



Ontario's Proposed Workplace Heat Stress Regulation: CELA Assessment and Recommendations with a Focus on the Agricultural sector

Prepared by:

Megan Abel, Student-at-Law

Jacqueline Wilson, Counsel

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PART I: EXTREME HEAT EXPOSURE FOR VULNERABLE WORKERS IS A CLIMATE JUSTICE ISSUE

Canada's National Adaptation Strategy calls for equitable, inclusive, ambitious, and collective adaptive action to ensure that all people's lives and well-being are protected from the impacts of a changing climate. Heat stress is a significant cause of occupational illness in Ontario, which can result in death.¹ The Strategy goes on to identify that extreme heat is the deadliest weather-related event in Canada.² Yet, heat-related mortality is widely preventable with suitable adaptive action, education, and information.³ With the objective of protecting Canada's population from urgent climate-related health risks, the Strategy set a goal to eliminate all heat-related deaths by 2040.⁴

The Ontario government has [proposed a new heat stress regulation](#) under the *Occupational Health and Safety Act (OHSA)* to address the growing health risk that extreme heat events cause for workers in Ontario.⁵ This report aims to assess the adequacy of the proposed requirements for protecting workers in the agricultural sector from workplace heat stress and its corresponding adverse health effects.

This research was conducted as part of the Canadian Environmental Law Association's (CELA) climate change and vulnerable communities project. CELA seeks to ensure that climate justice, health, and equity are adequately considered. The proposed heat stress regulation is a welcome development to better protect Ontario's vulnerable workers from the consequences of workplace heat stress exposure, including heat-related illness and death. However, amendment to the proposal is needed to ensure that the regulation can fulfill its underlying objective and successfully address the disproportionate and unfair impacts of climate change on vulnerable communities. In particular, the regulation must require mandatory adaptive measures and better enforcement mechanisms in agricultural workplaces.

¹ Ontario, Ministry of Labour, Immigration, Training and Skills Development, *Protecting Workers from Heat Stress and Heat-Related Illness* (Consultation paper: New Heat Stress Regulation Under the Occupational Health and Safety Act), Proposal No 23-MLITSD003 (Toronto: Health, Safety and Insurance Policy Branch) at 1 online: <ontariocanada.com/registry/view.do?postingId=45108&language=en> [MLITSD, *Proposed Heat Stress Regulation*].

² Environment and Climate Change Canada, *Canada's National Adaptation Strategy: Building Resilient Communities and a Strong Economy* (Ottawa: ECCC, 2023) at 6, online: <canada.ca/en/services/environment/weather/climatechange/climate-plan/national-adaptation-strategy.html> [ECCC, *Canada's Adaptation Strategy*].

³ Joanna Eyquem & Blair Feltmate, *Irreversible Extreme Heat: Protecting Canadians and Communities from a Lethal Future* (Waterloo: University of Waterloo Intact Centre on Climate Change, 2022) at 7, online: <intactcentreclimateadaptation.ca/wp-content/uploads/2022/06/UoW_ICCA_2022_04-Irreversible-Extreme-Heat.pdf>.

⁴ ECCC, *Canada's Adaptation Strategy*, *supra* note 2 at 23.

⁵ MLITSD, *Proposed Heat Stress Regulation*, *supra* note 1 at 1.

PART II: SUMMARY OF ONTARIO'S PROPOSED HEAT STRESS REGULATION

Currently, workers receive protection from hazardous workplace heat under the general duty employers have “to take every precaution reasonable in the circumstances for the protection of a worker,” pursuant to s.25(2)(h) of the *OHS*A.⁶

Ontario's proposed new heat stress regulation would apply to all workplaces that the *OHS*A applies to and introduce:⁷

1. An employer duty to take all reasonably necessary measures to protect workers from hazardous heat exposure.
2. A requirement to comply with heat stress exposure limits, based on the American Conference of Governmental Industrial Hygienists' method.
3. Allow for use of other methods to assess worker heat stress exposure risk.
4. A requirement that physiological monitoring, if used as an alternative assessment method, be supervised by a qualified individual.
5. A requirement to use [engineering controls](#) to reduce worker heat stress, with exceptions for:
 1. Outdoor workplaces
 2. Indoor workplaces experiencing temporarily high temperatures, where engineering controls are usually sufficient to protect workers
 3. Indoor workplaces where engineering controls alone cannot control some or all heat sources
6. Beyond engineering controls, any additional heat exposure controls must:
 - Be developed in consultation with a joint health and safety committee or health and safety representative
 - Include administrative controls
 - Include personal protective equipment
 - Be in writing
7. A requirement that employers provide drinking water, or another hydrating fluid, to workers.
8. A requirement to inform and instruct workers on protective measures the employer will implement, signs and symptoms of heat-related illness, and precautions workers should take to protect themselves.
9. A requirement to inform workers when a heat warning is issued and the protective measures they should take.

