

118TH CONGRESS
1ST SESSION

H. R. 6221

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from adverse air, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2023

Ms. LEE of California (for herself, Mr. GRIJALVA, Mr. DESAULNIER, Ms. CROCKETT, Ms. NORTON, Mr. CARSON, Ms. SCHAKOWSKY, Ms. OCASIO-CORTEZ, Mr. SCHIFF, Ms. TLAIB, Mr. ESPAILLAT, and Mr. HUFFMAN) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from adverse air, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Smoke Mitigation and
5 Occupational Key Enhancements Act” or “SMOKE Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Climate change is making wildland fires
2 more frequent and longer lasting.

3 (2) Wildfire smoke is a mixture of air pollut-
4 ants, of which the principal public health threat is
5 particulate matter.

6 (3) Wildfire smoke has been directly linked to
7 poor air quality that can lead to significant health
8 effects and costs to society (such as emergency de-
9 partment visits, hospital admissions, and deaths,
10 often due to respiratory ailments).

11 (4) In addition to climate change, other fac-
12 tors—land use, large-scale insect infestation, fuel
13 availability (including invasive species such as highly
14 flammable cheatgrass), and management practices,
15 including fire suppression—play an important role
16 in wildfire frequency and intensity.

17 (5) In summer 2023, smoke from wildfires in
18 Canada drifted into the United States, leading to ex-
19 tremely poor air quality across the eastern United
20 States. Since then, States across the country have
21 issued poor air quality alerts, with New York City
22 having reported the worst air quality in the world on
23 June 7, 2023. Due to these fires, about 128 million
24 Americans in 18 States were under air quality
25 alerts.

1 (6) While officials have warned Americans to be
2 mindful of poor air quality conditions, including to
3 limit time spent outside, worker protections are un-
4 clear in these circumstances.

5 **SEC. 3. OSHA STANDARDS.**

6 (a) PROPOSED STANDARD.—Not later than 2 years
7 after the date of enactment of this Act, the Secretary of
8 Labor shall, pursuant to section 6(b) of the Occupational
9 Safety and Health Act of 1970 (29 U.S.C. 655(b)), in con-
10 sultation with the Administrator of the Environmental
11 Protection Agency and the Secretary of Health and
12 Human Services (acting through the Director of the Na-
13 tional Institute on Occupational Safety and Health), and
14 in accordance with the best available evidence, promulgate
15 a proposed standard on prevention of workplace injury
16 from exposure to adverse air.

17 (b) FINAL STANDARD.—Not later than 42 months
18 after the date of enactment of this Act, the Secretary shall
19 promulgate a final standard on prevention of workplace
20 injury from exposure to adverse air that shall—

21 (1) presume as feasible any requirement that—

22 (A) is substantially equivalent to a require-
23 ment adopted by a State plan that has been ap-
24 proved by the Secretary under section 18 of the

1 Occupational Safety and Health Act of 1970
2 (29 U.S.C. 667); and

3 (B) has been in effect for at least 1 year;

4 (2) at a minimum, include the requirements de-
5 scribed in section 4; and

6 (3) be effective and enforceable in the same
7 manner and to the same extent as any standard pro-
8 mulgated under section 6(b) of the Occupational
9 Safety and Health Act of 1970 (29 U.S.C. 655(b)).

10 (c) INTERIM FINAL STANDARD.—

11 (1) IN GENERAL.—If the proposed standard de-
12 scribed in subsection (a) is not promulgated, not
13 later than 2 years after the date of enactment of
14 this Act, the Secretary of Labor shall promulgate an
15 interim final standard on prevention of workplace in-
16 jury from exposure to adverse air not later than 2
17 years and 60 days after such date of enactment—

18 (A) to require covered employers to mon-
19 itor the AQI for PM_{2.5} and, if adverse air is
20 present, communicate the AQI for PM_{2.5} to the
21 covered employees of such covered employers;
22 and

23 (B) that shall, at a minimum, include a re-
24 quirement to protect employees from discrimi-

1 nation or retaliation for exercising the rights of
2 the employees under the interim final standard.

3 (2) APPLICABILITY OF OTHER STATUTORY RE-
4 QUIREMENTS.—The following shall not apply to the
5 promulgation of the interim final standard under
6 this subsection:

7 (A) The requirements applicable to occupa-
8 tional safety and health standards under section
9 6(b) of the Occupational Safety and Health Act
10 of 1970 (29 U.S.C. 655(b)).

11 (B) The requirements of section 553(e) of
12 chapter 5 and chapter 6 of title 5, United
13 States Code.

