The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	CS/SB 1492
INTRODUCER:	Senator Trumbull
SUBJECT:	Employment Regulations
DATE:	January 24, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	**Fav/CS**
2.			CA	
3.			RC	

I. Summary:

CS/SB 1492 creates a new section of law regarding workplace heat exposure requirements by prohibiting a political subdivision from requiring an employer or contractor to meet or provide heat exposure requirements that are not already required under state or federal law, and prohibiting a political subdivision from giving preference in solicitations based upon employer heat exposure requirements. The bill does not limit the authority of a local government to provide workplace heat exposure requirements not otherwise required under state or federal law for direct employees of the political subdivision. These heat exposure provisions do not apply if compliance will prevent the political subdivision from receiving federal funds.

The effective date of the bill is July 1, 2024.

II. Present Situation:

Workplace Heat Exposure

The OSHA Act, is the federal labor law governing occupational health and safety in the private sector and federal government.[1] Under the OSHA Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.[2] The Occupational Safety and Health Administration (OSHA) is responsible for the promulgation and enforcement of standards.[3]

[1] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).
[2] 29 U.S.C. § 671.
[3] 29 U.S.C. § 655.

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published "Preventing Heat-related Illness or Death of Outdoor Workers." This recommended standard recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.[4]

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the OSHA Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.[5]

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.[6]

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.[7] OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited a company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of $136,532 for this violation, which was later reduced through an informal settlement with the employer to $81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress."[8]

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA's ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts.

[4] NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.
[5] 29 U.S.C. § 654.
[6] Occupational Safety and Health Administration, Heat Illness Prevention, *available at* https://www.osha.gov/heat/, (last visited January 22, 2024).
[7] 86 FR 59309.
[8] Occupational Safety and Health Administration, Violation Detail, *available at* https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001, (last visited January 22, 2024).

This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.[9]

Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid and call for help in an emergency. Enforcement includes a warning, fines of up to $2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.[10]
According to reports:[11]

- The proposal was deferred until March, 2024.
- Some South Florida employers have expressed that they already provide such protections.
- Miami-Dade County would have been the only local government in the nation to adopt such requirements.

Preemption

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

Such state preemption precludes a local government from exercising authority in the preempted area.[12]

Florida law recognizes two types of state preemption: express and implied. Express preemption requires an express legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.[13] Implied preemption, on the other hand, exists where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the legislature.[14]

---

[9] Occupational Safety and Health Administration, OSHA Instruction, *available at* https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf, (last visited January 22, 2024).
[10] Miami-Dade Legislative Item, File Number: 231773.
[11] Miami Herald, After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice, *available at* https://www.miamiherald.com/news/local/environment/article281487003.html, (last visited January 22, 2024).
[12] Wolf, The Effectiveness of Home Rule: A Preemptions and Conflict Analysis, 83 Fla. B.J. 92 (June 2009), *available at* https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited January 22, 2024).
[13] *See* City of Hollywood v. Mulligan, 934 So. 2d 1238, 1243 (Fla. 2006); Phantom of Clearwater, Inc. v. Pinellas County, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309 (Fla. 2008).
[14] Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880 (Fla. 2010).

Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.[15]

III. Effect of Proposed Changes:

Workplace Heat Exposure Requirements

The bill prohibits political subdivisions from:

- Mandating or otherwise imposing heat exposure requirements on an employer or a political subdivision contractor.
- Considering or seeking information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

The bill provides that it does not:

- Limit the authority of a political subdivision to mandate or impose workplace heat exposure requirements for the employees of the local government.
- Apply if it is determined that compliance would prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

The bill provides the following definitions:

- "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.
- "Heat exposure requirement" means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:
  - Employee monitoring and protection.
  - Water consumption.
  - Cooling measures.
  - Acclimatization and recovery periods or practices.
  - Posting or distributing notices or materials that inform employees how to protect themselves from heat exposure.
  - Implementation and maintenance of heat exposure programs or training.
  - Appropriate first-aid measures or emergency responses related to heat exposure.
  - Protections for employees who report that they have experienced excessive heat exposure.
  - Reporting and recordkeeping requirements.
- "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

The bill provides an effective date of July 1, 2024.

[15] *See*, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami, 812 So. 2d 504 (Fla. 3d DCA 2002).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective. The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.[16] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often depends on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that "[t]he distinction between substantive and procedural law is neither simple nor certain."[17] The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[18]

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[19] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[20]

---

[16] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).
[17] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) (quoting *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000)).
[18] *Love*, at 184.
[19] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.,* 869 So. 2d 1210, 1217 (Fla. 2004) (quoting *LaForet* 658 So. 2d 55, 61 (Fla. 1995)).
[20] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 2d DCA 1990).

Florida's contracts clause states that "no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[21] Regarding the impairment of an existing contract by the retroactive application of a statute, the Florida Supreme Court recently said:

> "[V]irtually no degree of contract impairment is tolerable." However, we also recognized that the holding that "virtually" no impairment is tolerable "necessarily implies that some impairment is tolerable." The question thus becomes how much impairment is tolerable and how to determine that amount. To answer that question, in *Pomponio* we proposed a balancing test that "allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party's interest in not having the contract impaired against the State's source of authority and the evil sought to be remedied." "[T]his becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the State's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."
>
> An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, "[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." There must be a "significant and legitimate public purpose behind the regulation."[22]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

---

[21] FLA. CONST. art. I, s. 10.

[22] *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 448.106 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 23, 2024:
The committee substitute removes provisions relating to wage and employment benefits by political subdivisions.

B. Amendments:

None.