⁶ *Occupational Health and Safety Act*, RSO 1990 c O.1, s 25(2)(h) [*OHS*A]; MLITSD, *Proposed Heat Stress Regulation*, *supra* note 1 at 2.

⁷ MLITSD, *Proposed Heat Stress Regulation*, *supra* note 1 at 2–4.

PART III: BACKGROUND ON VULNERABILITY OF AGRICULTURAL WORKERS

A. Particular Vulnerability of Agricultural Workers to Workplace Heat Stress

Agricultural workers, and specifically migrant farm workers (MFW), are particularly vulnerable to heat stress exposure in the workplace. A United States census data study found that agricultural workers experience occupational heat-related mortality at a rate 35 times above workers in other sectors.⁸

Ontario has taken steps to mitigate the risks from heat exposure for workers in the construction sector, which is critically important. There is an opportunity to learn and adapt these measures so that agricultural workers and other outdoor workers are better protected from heat.

Ontario's 2023 Climate Change Impact Assessment Report determined that 'equity' within Ontario's population received a 'low' adaptive capacity rating—meaning, vulnerable communities and individuals are disproportionately impacted by climate-related risks, and will only become more vulnerable in the future.⁹ Equity “remains a critical concern for climate change adaptation planning.”¹⁰ The report identified that Ontario has one of the largest migrant worker populations in Canada and that they are particularly vulnerable to heat stress—due to both the nature of their work and their precarious employment status.¹¹

Regarding the nature of their work, agricultural workers are consistently subject to several factors which exacerbate workers' risk of heat stress, as the Ontario government explicitly recognized in the proposed regulation. These include: work in the direct sun; physically demanding work; use of impermeable and semi-permeable personal protective equipment to protect workers from pesticides exposure; and, work in greenhouses, which exposes workers to high air temperatures, radiant heat, high humidity, and poor air circulation.

For workers in the Seasonal Agricultural Workers Program (SAWP) and other temporary foreign worker programs, the risk from workplace health hazards is compounded by factors including poverty, substandard living conditions in on-farm housing, the power imbalance between employers and workers because of their precarious employment status, lack of protective equipment, lack of knowledge about safety protocols, lack of access to health care, and language and literacy barriers.¹² Valid concerns about employer reprisal and possible deportation make MFWs much

⁸ Diane M Gubernot, G Brooke Anderson & Katherine L Hunting, “[Characterizing occupational heat-related mortality in the United States, 2000–2010: An analysis using the census of fatal occupational injuries database](#)” (2015) 58:2 Am J Industrial Medicine 203 at 205.

⁹ Climate Risk Institute, *Ontario Provincial Climate Change Impact Assessment Technical Report*, prepared for the Ontario Ministry of Environment, Conservation, and Parks (Ontario: King's Printer for Ontario, 2023) at 329, 460, online: < ontario.ca/files/2023-11/mecp-ontario-provincial-climate-change-impact-assessment-en-2023-11-21.pdf >.

¹⁰ *Ibid* at 329.

¹¹ *Ibid*.

¹² *Schuyler Farms Limited v Dr. Nesathurai*, 2020 ONSC 4711 at para 87 [*Schuyler Farms*], citing *Peart v Ontario (Community and Correctional Services)*, 2014 HRTO 611 [*Peart*].

less likely than other Ontario workers to assert their rights under the *OHSA*, or even report workplace injuries.¹³

B. Regulations under the *OHSA*: Application to Agricultural Operations

Ontario's proposed heat stress regulation states that it will apply to all workplaces under the *OHSA*.¹⁴ However, while the *OHSA* applies to agricultural operations, it is subject to the limits and conditions in *Farming Operations*, O Reg 414/05.¹⁵ This regulation stipulates that regulations made under the *OHSA* do not apply except where they are specifically set out in the *Farming Operations* regulation.¹⁶

Thus, CELA strongly recommends that section 4(2) of the *Farming Operations* regulation be amended to include Ontario's proposed heat stress regulation.¹⁷ Otherwise, agricultural workers will be excluded from its protection.¹⁸ Optional application of *OHSA* regulatory rules leaves agricultural workers vulnerable to workplace hazards and without adequate means for enforcement.¹⁹ Given the known vulnerability of agricultural workers to heat stress, their health risk and vulnerability will only be compounded by the absence of mandatory requirements imposed upon employers.

