requirements that were created within former s. DWD 301.09 (2m) (d) and (e), and that were repealed January 1, 2025. Therefore, the emergency rule creates the following requirements for employers of migrant workers in agriculture, which are identical to the repealed requirements that employers were subject to last season:

- Employers must monitor for heat illnesses and establish a heat illness prevention plan that includes ensuring effective communication during an emergency in the field.
- Employers must provide shade and the opportunity to take breaks when temperatures exceed 80 degrees Fahrenheit.

Like the repealed requirements, the above requirements apply to operations in which any number of migrant workers are engaged in hand labor.

Summary of, and comparison with, existing or proposed federal regulations.

As noted in the Finding of Emergency, OSHA is in the process of promulgating a federal regulation for protecting all workers from heat illness. See 89 FR 70698. As stated in OSHA's proposed regulation, there is currently no OSHA standard in effect that regulates heat stress hazards in the workplace. See 89 FR 70698, 70699. With specified exemptions, the proposed OSHA regulation applies to all employees in indoor and outdoor work areas who are subject to OSHA's jurisdiction. One of the exemptions applies to

employees exposed to heat for short durations. The emergency rule applies only to migrant workers engaged in outdoor field work but does not include an exemption for short duration exposure. Like the emergency rule, the proposed OSHA regulation requires employers to develop and implement a plan for preventing heat illness and injuries, which must include emergency response procedures. However, unlike the emergency rule, the proposed OSHA regulation includes additional requirements regarding the plan, including a requirement to seek the input of non-managerial employees in developing and implementing the plan and a requirement to review and update the plan annually and whenever certain heat-related illnesses or injuries occur. With certain exemptions, the proposed OSHA regulation requires employers to monitor heat conditions at outdoor work areas using methods specified in the regulation. The emergency rule does not include similar specified requirements. Both the proposed OSHA regulation and the emergency rule include requirements for monitoring workers for signs or symptoms of heat illness and communicating with workers. Both the proposed OSHA regulation and emergency rule include requirements for providing outdoor workers with access to shade or ventilation, cooling, or air conditioning. The proposed OSHA regulation also includes requirements for acclimating workers to heat who return to work after absences of more than 14 days, as well as heat illness training requirements for employees. The emergency rule does not include acclimation or training requirements.

Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule

A preliminary hearing on the Statement of Scope for this rule, SS 017-25, was held on March 26, 2025. DWD received written comments and heard testimony from Mariah Hennen, representing Legal Action of Wisconsin, in favor of reinstating the heat illness protection requirements as described in the Statement of Scope.

Comparison with rules in adjacent states.

Illinois. Pursuant to the Illinois Migrant Labor Law (210 Illinois Compiled Statutes (ILCS) 110), the Illinois Department of Public Health has promulgated rules imposing requirements for the following: camp construction and alteration permits; camp sites and structures, including requirements for sleeping rooms, bedding, and ventilation; water supply; sewage and solid waste disposal; toilet, handwashing, and laundry facilities; showers; food preparation; food storage and eating facilities; electrical wiring; mechanical equipment; fire protection; and communicable disease reporting. See 77 Ill. Admin. Code ss. 935.10 to 935.105. There does not appear to be any statutes or rules specific to heat illness protections for migrant workers in the state.

Iowa. Iowa statutes specify requirements for the following: migrant labor camp sites; shelters, including living quarters and sleeping facilities; water supply; toilet, sewage, laundry, handwashing, and bathing facilities; lighting; refuse disposal; insect and rodent control; construction and operation of kitchens, dining halls, and feeding facilities; and safety and fire prevention. ICA s. 138.13. The Department of Public Health promulgated rules on shelters, water supply, waste disposal, bathing facilities, central dining facilities, and safety and fire. Iowa Admin. Code 641.81.1 to 641-81.6. In 2022, the department's duties were transferred to a new Department of Health and Human Services. Iowa does not have state statutes or administrative rules regarding heat illness protections for migrant workers.

