

OSHA Pushes Outdoor and Indoor Heat Rule

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The Occupational Safety and Health Administration (OSHA) has moved a step closer to a final rule for “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.” OSHA sent the yet-to-be-unveiled rule to the Office of Management and Budget for an interagency review of up to 90 days, after which OSHA will publish the rule in the Federal Register to give it effect.

While the final rule has not been published, the potential regulatory framework OSHA proposed in 2023 on the topic offers clues to how to prepare. Under the proposal, employers would be required to create and maintain a written Heat Injury and Illness Prevention Program (HIPP). Small employers with up to 10 employees would be exempted from the HIPP requirement. Further, outdoor and indoor work in any or all General Industry, Construction, Maritime, and Agriculture sectors where OSHA has jurisdiction would be covered.

Other potential requirements under the proposed standard call for employers to identify heat hazards by monitoring weather conditions or by measuring the heat index and humidity of the areas where employees are working. Certain conditions or assigned heat metrics may trigger additional obligations.

The rule may require outdoor sites to include cool-down areas with fans, shade, mechanical ventilation, or air-conditioned spaces inside trailers, vehicles, and structures used for breaks. As for indoor worksites, OSHA may require cool-down areas, increased airflow, and ventilation requirements around fixed heat-generated sources under certain conditions or assigned heat metrics. OSHA might also require options for employer-provided vehicles or delivery trucks, including air-conditioning or other cooling mechanisms when high heat triggers are reached and when employees spend the majority of their shift working in or from vehicles.

Other potential requirements include cool water, necessary breaks for water, acclimating new and returning employees to hot conditions, breaks in shaded areas, training for supervisors on spotting signs and symptoms of heat illness, work schedules that factor in high temperatures, and certain personal protective equipment aimed at addressing heat-related symptoms.

Finally, employers may also be required to create and utilize written medical treatment and emergency response plans for when employees experience signs or symptoms of heat stress, illness, or injury. Under the proposed standard, employers may be subject to new recordkeeping requirements such as maintaining records of temperature monitoring data and accident reports for heat illness and injuries, even if they are relatively minor. Employers may also be required to keep written records of how new and returning employees were acclimated to the heat. OSHA could also require employers to establish procedures to effectively communicate and coordinate with other employers at multi-employer worksites, such as obligating host employers to communicate procedures for protecting all workers on-site from heat-related hazards to contractors and independent

contractors, vendors, and staffing agencies, among others.

Implications for Employers

Employers may need to quickly develop new written plans, train employees and managers, and institute situation-based protocols once the final rule is published in the Federal Register. Employers who fail to act may be cited and, given that OSHA established a National Emphasis Program on Outdoor and Indoor Heat-Related Hazards in 2022, employers can anticipate the agency will cite employers under the new standard with vigor. Maximum penalties per violation are \$16,131 for serious violations and \$161,232 for willful and repeat violations.

Jackson Lewis' Workplace Safety and Health Practice Group will continue to monitor developments and will provide updates once available. If you have any questions, contact any attorney in the Group for assistance.

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