¹³ See Theresa James, "[The COVID-19 Pandemic and Structural Barriers for Migrant Agricultural Workers in Ontario](#)" (2021) 12:1 West J Leg Studies 1 at 12. See also one such example of employer retaliation against a MFW, who was dismissed for raising workplace health and safety concerns during the COVID-19 pandemic (*Luis Gabriel Flores Flores v Scotlynn Sweetpac Growers Inc.*, 2020 ONLRB 88341, at paras 65–69, 95).

¹⁴ MLITSD, *Proposed Heat Stress Regulation*, *supra* note 1 at 2.

¹⁵ *OHSA*, *supra* note 6 at s 3(2); See also *Farming Operations*, O Reg 414/05, s 1.

¹⁶ *Farming Operations*, *supra* note 15, s 4.

¹⁷ A government guideline on employer responsibilities regarding workplace heat stress in the agricultural sector will be insufficient to remedy this concern, as guidelines do not replace the laws in place (see *Ontario (Ministry of Labour) v Stratford Chick Hatchery Ltd.*, 2013 ONCJ 47 at paras 38–39).

¹⁸ The court first had to determine that nothing in O. Reg. 414/05 limited the application of *OHSA* s. 25(2)(h), before assessing whether the employer had breached the provision (see *ibid* at para 38). Unlike that case, the proposed regulation would be limited from applying to the agricultural sector by O. Reg. 414/05 s. 4(1), unless there's amendment to s. 4(2).

¹⁹ Theresa Aversa, *Crisis of Control: OHS and Workers' Compensation in Canada's Migrant Agricultural Workers' Programs* (MA Thesis, McMaster University, 2015) [unpublished] at 30; *Dunmore v Ontario (Attorney General)*, 2001 SCC 94 (“[A]gricultural workers already possess a limited sense of entitlement as a result of their exclusion from other protective legislation related to employment standards and occupational health and safety” at para 45).

PART IV: ASSESSMENT OF ONTARIO'S PROPOSED REGULATION & CELA RECOMMENDATIONS

Ontario's Proposal - Requirement 5: Engineering Controls

Proposed requirement 5 would increase engineering controls for Ontario's workers:

5. *Engineering controls must be used to maintain a worker's heat exposure within the heat stress exposure limits, except if:*

1. *The workplace is outdoors,*
2. *The workplace is indoors and engineering controls are sufficient to protect workers in usual thermal conditions, but there is a temporarily high level of heat unrelated to the workplace or work process being performed, such as a hot spell or heat wave, such that it is not reasonably practicable to protect workers through the use of engineering controls alone, or*
3. *The workplace is indoors and the usual thermal conditions related to the workplace or work processes are such that it is not reasonably practicable to control some or all of the sources of heat through the use of engineering controls alone.*

Engineering controls function to "remove the hazard at the source, before it comes in contact with the worker."²⁰ The proposal explains that engineering controls can include:²¹

- Machines to reduce physical demands on workers (e.g., hoists and lift-tables)
- Air conditioning to reduce temperature and humidity
- Providing cool, shaded work areas and air-conditioned rest areas
- Utilizing insulating and reflective barriers to control heat at its source (e.g., insulate furnace walls)

CELA supports the mandatory requirement for engineering controls, however the proposed exception criteria are too broad and would exclude vulnerable agricultural workers.

²⁰ Canadian Centre for Occupational Health and Safety, "What are examples of engineering controls methods?" (03 June 2022), online: <[ccohs.ca/oshanswers/hsprograms/hazard/hierarchy_controls.html#section-4-hdr](https://www.ccohs.ca/oshanswers/hsprograms/hazard/hierarchy_controls.html#section-4-hdr)>.

²¹ Ontario Ministry of Labour, Immigration, Training and Skills Development, "Ways to manage heat stress in the workplace" (21 June 2019, last modified 19 August 2021), online: <[ontario.ca/page/managing-heat-stress-work#section-3](https://www.ontario.ca/page/managing-heat-stress-work#section-3)>.

i. Exception Criteria are too Broad

The current proposed exception criteria to the requirement for engineering controls fails to protect some of Ontario's most vulnerable workers from workplace heat stress.

Outdoor workers are excepted from all engineering control protections. However, outdoor workers are particularly vulnerable to heat. For instance, in 2021, during the extreme heat event in British Columbia, outdoor workers comprised 74 of the 115 (~64%) total heat stress claims accepted by WorkSafeBC.²² Therefore, exception 1 must be amended to ensure that outdoor workplaces benefit from mandatory new engineering control requirements to the extent possible.

