

117TH CONGRESS
2D SESSION

H. R. 8818

To direct the Occupational Safety and Health Administration to issue an occupational safety and health standard to protect workers from wind-related injuries.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2022

Ms. BUSH (for herself, Mr. GREEN of Texas, Ms. NORTON, Ms. CLARKE of New York, Mr. BOWMAN, Mr. CARSON, Mr. GRIJALVA, Ms. LEE of California, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To direct the Occupational Safety and Health Administration to issue an occupational safety and health standard to protect workers from wind-related injuries.

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 “Wind Safety Standard
5 Act of 2022”.

1 **SEC. 2. OSHA SAFETY STANDARD FOR PROTECTION FROM**
2 **HIGH WINDS.**

3 (a) PROPOSED STANDARD.—Not later than 2 years
4 after the date of enactment of this Act, the Secretary of
5 Labor shall, pursuant to section 6(b) of the Occupational
6 Safety and Health Act of 1970 (29 U.S.C. 655(b)), pro-
7 mulgate a proposed standard on prevention of workplace
8 injury from high winds.

9 (b) FINAL STANDARD.—Not later than 42 months
10 after the date of enactment of this Act, the Secretary shall
11 promulgate a final standard on prevention of workplace
12 injury from high winds that shall—

13 (1) provide no less protection than the most
14 protective wind protection standard adopted by a
15 State plan that has been approved by the Secretary
16 under section 18 of the Occupational Safety and
17 Health Act of 1970 (29 U.S.C. 667) and, at a min-
18 imum, include the requirements described in section
19 4; and

20 (2) be effective and enforceable in the same
21 manner and to the same extent as any standard pro-
22 mulgated under section 6(b) of the Occupational
23 Safety and Health Act of 1970 (29 U.S.C. 655(b)).

24 (c) INTERIM FINAL STANDARD.—

25 (1) IN GENERAL.—If the proposed standard de-
26 scribed in subsection (a) is not promulgated not

1 later than 2 years after the date of enactment of
2 this Act, the Secretary of Labor shall promulgate an
3 interim final standard on prevention of workplace in-
4 jury from high winds not later than 2 years and 60
5 days after such date of enactment—

6 (A) to require covered employers to develop
7 and implement a comprehensive workplace wind
8 protection plan to protect covered employees
9 from excessive winds that may lead to wind-re-
10 lated workplace injuries; and

11 (B) that shall, at a minimum—

12 (i) provide no less protection than the
13 most protective wind protection standard
14 adopted by a State plan that has been ap-
15 proved by the Secretary under section 18
16 of the Occupational Safety and Health Act
17 of 1970 (29 U.S.C. 667); and

18 (ii) include a requirement to protect
19 employees from discrimination or retalia-
20 tion for exercising the rights of the em-
21 ployees under the interim final standard.

22 (2) APPLICABILITY OF OTHER STATUTORY RE-
23 QUIREMENTS.—The following shall not apply to the
24 promulgation of the interim final standard under
25 this subsection:

1 (A) The requirements applicable to occupa-
2 tional safety and health standards under section
3 6(b) of the Occupational Safety and Health Act
4 of 1970 (29 U.S.C. 655(b)).

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

8 (C) The requirements of the National En-
9 vironmental Policy Act of 1969 (42 U.S.C.
10 4321 et seq.).

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

13 (A) take effect on a date that is not later
14 than 30 days after the promulgation of such
15 standard, except that such interim final stand-
16 ard may include a reasonable phase-in period
17 for the implementation of required engineering
18 controls that take effect after such date;

19 (B) be enforced in the same manner and
20 to the same extent as any standard promul-
21 gated under section 6(b) of the Occupational
22 Safety and Health Act of 1970 (29 U.S.C.
23 655(b)); and

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

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) COVERED EMPLOYEE.—The term “covered
7 employee” includes an individual employed by a cov-
8 ered employer.

9 (2) COVERED EMPLOYER.—The term “covered
10 employer”—

11 (A) means an employer that employs an
12 individual to work at a covered workplace; and

13 (B) includes a contractor, subcontractor, a
14 temporary service firm, or an employee leasing
15 entity.

16 (3) COVERED WORKPLACE.—The term “covered
17 workplace” includes a workplace with occupational
18 exposure to high winds, including—

19 (A) any workplace in which covered em-
20 ployees perform services for a covered employer
21 outdoors during high winds; and

22 (B) any workplace in which covered em-
23 ployees perform services for a covered employer
24 indoors in any case in which such covered em-

1 employees may be at risk during an extreme
2 weather event involving high winds.