Michigan. Statutes allow the Department of Agriculture and Rural Development to promulgate rules to protect the health, safety, and welfare of migrant workers and camp occupants. MCLA s. 333.12421 (1). Michigan does not have any statutes or administrative rules relative to heat illness protections for migrant workers.

Minnesota. State statutes allow the commissioner of the Department of Health to promulgate rules regarding construction, equipment, maintenance, and sanitary conditions of migrant labor camps. Minn. Stats. s. 144.12 (11). However, no such rules are currently in effect. Minnesota has an occupational heat stress rule applicable to indoor workplaces and indoor heat stress only. Minn. Rules part 5205.0110.

Summary of factual data and analytical methodologies.

The requirements of this emergency rule are identical to requirements in permanent rule Clearinghouse Rule CR 23-030 that were repealed effective January 1, 2025. In developing that permanent rule, DWD reviewed ch. DWD 301, the Migrant Labor Law, OSHA regulations, and federal regulations on migrant recruitment, migrant work agreements, payroll records, and provisions of other information to migrant workers. DWD conducted field sanitation compliance checks during the 2024 growing season, and reviewed the heat illness preventions plans that were prepared to comply with the heat illness rule. Some employers had questions regarding meeting the shade requirements. DWD was able to provide suggestions for cost-effective compliance options, like using sheets to create shade. Other employers already set up areas of shade as part of their operation before the heat illness rule went into effect. DWD also obtained the input of the Ad Hoc Committee on Migrant Seasonal Farmworkers on the permanent rule, holding three meetings with that committee to review comments from committee members and written comments submitted by stakeholders. In addition, DWD consulted with DHS, DSPS, and DNR on the permanent rule. As required under s. 103.968, Stats., on October 23, 2023, DWD submitted the permanent rule to the Governor's Council on Migrant Labor, the Council met October 25, 2023, to review the rule and did not recommend any additional changes.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

Because s. 227.137 (5), Stats., exempts emergency rules from economic impact analysis requirements, DWD did not prepare an economic impact analysis for this emergency rule.

Regarding small businesses, as of March 2025, approximately 281 entities are subject to ch. DWD 301's requirements. Of that total, 207 are migrant labor employers and 74 are either migrant labor contractors or agents of employers. Of the 281 businesses, 133 of them operate 264 migrant labor camps located throughout the state. Most of these migrant labor camp operators, migrant labor contractors, and employers are small businesses, as defined in s. 227.114 (1), Stats.

The emergency rule should have minimal economic impact on those small businesses. Because the emergency rule is temporarily reinstating for the 2025 growing season heat illness protection requirements that were previously in effect for the 2024 growing season and existing employers have already established plans and shade areas to meet those requirements, DWD believes the economic impact will be minimal. Further, because operations run by small businesses have fewer migrant workers than those operated by larger businesses, those costs are anticipated to have only minimal impact on small businesses. Finally, not all operations employ migrant workers to engage in hand labor so not all operations are impacted by this rule. In addition, s. DWD 301.09 (7) allows DWD to issue variances from field sanitation requirements, including the emergency rule's heat illness protection requirements. Therefore, a small business can apply for a variance that reduces that economic impact of a requirement, which the Department may grant if the variance is necessary to prevent a practical difficulty or unnecessary hardship and other requirements are satisfied.

Agency contact person.

Questions and comments related to this rule may be directed to:

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Place where comments are to be submitted and deadline for submission.

Comments may be submitted to the contact person shown above. Information as to the place, date, and time of the public hearing, as well as the deadline for submitting comments, will be published in the Wisconsin Administrative Register.

Text of Rule

SECTION 1. DWD 301.09 (2m) (d) and (e) are created to read:

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.

SECTION 2. EFFECTIVE DATE. This rule takes effect upon publication in the state newspaper and shall remain in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions under s. 227.24 (2), Stats.

Signed this _____ day of _____, 2025.

Amy Pechacek, Secretary-designee