While heat waves may cause elevated thermal temperatures in indoor workplaces that are temporary in nature, extreme outdoor heat cannot be considered infrequent and often lasts for hours or days. Ontario experienced an average of 50 potentially deadly hot days per year between 1971 and 2000.²³ Climate change will exacerbate extreme heat and modelling projections suggest that the number of extremely hot days in Ontario will increase by 1.5 times by the 2050s—with corresponding increases in their duration and severity.²⁴

Exceptions 2 and 3 should also be amended to ensure that engineering controls, where they are available and may assist with protection of workers, are employed.

ii. CELA's Recommendations to Amend Exception Criteria

CELA recommends that the only exceptions to the use of engineering controls should arise where:

- The workplace has implemented other means of control that are independently sufficient, either alone or in combination, to maintain a worker's heat exposure within the heat stress exposure limit, or
- No additional benefit beyond that derived from other means of control implemented in the workplace will be derived from the use of any reasonably practicable engineering controls, or
- Heat exposures are incidental, where the worker is not required to perform an activity for more than 15 minutes in any sixty-minute period, in extreme heat conditions, or²⁵

²² WorkSafeBC, News Release, "WorkSafeBC reminding employers to keep both indoor and outdoor workers safe from heat stress" (25 July 2022), online: < [worksafebc.com/en/about-us/news-events/news-releases/2022/July/worksafebc-reminding-employers-to-keep-both-indoor-and-outdoor-workers-safe-from-heat-stress](https://www.worksafebc.com/en/about-us/news-events/news-releases/2022/July/worksafebc-reminding-employers-to-keep-both-indoor-and-outdoor-workers-safe-from-heat-stress) >.

²³ Dylan Clark et al, *The Health Costs of Climate Change: How Canada Can Adapt, Prepare, and Save Lives* (Ottawa: Canadian Institute for Climate Choices, 2021) at 29, online (pdf): <climatechoices.ca/reports/the-health-costs-of-climate-change>.

²⁴ *Ibid*; Environment and Climate Change Canada, *Canada's Changing Climate Report*, ed by Elizabeth Bush & Donald S Lemmen, Catalogue No En4-368/2019E (Ottawa: Government of Canada, 2019) at 116, online (pdf): < changingclimate.ca/CCCR2019/ >.

²⁵ As previously recommended (see Zoé St Pierre & Jacqueline Wilson, *Heat Exposure for Agricultural Workers*, (Toronto: Canadian Environmental Law Association, 2023) at 6, online: <cela.ca/wp-content/uploads/2023/03/1521-Heat-Exposure-for-Agricultural-Workers_14-March-2023.pdf>).

- The workplace is an emergency operation directly involved in the protection of human life or property, or the restoration of essential services, such as but not limited to evacuation, medical services, firefighting, law enforcement, utilities, and communications.²⁶

iii. CELA's Recommendations for Additional Specific Engineering Controls

For agricultural workplaces, CELA recommends adding the below requirements:

1. Employers must provide adequate shade for outdoor workers to take breaks.
2. Employers must provide adequate washroom facilities.
3. Employers must provide adequate clean-up facilities for agricultural workplaces.

Requirement that employers must provide shade:²⁷

- Shaded or areas sheltered from the sun to eliminate ultraviolet exposure must be provided for workers to take breaks. Workers should be allowed to take cool-down rest breaks in the shade to prevent themselves from over-heating.
- **Shade provision requirements:**
 1. The amount of shade present must be sufficient to accommodate the number of workers on recovery or rest periods, so that they can sit in a normal posture fully covered by the shade without having to be in physical contact with each other.
 2. The shade must be located as close as reasonably possible to the areas where the workers are working.
- **Exception**
 1. If the employer can demonstrate that it is infeasible or unsafe to implement a shade structure, the employer may utilize alternative methods for providing access to shade so long as the alternative procedures provide equivalent protection.

Requirement that employers must provide washroom facilities:²⁸

CELA additionally recommends an explicit requirement that the employer provides washroom facilities reasonably close to the worksite of agricultural workers.

Agricultural workers have reported that they avoid drinking water to avoid using a washroom because they are not accessible.²⁹ The Ontario government has recognized the importance of providing accessible washroom facilities for construction workers and should implement similar requirements for agricultural workers.

²⁶ As previously recommended (see *ibid*).

²⁷ As previously recommended (see *ibid* at 10).

²⁸ As previously recommended in consultation process (see Occupational Health Clinics for Ontario Workers, *Submission to the Ontario MLITSD on Protecting Workers from Heat Stress and Heat-Related Illnesses*, (Toronto: OHCOW, unpublished, 2023) at 10.

²⁹ *Ibid*.