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

7 (5) HIGH WINDS.—The term “high winds”
8 means winds of such velocity that one or more of the
9 following hazards would be present:

10 (A) The winds could blow an employee
11 from an elevated location.

12 (B) The winds could cause an employee or
13 equipment handling material to lose control of
14 the material.

15 (C) The winds would expose an employee
16 to other hazards not controlled by the standard
17 involved.

18 Winds exceeding 64.4 kilometers per hour (40 miles
19 per hour), or 48.3 kilometers per hour (30 miles per
20 hour) if the work involves material handling, shall be
21 presumed to be of such velocity unless the employer
22 takes precautions to protect employees from the haz-
23 ardous effects of the winds.

24 (6) SECRETARY.—The term “Secretary” means
25 the Secretary of Labor.

1 **SEC. 4. REQUIREMENTS FOR FINAL STANDARD ON PRE-**
2 **VENTION OF OCCUPATIONAL EXPOSURE TO**
3 **HIGH WINDS.**

4 (a) **IN GENERAL.**—The final standard promulgated
5 under section 2(b) shall, at a minimum, include the re-
6 quirements described in subsection (b) with respect to cov-
7 ered employers.

8 (b) **REQUIREMENTS.**—The final standard promul-
9 gated under section 2(b) shall, with respect to covered em-
10 ployers, include the following:

11 (1) **MONITORING OF WIND CONDITIONS.**—A
12 covered employer shall monitor wind conditions
13 using data from the National Weather Service.

14 (2) **EMPLOYEES WORKING OUTDOORS DURING**
15 **HIGH WINDS.**—With respect to each covered em-
16 ployee who performs services for a covered employer
17 outdoors during high winds—

18 (A) such employee shall receive training in
19 work with high winds, including training relat-
20 ing to—

21 (i) the impact on work at heights;

22 (ii) the impact of wind on certain
23 equipment such as lifts, cranes, scaf-
24 folding, ladders, and mobile elevated work
25 platforms;

1 (iii) the risk of foreign object debris;

2 and

3 (iv) the impact of wind on exposed
4 skin and the risk of wind burn;

5 (B) such employee shall not be required to
6 work in high winds without a safety harness
7 system, tie-off restraints, or other appropriate
8 safety equipment;

9 (C) such employee shall not be required to
10 use any equipment that is not rated for the
11 level of high winds in which the employee is re-
12 quested to work;

13 (D)(i) such employee shall have the right
14 to refuse to work in high winds and be assigned
15 alternate work without penalty in any case in
16 which the employee determines that high wind
17 safety procedures are inadequate to mitigate
18 the risk of such work; and

19 (ii) in any such case, the employer shall
20 conduct a hazard assessment and immediately
21 investigate and correct any identified hazards
22 and implement any control measures as nec-
23 essary to adequately mitigate such risks;

24 (E) such employee—

1 (i) shall be instructed on how to prop-
2 erly secure all tools and any other object
3 that could act as foreign object debris;

4 (ii) may not be required to work in
5 high winds if all such objects cannot be se-
6 cured; and

7 (iii) shall be provided with proper per-
8 sonal protective equipment including eye
9 protection while working in high winds;
10 and

11 (F) such employee—

12 (i) shall receive training on wind burn
13 prevention, identification, and treatment;
14 and

15 (ii) shall be provided by the employer
16 with personal protective equipment at no
17 cost to the employee to prevent wind burn,
18 except to the extent such equipment would
19 result in a net increase of hazards to the
20 employee.

21 (3) EMPLOYEES WORKING INDOORS AND OUT-
22 DOORS DURING EXTREME WEATHER EVENTS IN-
23 VOLVING HIGH WINDS.—With respect to each cov-
24 ered employee who performs services for a covered
25 employer indoors or outdoors in any case in which

1 such covered employee may be at risk during an ex-
2 treme weather event involving high winds, the cov-
3 ered employer shall—

4 (A) develop, implement, and maintain a
5 wind emergency plan for each such employee,
6 similar to an emergency action plan described
7 under section 1910.38 of title 29, Code of Fed-
8 eral Regulations, which shall include—

9 (i) an evacuation plan which details
10 employer and employee responsibilities;

11 (ii) a shelter in place plan, including
12 a plan for mobile workforce and employees
13 at remote or satellite locations;

14 (iii) specific plans for extreme weather
15 events such as tornadoes and hurricanes
16 that include a trigger to activate such
17 plans and appropriate training and drills;

18 (iv) specific plans for high-risk build-
19 ings and mobile worksites (such as vehicles
20 or trailers), to be updated as needed upon
21 remodeling; and

22 (v) job protections for employees who
23 evacuate due to unsafe conditions;

24 (B) conduct a hazard assessment to iden-
25 tify unsafe working conditions or hazardous

1 equipment that can be impacted when extreme
2 weather advisories are issued; and

3 (C) ensure that emergency shelters are de-
4 signed and built to industry best practices for
5 performance criteria like Safe Rooms for Tor-
6 nadoes and Hurricanes (FEMA P-361) or ICC/
7 NSSA Standard for the Design and Construc-
8 tion of Storm Shelters (ICC-500).

