

## **OSHA Advanced Notice of Proposed Rulemaking – Federal Heat Standard ABB Draft Comment – 1/18/22**

Submission for Advanced Notice of Proposed Rulemaking: “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Rulemaking”

(Docket No. OSHA-2021-0009)

<https://www.osha.gov/laws-regs/federalregister/2021-10-27>

### **Introduction**

Thank you for the opportunity to provide input in response to the Advance Notice of Proposed Rulemaking. A Better Balance is a non-profit legal advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. A Better Balance utilizes direct legal services, strategic litigation, and legislative advocacy to combat discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. When we value the work of providing care, which has long been marginalized due to sexism and racism, our communities and our nation are healthier and stronger.

Through our national office, headquartered in New York City, as well as our D.C., Colorado, and Southern offices, we have heard from countless workers through our free and confidential legal helpline who often work in conditions that are physically demanding and lack proper protections from severe heat conditions, and lack access to supportive workplace policies such as paid sick days, paid family and medical leave, and accommodations. These workers are faced with an impossible choice between caring for themselves or their loved ones and maintaining their economic security.

### **Comment Overview**

A Better Balance encourages OSHA to issue a uniform federal guideline regarding heat injury and illness prevention. For pregnant workers, especially, heat exposure at work can cause risks to their health. Illnesses caused by heat, such as heat stroke, dehydration, fatigue, dizziness, and pre-term birth can lead to negative maternal and infant health outcomes.<sup>1</sup> Further, heat exposure is an unsafe working condition that can cause pregnant workers to be forced off of their jobs, catalyzing cycles of family and caregiver poverty. Therefore, the specific vulnerabilities that pregnant people face from heat in the workplace should be encompassed within a federal heat standard, and the standard should be robust enough to provide appropriate protections for all workers, including pregnant workers, from extreme heat. Pregnant workers can and need to work throughout their pregnancy, and should be able to do so safely through adequate workplace

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<sup>1</sup> “Increasing Temperatures Because of the Climate Change Crisis is a Reproductive Justice Issue in the United States,” HUMAN RIGHTS WATCH, BLACK WOMEN’S HEALTH IMPERATIVE, A BETTER BALANCE, LATINA INSTITUTE FOR REPRODUCTIVE JUSTICE, AND NATIONAL BIRTH EQUITY COLLABORATIVE, [https://www.hrw.org/sites/default/files/media\\_2020/10/climatecrisis-reproductivejustice-US\\_1020\\_web.pdf](https://www.hrw.org/sites/default/files/media_2020/10/climatecrisis-reproductivejustice-US_1020_web.pdf) (last accessed January 21, 2022).

protections. A federal heat standard to prevent heat illness and injury would allow pregnant workers to continue working safely.

A Better Balance does not think there needs to be a separate heat standard for pregnant workers since pregnant workers' individual needs may vary. Rather, our organization recommends that OSHA develop a uniform standard for protections from harmful exposure to heat and when doing so, factor in pregnant workers' potential needs. OSHA should also work to ensure that employers provide information to employees about their federal, state, and local workplace rights that may provide additional protections, and guarantee robust enforcement of rules that provide workplace rights.

### **Heat Exposure is Increasingly a Concern for Pregnancy Health and Pregnant Workers' Economic Security**

Research over the past fifteen years shows that increasing exposure to heat threatens maternal and infant health in the United States. This is particularly important for pregnant people of color, especially Black pregnant people, as maternal and infant outcomes already differ starkly on the basis of race. For example, Black people are three times more likely to die from a pregnancy-related cause than White people.<sup>2</sup> Similarly, exposure to extreme heat and other issues related to climate change disproportionately impact people of color.<sup>3</sup> Therefore, a federal heat standard could help improve race-based disparities in maternal and infant health outcomes. The OSHA rule would be especially important for workers in the South, where temperatures are some of the highest in the country, and only a handful of states have laws affording pregnant workers an explicit right to accommodations on the job absent undue hardship on employers.<sup>4</sup>

The following studies and guidance show how extreme heat impacts maternal and infant health outcomes:

- The United Nations Food and Agricultural Organization (FAO) issued a report in 2020 on heat exposure and work, especially in agriculture, that included concerns that “heat stress may increase the risk that pregnant females will give birth prematurely or to babies with birth defects.”<sup>5</sup>

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<sup>2</sup> “Health Equity: Working Together to Reduce Black Maternal Mortality,” CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html> (last accessed January 21, 2022).

<sup>3</sup> “Increasing Temperatures Because of the Climate Change Crisis is a Reproductive Justice Issue in the United States,” *supra* note 1.

<sup>4</sup> “State Pregnant Workers Fairness Laws,” A BETTER BALANCE (November 4, 2016), <https://www.abetterbalance.org/resources/pregnant-worker-fairness-legislative-successes/>.

<sup>5</sup> D. Staal Wästerlund, “Managing Heat in Agricultural Work: Increasing worker safety and productivity by controlling heat exposure,” FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED STATES (2018), <http://www.fao.org/3/i9179en/I9179EN.pdf>.