CELA recommends adopting the washroom facilities rules in *Construction Projects*, [O Reg 213/91](#) for agricultural workers:³⁰

- Defines “facilities” as toilet, urinal and clean-up facilities (sub-section 29(1)).
- Provides that the constructor shall provide or arrange facilities for workers prior to work commencing (paragraph 29(3)(a)).
- Provides that the constructor shall ensure workers have reasonable access to facilities (paragraph 29(3)(b)), including requirements on:
 - Location of facilities (sub-sections 29(4)–(9))
 - Informing workers of facilities (sub-section 29(10))
 - Facility maintenance and sanitary requirements (sub-sections 29(11)–(12))

Regarding toilet facilities:

- Defines “non-sewered flush toilet facilities” and “sewered toilet facilities” (sub-section 29.1(0.1)).
- Provides the required features and standards that each toilet facility must meet (subsections 29.1(0.2)–(1.1)).
- Provisions on separate toilet facilities for male and female workers (sub-sections 29.1(2)–(2.3)).
- When the requirement for providing toilet facilities arises and the minimum number required (sub-sections 29.1(3)–(9)).

Regarding clean-up facilities:

- Constructors are required to provide a clean-up facility for each toilet facility (sub-sections 29.2(1)–(1.1)).
- All clean-up facilities must:
 - Have a wash basin with running water and provide soap or hand cleanser and paper towels or hand-dryers (sub-section 29.2(2)).
 - Or, if the above is not reasonably possible, workers must be provided with a means of cleaning their hands and alcohol-based hand sanitizer (sub-section 29.2(3)).

Requirement that employers provide washing facilities for workers exposed to pesticides:

Agricultural workers are often exposed to pesticides, which can contribute to overheating by inhibiting sweating.³¹ In the construction context, employers are subject to a regulatory requirement to provide washing facilities with clean water, soap, and individual towels to “workers who handle or use corrosive, poisonous or other substances likely to endanger their health.”³² The Ontario government must recognize

³⁰ *Construction Projects*, O Reg 213/91, ss 29–29.2.

³¹ *Pearl*, *supra* note 12 at para 102.

³² *Construction Projects*, *supra* note 30, s 30.

that pesticides are a substance likely to endanger the health of agricultural workers, including because they exacerbate reactions to extreme heat.

CELA recommends that employers in the agricultural sector be required to provide washing facilities with clean water, soap, and individual towels to agricultural workers who may be exposed to pesticides, or other substances likely to endanger their health.

Ontario's Proposal - Requirement 6: Additional Measures and Procedures

Proposed requirement 6 contemplates additional measures and procedures for workplaces:

6. Any additional measures and procedures implemented beyond engineering controls to control heat exposures must:

- *Be developed in consultation with the joint health and safety committee or health and safety representative, if any;*
- *Include administrative controls, such as reducing the amount of time a worker spends in exposure to heat through implementation of a work-rest cycle, adjusting the start of the work day, or provision of more frequent breaks;*
- *Include the use of personal protective equipment, such as anti-radiant heat or reflective clothing and, in the case of outdoor work in exposure to solar radiation, the use of adequate head protection, clothing and sunscreen, and;*
- *Be in writing.*

CELA recommends making additional measures to address heat stress mandatory.

i. CELA's Recommendations for Better Consultation with Workers

CELA supports development of protective measures in consultation with workers. However, the current requirements for consultation should be expanded to include workplaces without a Joint Health and Safety Committee (JHSC) or Health and Safety Representative (HSR), especially because of significant limitations on the requirements for JHSCs or HSRs in agricultural workplaces.³³ There should be prescriptive requirements for consultation with workers which take into consideration language barriers, precarious immigration status, and other well understood vulnerabilities.

ii. CELA's Recommendations for Mandatory Administrative Controls

Administrative controls are some of the most effective measures that can be taken to protect agricultural workers from extreme heat, including implementation of a work-rest cycle, shifting of work hours to avoid the hottest hours of the day, and the provision of sufficient breaks. These measures should not be optional—particularly for outdoor and

³³ *Farming Operations*, *supra* note 15, s 3; *OHSA*, *supra* note 6 at ss 9(1)–(2).

greenhouse workers in the agricultural sector. CELA notes that currently both engineering controls in outdoor workplaces and all administrative controls are not mandatory in agricultural workplaces. Without amending the proposal and ensuring mandatory action for agricultural workers, the new regulation may not ultimately provide any additional protections.

CELA recommends making the following administrative controls mandatory:³⁴

Employers must implement a buddy system. In extreme heat, a buddy system shall be implemented to assist workers with monitoring symptoms of heat-related illness and to ensure that all heat-related procedures are being followed. If a buddy system is not feasible, the employer shall implement another equally effective method of observation and communication.

Workers should take more frequent breaks in cooler or shaded areas.³⁵ An individual worker who takes a preventative cool-down break:

1. Shall be monitored and asked if they are experiencing symptoms of a heat-related illness;
2. Shall be encouraged to stay in the shade; and
3. Shall not be instructed to go back to work until any symptoms of heat-related illness have subsided.
4. Shall implement the following rest break durations and intervals.