9 (4) TRAINING AND EDUCATION.—

10 (A) EMPLOYEE TRAINING.—A covered em-
11 ployer shall provide annual training and edu-
12 cation to covered employees who may be ex-
13 posed to high winds, which shall cover the fol-
14 lowing topics:

15 (i) Personal factors that may increase
16 susceptibility to high winds.

17 (ii) Signs and symptoms of wind-re-
18 lated injury.

19 (iii) Engineering control measures.

20 (iv) Administrative control measures.

21 (v) Emergency response procedures.

22 (vi) Employee rights.

23 (B) SUPERVISOR TRAINING.—In addition
24 to the training and education required in sub-
25 paragraph (A), training and education shall be

1 provided annually to covered employees who are
2 supervisors that shall cover the following topics:

3 (i) The procedures a supervisor is re-
4 quired to follow under this Act.

5 (ii) How to recognize high-risk situa-
6 tions, including how to monitor weather re-
7 ports and weather advisories, and not as-
8 signing an employee to situations that pre-
9 dictably compromise the safety of the em-
10 ployee.

11 (C) GENERAL TRAINING REQUIRE-
12 MENTS.—The education and training provided
13 under this paragraph to covered employees shall
14 meet the following:

15 (i) In the case of such an employee
16 whose job circumstances have changed,
17 within a reasonable timeframe after such
18 change of job circumstances, education and
19 training shall be provided that shall be—

20 (I) in addition to the education
21 and training provided under clause
22 (ii), subparagraph (A), and, if applica-
23 ble to such employee, subparagraph
24 (B); and

1 (II) applicable to such change of
2 job circumstances.

3 (ii) Applicable education and training
4 shall be provided for each new covered em-
5 ployee prior to the employee's job assign-
6 ment.

7 (iii) The education and training shall
8 provide such employees opportunities to
9 ask questions, give feedback, and request
10 additional instruction, clarification, or
11 other follow-up.

12 (iv) The education and training shall
13 be provided by an individual with knowl-
14 edge of wind injury prevention and of the
15 plan of the employer under this section.

16 (v) The education and training shall
17 be appropriate in content and vocabulary
18 to the language, educational level, and lit-
19 eracy of such covered employees.

20 (5) RECORDKEEPING.—Each covered employer
21 shall—

22 (A) comply with all requirements under the
23 Occupational Safety and Health Act of 1970 re-
24 lating to the reporting of wind-related injuries;

25 (B) maintain at all times—

1 (i) records related to each plan of the
2 employer under paragraph (1), including
3 high wind risk and hazard assessments,
4 and identification, evaluation, correction,
5 and training procedures;

6 (ii) data on all wind-related injuries
7 and deaths; and

8 (iii) data on environmental and phys-
9 iological measurements related to high
10 winds; and

11 (C) make such records and data available,
12 upon request, to covered employees and their
13 representatives for examination and copying in
14 accordance with section 1910.1020 of title 29,
15 Code of Federal Regulations (as such section is
16 in effect on the date of enactment of this Act).

17 (6) WHISTLEBLOWER PROTECTIONS.—

18 (A) POLICY.—Each covered employer shall
19 adopt a policy prohibiting any person (including
20 an agent of the employer) from discriminating
21 or retaliating against any employee for—

22 (i) exercising the rights of the em-
23 ployee under this Act; or

1 (ii) reporting violations of the stand-
2 ard to any local, State, or Federal govern-
3 ment.

4 (B) PROHIBITION.—No covered employer
5 shall discriminate or retaliate against any em-
6 ployee for—

7 (i) reporting a high wind-related con-
8 cern to, or seeking assistance or interven-
9 tion with respect to high wind-related
10 health symptoms from, the employer, local
11 emergency services, or a local, State, or
12 Federal government; or

13 (ii) exercising any other rights of the
14 employee under this Act.

15 (C) ENFORCEMENT.—This paragraph shall
16 be enforced in the same manner and to the
17 same extent as any standard promulgated
18 under section 6(b) of the Occupational Safety
19 and Health Act of 1970 (29 U.S.C. 655(b)).

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