14 (C) The requirements of the National En-
15 vironmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 (3) EFFECTIVE DATE OF INTERIM STAND-
18 ARD.—The interim final standard shall—

19 (A) take effect on a date that is not later
20 than 30 days after the promulgation of such
21 standard;

22 (B) have the same legal effect and be en-
23 forceable in the same manner and to the same
24 extent as any standard promulgated under sec-

1 tion 6(b) of the Occupational Safety and Health
2 Act of 1970 (29 U.S.C. 655(b)); and

3 (C) be in effect until the final standard de-
4 scribed in subsection (b) becomes effective and
5 enforceable.

6 **SEC. 4. REQUIREMENTS FOR FINAL STANDARDS.**

7 (a) IN GENERAL.—The final standard promulgated
8 under section 3(b) shall include the following require-
9 ments:

10 (1) CONTROLS RELATED TO MONITORING.—

11 Each covered employer shall, at the start of each
12 work day or shift, and every 2 hours thereafter, de-
13 termine whether adverse air is present at each cov-
14 ered workplace for each such work day or shift by
15 monitoring or obtaining the AQI for PM2.5 fore-
16 casts from—

17 (A) the Environmental Protection Agency;

18 (B) the Interagency Wildland Fire Air
19 Quality Response Program; or

20 (C) the United States Forest Service.

21 (2) EMPLOYER COMMUNICATION OF POTENTIAL

22 ADVERSE AIR EXPOSURES.—Each covered employer
23 shall establish and implement a system to commu-
24 nicate the presence of adverse air in a language and
25 manner readily understandable by covered employ-

1 ees, which shall include procedures that inform such
2 employees of the following:

3 (A) Each time during the workday when
4 adverse air affects the workplace of such em-
5 ployees.

6 (B) The protective controls described in
7 paragraph (3) available to employees to reduce
8 exposure to adverse air.

9 (C) The potential health impacts of breath-
10 ing adverse air without proper protection.

11 (D) The policy of the employer that em-
12 ployees are encouraged to report to the em-
13 ployer, without fear of discrimination or retalia-
14 tion—

15 (i) the presence of adverse air in the
16 workplace; and

17 (ii) adverse symptoms, including asth-
18 ma attacks, difficulty breathing, or chest
19 pain, that the employee is at risk of experi-
20 encing if exposed to adverse air.

21 (3) PROTECTIVE CONTROLS.—Each covered
22 employer shall provide the following at each covered
23 workplace of the employer:

24 (A) ENGINEERING CONTROLS.—

1 (i) IN GENERAL.—Reduction of em-
2 ployee exposure to adverse air by engineer-
3 ing controls whenever feasible, such as by
4 providing enclosed buildings, structures, or
5 vehicles where the air is filtered to prevent
6 exposure to adverse air within such build-
7 ings, structures, or vehicles.

8 (ii) INSUFFICIENT ENGINEERING CON-
9 TROLS.—If engineering controls are insuf-
10 ficient to prevent exposure to adverse air,
11 reduction of employee exposure to such air
12 to the extent feasible.

13 (B) ADMINISTRATIVE CONTROLS.—When-
14 ever engineering controls are not feasible or do
15 not reduce employee exposures to adverse air,
16 implementation, if feasible, of administrative
17 controls, such as relocating work to a location
18 where adverse air is not present, allowing re-
19 mote work, changing work schedules, reducing
20 work intensity, or providing additional rest peri-
21 ods.

22 (C) PERSONAL PROTECTIVE EQUIP-
23 MENT.—

24 (i) IN GENERAL.—Whenever adverse
25 air is present, the provision of a sufficient

1 number of respirators that meet the re-
2 quirements of clause (ii) to all covered em-
3 ployees for voluntary use and encourage-
4 ment to employees to use such respirators.

5 (ii) RESPIRATORS PROVIDED.—A res-
6 pirator provided under clause (i) shall be—

7 (I) a device approved by the Na-
8 tional Institute for Occupational Safe-
9 ty and Health that effectively protects
10 the wearers from inhalation of PM2.5,
11 such as N95 filtering facepiece res-
12 pirators;

13 (II) cleaned or replaced as appro-
14 priate; and

15 (III) stored and maintained in
16 such a way so that such respirators do
17 not present a health hazard to users.

18 **SEC. 5. ADVERSE AIR RELATED LEAVE.**

19 (a) IN GENERAL.—In the case of an employee whose
20 health would be jeopardized by exposure to adverse air,
21 such employee shall be entitled to a total of 12 weeks of
22 unpaid leave per 12-month period for the purposes of
23 avoiding such exposure at a covered workplace where the
24 employee is employed.