Heat Index (°C)	Rest Break Durations and Intervals
30-34	10 minutes every two hours
35-36	20 minutes every hour
37-39	30 minutes every hour
40 or greater	40 minutes every hour

*This table is adapted from the Oregon Division of Occupational Safety and Health.³⁶

iii. CELA's Recommendations for Personal Protective Equipment

CELA supports the proposed requirements for head protection, sunscreen and water but recommends that employers be required to provide these protections at no cost to the worker. With respect to exposure to solar radiation, the sunscreen provided at the

³⁴ As previously recommended (see St Pierre & Wilson, *supra* note 25 at 9–11).

³⁵ More frequent breaks during extreme heat events was recommended for food service workers in British Columbia (see Worker Solidarity Network, *Can't Stand the Heat? Get Out of the Kitchen!: The impact of extreme weather events on food service workers in British Columbia* (Victoria: The Worker Solidarity Network, 2023) at 17 online: <workersolidarity.ca/wp-content/uploads/2023/05/Climate-and-Labour-Report-WSN-2023.pdf>).

³⁶ See St Pierre & Wilson, *supra* note 25 at 11, citing Oregon Division of Occupational Safety and Health, "Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures" at 21.

employer's expense should have a minimum sun protection factor of 30 to suitably protect workers from ultraviolet rays.³⁷

With respect to anti-radiant heat or reflective clothing, CELA recommends consideration of whether the proposed clothing will protect agricultural workers from exposures to pesticides.

iv. CELA's Recommendations for Additional Measures to be Communicated In-Writing

CELA supports a requirement that additional measures and procedures to protect workers from heat stress must be communicated in writing, with an amendment to specify that measures must be communicated in English, French, and the language spoken by the majority of workers in a workplace.³⁸ The numerous health hazards faced by agricultural workers are compounded by language and literacy barriers that often prevent migrant farmworkers from understanding their rights, safety protocols, and safety information.³⁹

Ontario's Proposal - Requirement 7: Drinking Water

Ontario's proposed requirement 7 requires the provision of cool, potable drinking water or a suitable alternative:

7. A requirement that cool, potable drinking water or another adequate hydrating fluid be provided by the employer, close to the work areas, for the use of workers in hot conditions

CELA supports a mandatory requirement to provide workers with cool, potable drinking water or another adequate hydrating fluid, but it must be at no cost to the worker.⁴⁰ CELA recommends adopting the requirements for drinking water in the *Construction Projects* regulation for agricultural workers:⁴¹

28. (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers.
- (2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet.
- (3) Workers shall be given a sanitary means of drinking the drinking water.

³⁷ As previously recommended (see St Pierre & Wilson, *supra* note 25 at 10).

³⁸ As previously recommended (see *ibid* at 5).

³⁹ *Schuyler Farms*, *supra* note 12 at para 87(vii), citing *Peart*, *supra* note 12 at para 67; and see *Peart*, *supra* note 12 at paras 107, 113, 130.

⁴⁰ As previously recommended (see St Pierre & Wilson, *supra* note 25 at 8); Also recommended previously within consultation process (see Migrant Workers Alliance for Change, *Protecting Workers from Heat Stress and Heat-Related Illness*, submission to Heat Stress Consultation (Toronto: MWAC, 2023) at 7, online: < migrantworkersalliance.org/policy/heat-stress-regulations/ >).

⁴¹ *Construction Projects*, *supra* note 30, ss 28(1)-(4).

(4) Workers shall not be required to share a common drinking cup to drink water.

Ontario's Proposal - Requirement 8: Information and instruction for Workers

Ontario's proposed requirement 8 requires workers to be informed of heat stress reduction measures:

8. A requirement that workers be provided the following information and instruction where the thermal conditions in a workplace or related to a specific work process will pose or are likely to pose a hazard to the worker's health or safety:

- *The measures and procedures to be implemented to protect the worker, including the engineering controls to be implemented.*
- *The importance of staying hydrated and of taking breaks and all rest periods identified in the work-rest cycle set out in the measures and procedures.*
- *The early signs and symptoms of heat strain and heat-related illnesses and the precautions to be taken to avoid illness or injury.*
- *Steps the worker should immediately take if they suspect they are experiencing heat strain or heat-related illness.*

CELA recommends amending the proposal to include requirements that:

- Where mechanical machinery is utilized as an engineering control, employers must provide adequate operational and safety training.⁴²
- Workers should be provided with information and instruction regarding their workplace heat stress rights, responsibilities, employer's obligations, and the mechanism for reporting and enforcing regulatory violations.
- All information and instruction referred to in this requirement must be provided in writing in both English, French, and the language spoken by the majority of workers in a workplace.