- The American College of Obstetrics and Gynecology (ACOG) [issued guidance](#) in July 2021 noting that exposure to extreme heat (and extreme cold) may be associated with preterm birth and low birth weight.<sup>6</sup>
- The CDC/NIOSH webpage “[Heat – Reproductive Health](#)” warns pregnant people that they are more likely to get heat exhaustion, heat stroke or dehydration and that “exposure to excess heat at work could increase your chances of having a baby with a birth defect or other reproductive problems”.<sup>7</sup>

A Better Balance is also aware from our free and confidential legal helpline how extreme heat, or associated problems like needing additional water, can cause workers to be pushed out of their jobs or fired. For example, consider these stories from workers who called A Better Balance in 2020:

- Tesia, a pregnant retail worker in Missouri, who was forced out of work after her employer refused to let her keep a water bottle with her when the store’s water fountain was shut down due to concerns about COVID-19.<sup>8</sup>
- Jordan, a cashier at a large retailer in Mississippi, was experiencing preterm contractions and severe dehydration at work. She was forced onto unpaid leave after her employer refused to give her a lifting accommodation, more frequent breaks to drink water and sit, and a reduced schedule.<sup>9</sup>

When workers like Tesia and Jordan are forced off the job, it can lead to grave financial instability and poverty for families at a time when they need security the most.<sup>10</sup> Pregnant workers who are fired or have their hours cut may have to use saved paid or unpaid leave that they hoped to reserve to recover from childbirth.<sup>11</sup> Further, because childbirth is incredibly expensive, many workers return to the workforce much earlier than planned or medically advisable simply to provide for their families.<sup>12</sup> In addition to income, the loss of health insurance as a result of losing a job can force pregnant or postpartum workers to delay or avoid critical medical care.<sup>13</sup> A federal heat standard would ensure that pregnant workers who may have limitations related to heat can continue working, in an environment safe for themselves and their pregnancies.

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<sup>6</sup> “Reducing Prenatal Exposure to Toxic Environments,” THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS (July 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reducing-prenatal-exposure-to-toxic-environmental-agents>.

<sup>7</sup> “Heat – Reproductive Health,” THE NATIONAL INSTITUTE FOR OCCUPATIONAL HEALTH AND SAFETY, <https://www.cdc.gov/niosh/topics/repro/heat.html> (last edited April 20, 2017).

<sup>8</sup> Dina Bakst, Elizabeth Gedmark, Sarah Brafman & Meghan Racklin, A BETTER BALANCE, Long Overdue: The Pregnant Workers Fairness Act is A Critical Measure to Ensure Women’s Workforce Participation and Promote Healthy Pregnancies (2021), <https://www.abetterbalance.org/wp-content/uploads/2021/06/Long-Overdue-June-2021-Update-Final-1.pdf>.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.*

These barriers to financial security faced by pregnant workers also include racial and gendered disparities.<sup>14</sup> As the pandemic has shown, women are more likely than men to perform unpaid caregiving work, including childbirth and child rearing, and therefore suffer consequences at work and have limited economic opportunities.<sup>15</sup> Further, workers in low-wage jobs are disproportionately people of color, and they are particularly likely to be denied pregnancy accommodations due to the physical demands and lack of workplace protections that higher-paid workers may receive.<sup>16</sup> Many pregnant workers are already marginalized due to their race or gender, and face economic precarity at the hands of their employer. Therefore, a federal heat standard could help support the health, safety, and financial security for families and lessen gender and racial class disparities by providing workers with rights against extreme heat at work.

The needs of pregnant workers should be considered in creating the federal heat standard, and OSHA should provide resources for employers to share with employees about their rights. Furthermore, a general federal heat standard would benefit all workers from extreme heat at work whether they are pregnant, parenting, caregiving, or taking care of their own chronic illness. Given that many workers in hot work environments are low-wage, workers of color, and/or immigrants, they likely lack other workplace protections that would afford rights to paid time off or sick time. A general federal standard will help keep all workers healthier on the job, which will help strengthen many different kinds of families and communities.

Finally, because the United States lacks many basic worker protections, fear of retaliation is a common concern for workers. Without adequate guidance provided alongside a federal heat standard, workers may fear retaliation for bringing up the issue of high heat or the need for accommodation with their employer. Therefore, in moving forward with this proposed rule, fear of retaliation should be considered as a significant factor to underreporting heat illness or workplace hazards.

## Conclusion

As a non-profit legal organization that advocates for pregnant, caregiving, and parenting low-wage workers, A Better Balance recognizes the importance of a federal heat standard. Pregnant workers in particular can suffer devastating consequences when exposed to extreme heat without recourse, and protections like this OSHA rule are critical for them to be able to stay safe and healthy on the job. Further, this rule and others like it are an important part of advancing towards reproductive and economic justice for all workers, families, and communities. A Better Balance thanks OSHA for undertaking this ANPRM, and hopes that the above analysis and recommendations are helpful.

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<sup>14</sup> We recognize that any person, regardless of gender identity, can give birth; however, research with findings based on the gender binary can be helpful in determining how different genders experience work-life barriers.

<sup>15</sup> Robin Blelweis, Alexandra Cawthorne Gaines, and Diana Boesch, “The Basic Facts About Women in Poverty,” CENTER FOR AMERICAN PROGRESS, <https://www.americanprogress.org/article/basic-facts-women-poverty/> (last updated August 3, 2020).

<sup>16</sup> Long Overdue: The Pregnant Workers Fairness Act is A Critical Measure to Ensure Women’s Workforce Participation and Promote Healthy Pregnancies, supra note 8.