1 (b) SUBSTITUTION OF PAID LEAVE.—An employee
2 may elect to substitute any of the accrued paid vacation
3 leave, personal leave, or family leave of the employee for
4 leave provided under subsection (a) for any part of the
5 12-week period of such leave under such subsection.

6 (c) EMPLOYMENT PROTECTION DURING ADVERSE
7 AIR RELATED LEAVE.—

8 (1) IN GENERAL.—Any eligible employee who
9 uses leave under subsection (a) for the intended pur-
10 pose of such leave shall be entitled, on return from
11 using such leave—

12 (A) to be restored by the employer to the
13 position of employment held by the employee
14 when the use of such leave commenced; or

15 (B) to be restored to an equivalent position
16 with equivalent employment benefits, pay, and
17 other terms and conditions of employment.

18 (2) LOSS OF BENEFITS.—The use of such leave
19 shall not result in the loss of any employment ben-
20 efit accrued prior to the date on which the use of
21 leave under subsection (a) commenced.

22 (3) LIMITATIONS.—Nothing in this section shall
23 be construed to entitle any restored employee to—

24 (A) the accrual of any seniority or employ-
25 ment benefits during any period during which

1 such restored employee uses leave under sub-
2 section (a); or

3 (B) any right, benefit, or position of em-
4 ployment other than any right, benefit, or posi-
5 tion to which the employee would have been en-
6 titled had the employee not used such leave.

7 (4) CONSTRUCTION.—Nothing in this section
8 shall be construed to prohibit an employer from re-
9 quiring an employee to report periodically to the em-
10 ployer on the status and intention of the employee
11 to return to work.

12 (d) CERTIFICATION.—

13 (1) IN GENERAL.—An employer may require
14 that a request for leave under subsection (a) be sup-
15 ported by a certification issued by the health care
16 provider of the eligible employee. The employee shall
17 provide, in a timely manner, a copy of such certifi-
18 cation to the employer.

19 (2) SUFFICIENT CERTIFICATION.—Certification
20 provided under paragraph (1) shall be sufficient if it
21 states—

22 (A) the appropriate medical facts within
23 the knowledge of the health care provider re-
24 garding the condition; and

1 (B) a statement that the health of the em-
2 ployee would be endangered by exposure to un-
3 safe air.

4 (3) SUBSEQUENT RECERTIFICATION.—The em-
5 ployer may require that the eligible employee obtain
6 subsequent recertifications on a reasonable basis.

7 **SEC. 6. DEFINITIONS.**

8 In this Act:

9 (1) ADVERSE AIR.—The term “adverse air”
10 means air with an AQI of at least 151 for PM2.5.

11 (2) AQI.—The term “AQI” means the measure
12 of the concentration of ozone, particulate matter,
13 carbon monoxide, sulfur dioxide, and nitrogen diox-
14 ide in the air described under Appendix G to part
15 58 of title 40, Code of Federal Regulations.

16 (3) COVERED EMPLOYEE.—

17 (A) IN GENERAL.—The term “covered em-
18 ployee” means an employee of a covered em-
19 ployer who works at a covered workplace, ex-
20 cept as provided in subparagraph (B).

21 (B) EXCLUSION.—The term “covered em-
22 ployee” does not include an employee who
23 works in emergency operations that are directly
24 involved in the protection of life or property, or

1 the restoration of essential services and critical
2 infrastructure.

3 (4) COVERED EMPLOYER.—The term “covered
4 employer” means any employer that employs an em-
5 ployee at a covered workplace.

6 (5) COVERED WORKPLACE.—

7 (A) IN GENERAL.—The term “covered
8 workplace” means a workplace at which em-
9 ployees are, or may reasonably be expected to
10 be, exposed to adverse air.

11 (B) EXCLUSIONS.—The following shall not
12 be considered a covered workplace:

13 (i) An enclosed building or structure
14 in which the air is filtered by a mechanical
15 ventilation system such that an employee is
16 not exposed to adverse air, if the employer
17 ensures that windows, doors, bays, and
18 other openings are kept closed, except
19 when it is necessary to open doors to enter
20 or exit.

21 (ii) An enclosed vehicle in which the
22 air is filtered by a cabin air filter such that
23 an individual inside such vehicle is not ex-
24 posed to adverse air, if the employer en-
25 sures that windows, doors, and other open-

1 ings are kept closed, except when it is nec-
2 essary to open doors to enter or exit the
3 vehicle.

4 (iii) A workplace that exposes individ-
5 uals to adverse air for a period not to ex-
6 ceed 1 hour during a shift.

7 (6) EMPLOYER.—The term “employer” has the
8 meaning given such term in section 3 of the Occupa-
9 tional Safety and Health Act of 1970 (29 U.S.C.
10 652).

○