Ontario's Proposal - Requirement 9: Requirements Where Heat Warning Issued

Ontario's proposed requirement 9 requires workers to be informed of extreme heat events:

9. In areas where a heat warning has been issued by Environment and Climate Change Canada, a requirement for employers of workers working outdoors or workers who face an increased risk of developing a heat-related illness as a result of a change in their usual thermal workplace conditions to advise them of the heat warning, the importance of staying hydrated and taking breaks and all rest periods identified in the work-rest cycle set out in the employer's measures and procedures.

⁴² As previously recommended (see St Pierre & Wilson, *supra* note 25 at 9).

CELA supports this requirement but recommends that employers inform workers of extreme heat events and the importance of staying hydrated and taking breaks in-writing and in English, French, and the language spoken by the majority of workers in a workplace.⁴³

PART V: CELA's RECOMMENDATION FOR ADDITIONAL REGULATORY PROVISIONS

A. Requirement to Acclimatize Workers to Heat

CELA recommends including a requirement in the regulation to acclimatize workers to heat.

The Ontario government has recognized the importance of allowing workers to acclimate to heat for minimizing heat stress and associated health risks.⁴⁴ The acclimatization requirements should be modelled on the recommendations of the National Institute for Occupational Safety and Health:⁴⁵

- A. Workers who are new or not experienced should spend at most 20% of their usual work duration in the heat on the first day, and increase the duration of work by no more than 20% on each subsequent day.
- B. Experienced workers should spend at most 50% of the usual work duration in the heat on the first day, 60% on the second day, 80% on the third day, and no more than 100% on the fourth day.

	Day 1	Day 2	Day 3	Day 4	Day 5
New Worker	20%	40%	60%	80%	100%
Experienced Worker	50%	60%	80%	100%	100%

B. Requirement for Employer Emergency Response Procedures

The current proposed regulation should include detailed emergency response procedures for workers experiencing symptoms of heat-related illness.

CELA recommends adding the following requirement to the proposed regulation:⁴⁶

⁴³ As previously recommended (see *ibid* at 5).

⁴⁴ See Ontario Ministry of Labour, Immigration, Training and Skills Development, "Managing heat stress at work" (21 June 2019, last modified 19 August 2021), online: < ontario.ca/page/managing-heat-stress-work#section-3 >.

⁴⁵ *Ibid*, citing The National Institute for Occupational Safety and Health, "Heat Stress – Recommendations" (last modified 6 June 2018), online: < cdc.gov/niosh/topics/heatstress/recommendations.html >.

⁴⁶ As previously recommended (see St Pierre & Wilson, *supra* note 25 at 11).

- Employers, supervisors, and employees must be aware of the signs and symptoms associated with heat-related illnesses. If a worker reports any signs or symptoms of a heat-related illness, actions proportionate to the severity of the symptoms must be taken.
- If the signs or symptoms are indicators of severe heat-related illness (including decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior, or convulsions), the employer must implement emergency response procedures.
- At least one employer, supervisor or worker at each worksite must be designated and equipped to call for emergency medical services. If symptoms are continuous and/or signs of heat stroke appear, the worker must receive immediate medical attention by calling 911.

C. Enforcement Mechanism in Regulation

CELA strongly recommends an amendment to the proposed regulation to include stronger enforcement mechanisms.

Generally, the *OHSA* employs an internal responsibility system to resolve health and safety issues in the workplace. However, such a system is predicated upon worker participation and collaboration—an approach which has proved challenging for agricultural workers and MFWs.⁴⁷ Agricultural workers, and particularly migrant workers, face several barriers that prevent them from raising their concerns to employers about workplace hazards. This issue persists regardless of provincial legislation.⁴⁸

MFWs continue to suffer disproportionately from labour standards violations, as they “are reluctant to, or simply do not, use the [confidential] tip line to report abuses for fear of losing their jobs and being asked to leave the country.”⁴⁹ MFWs are reluctant to report injuries that arise from heat stress in the workplace.⁵⁰ In Ontario, MFWs most frequently are repatriated due to medical or surgical reasons (41.3%) and external injuries, including physical trauma and poison (25.5%).⁵¹ Further, the *OHSA* requirement for a JHSC or member certification are limited in agricultural operations, thus making it more difficult for workers to meaningfully contribute to occupational health and safety practices at the workplace.

Any recommendations that would place the onus on workers to protect themselves from heat stress should be rejected. Such a requirement would ignore the well-understood barriers to workplace safety for the migrant worker population and undermine the purpose of a new regulation that is designed to protect workers from extreme heat.

⁴⁷ Aversa, *supra* note 19 at 28.

⁴⁸ *Ibid* at 27.

⁴⁹ House of Commons, *Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 42–1, (September 2016) at 33 (Chair: Bryan May) online: < ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-4/>.

⁵⁰ *Ibid*.

⁵¹ Aaron M Orkin et al, “Medical repatriation of migrant farm workers in Ontario: a descriptive analysis” (2014) 2:3 *Can Medical Assoc J* E192 at E194, online: < ncbi.nlm.nih.gov/pmc/articles/PMC4183168/pdf/cmajo.20140014.pdf >.

D. Recommended Application of Regulation to On-farm Housing:

CELA recommends that the regulation provide for mandatory active cooling in on-farm housing and a maximum temperature requirement of 26 °C.

This proposed regulation fails to incorporate ongoing concerns about on-farm housing for SAWP and other temporary foreign workers. Housing is well-recognized as a key social determinant of health, and explicitly identified as such in the Ontario Ministry of Health's *Health Equity Guideline*.⁵² The concerns driving many of the recommendations in this report are reproduced and compounded for MFWs living in employer-provided accommodations. As in the workplace context, MFWs are reluctant to report their substandard on-farm housing conditions, for fear of endangering their employment or immigration status.⁵³

MFWs are susceptible to continued exposure to extreme heat in their living space, which provides them nearly no opportunity to recover from their workplace heat exposure. In a federal government consultation, there was no controlled cooling in 43% of temporary foreign worker dwellings.⁵⁴ MFWs are sometimes housed in accommodations with inadequate ventilation.⁵⁵

Nine studies have previously identified that MFW's accommodations had inadequate, or a total lack, of potable drinking water.⁵⁶ Even where water is available, a lack of suitable washroom facilities in MFW housing will discourage workers from staying hydrated in extreme heat. In a federal government consultation, 45% of surveyed temporary foreign worker accommodations had six or more workers sharing one toilet.⁵⁷

Further, MFWs can experience pesticides exposure in both their working and living conditions, which can exacerbate a worker's response to extreme heat. Pesticides exposure are a housing-related health hazard for MFWs because pesticides are frequently stored adjacent to, or in the same building as, employer-provided housing.⁵⁸ Inadequate shower and laundry facilities compound this risk, leaving MFWs unable to wash the pesticides off themselves and their clothes. In a survey of 453 Canadian MFWs, 66.1% were unsatisfied with bathroom areas and 63.3% were unsatisfied with laundry areas.⁵⁹

⁵² Ontario Ministry of Health and Long-Term Care, *Health Equity Guideline, 2018*, (MOHLTC, 2018) at 5, online: < files.ontario.ca/moh-guidelines-health-equity-guideline-en-2018.pdf >.

⁵³ Susana C Cajax, Analyse M Weiler & Julia Martyniuk, "Housing conditions and health implications for migrant agricultural workers in Canada: A scoping review" (2023) *Can J Nursing Research* (doi:10.1177/08445621231203086) 1 at 3.

⁵⁴ Employment and Social Development Canada, *What we heard: Consultations on accommodations for Temporary Foreign Workers*, (Ottawa: ESDC, 2022) at 36 online: < canada.ca/content/dam/esdc-edsc/images/services/foreign-workers/reports/what_we_heard_report.pdf >.

⁵⁵ Cajax, Weiler & Martyniuk, *supra* note 53 at 5.

⁵⁶ *Ibid.*

⁵⁷ Employment and Social Development Canada, *supra* note 54 at 35.

⁵⁸ Cajax, Weiler & Martyniuk, *supra* note 53 at 5.

⁵⁹ Migrant Rights Network, *Decent & Dignified Housing for Migrant Farmworkers*, Food & Farmworkers Working Group submissions to Consultations on Mandatory Requirement for Employer-Provided Accommodations in the TFW Program (Ontario: Migrant Workers Alliance for Change, 2020) at 5, online: <

PART VI: CONCLUSION

Extreme heat is a significant and increasingly worrisome cause of occupational illness for Ontario's workers.⁶⁰ Ontario's new proposed heat stress regulation is an opportunity to take urgent and much needed adaptive action to address the impacts of climate change within Ontario's workplaces. A workplace heat stress regulation under the *OHSA* would better protect workers from extreme heat. However, the regulation must be amended to adequately protect agricultural workers and particularly MFWs.

migrantworkersalliance.org/wp-content/uploads/2020/12/MRN-Submission_-Decent-Dignified-Housing-for-Migrant-Farmworkers.pdf >.

⁶⁰ MLITSD, *Proposed Heat Stress Regulation*, *supra* note 1 at 1.