

### As the Heat Index Rises, Standards for Keeping Employees Cool May Also Change

September 18, 2023 | (Time to read: 5 minutes)

Written as a column for Daily Journal by MWM's Kate LaQuay and Sahar Shiralian

California employers with workspaces that are prone to extreme heat, such as warehouses, may want to review newly-proposed Cal/OSHA standards.

The dog days of summer are almost over, which is cause for celebration for many Californians. Recent historic heat wave were likely the sizzling inspiration for a new proposed regulation establishing a heat illness standard for indoor work areas. On Aug. 4, the Cal/OSHA Standards Board released the far-reaching proposal (the "Standard"), which would require employers to develop a written heat illness prevention program if their workspace temperature reach 82 degrees when workers are present. Affected employers also would be required to provide heat illness training to employees, offer employees water and permit employees to take breaks in "cool-down areas" as the employees deem necessary. Additional obligations would be triggered when conditions put workers at increased risk of heat illness. California employers with workspaces that are prone to extreme heat, such as warehouses, may want to review the Standard and monitor any changes to the proposed regulation.

An existing Cal/OSHA regulation already applies to heat illness prevention outdoors. The division's proposed Standard would apply to workspaces that are "under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed." Notably, the Standard does not apply to places of employment where employees telework by choice – employers would not be responsible to monitor or address the temperature at employees' homes if they work remotely.

Level one requirements – when indoor temperature reach 82 degrees

If temperatures reach 82 degrees when workers are present, the Standard would require employers to:

- Provide employees access to fresh, free, and cool water. "Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift."
- Maintain and allow employees access to a "cool-down area." Temperatures in the "cool-down area" (which can be indoor, or outdoor, if blocked from direct sunlight) must be less than 82 degrees unless that would be "infeasible." Employers must be able to sit without touching.
- Allow employees "to take a preventative cool-down rest" when they "feel the need to do so." When an employee rests in the cool-down area, the employer must monitor the employee, ask if they are "experiencing symptoms of heat illness," and encourage the employee to "remain in the cool-down area." First aid must be given to employees experiencing symptoms. Employees cannot be "ordered back to work until any signs or symptoms" have eased.
- Establish and implement a written Heat Illness Prevention Plan. The Plan, including the employer's procedures for providing water and cool-down areas, must be available in English and the language spoken by most employees. It must be available to employees and Cal/OSHA on request.
- Implement emergency response procedures to treat and respond to signs or symptoms of heat illness. Employees must be able to contact a supervisor or emergency medical personnel as necessary. Supervisors must "take

immediate action commensurate with the severity of the illness.” Employees must be transported, if necessary, to emergency responders.

- During a heat wave, closely observe employees if no engineering controls (e.g., air conditioning, fans, and natural ventilation) are in use to reduce the temperature. A heat wave is any day when the forecasted high temperature (outside) is: i.) 80 degrees or higher; and ii) at least 10 degrees higher than the average high temperature for the past five days.
- Provide heat illness training to both supervisory and non-supervisory employees. Training should include: signs and symptoms of heat illness; risk factors for heat illness; the employer’s obligation to provide water, cool-down area, cool-down rests, and other control measures; and procedures for reporting and responding to heat illness. Employees who supervise those at risk of heat illness must receive additional training.

Level two requirements – additional requirements when employees are at increased risk

Additional requirements would apply when the temperature or heat index for workspaces reaches 87 degrees (while employees are present), or when temperatures are at least 82 degrees and either of these conditions is met: a) employees “wear clothing that restricts heat removal”; or b) employees work in a “high radiant heat area.” These and other terms are defined in the Standard. For example, clothing that restricts heat removal is a full-body covering that is waterproof or designed to protect against hazards such as chemicals, radiation, fire, or other contaminants. In a “high radiant heat area,” the temperature measured using a “globe thermometer” is at least five degrees higher than the temperature “obtainable by using a thermometer freely exposed to the area” where employees work. “Heat index” refers to a measure of “heat stress developed by the National Weather Service.”

When the additional requirements apply for any of the reasons discussed above, the Standard would require employers to:

- Reduce temperatures in workspaces to less than 87 degrees (or 82 degrees, if employees wear clothing that restricts heat removal or work in high radiant heat areas), to the extent feasible. If it is infeasible to achieve such temperatures through engineering controls, the employer must reduce the temperature to the lowest feasible level and maximize the risk of heat illness through a combination of administrative controls (such as rotating employees, scheduling work earlier or later in the day, reducing work intensity or speed, or changing required work clothing), engineering controls, and personal heat-protective equipment (such as water-cooled garments, cooling vests, or heat-reflecting clothing.)
- Measure the temperature and heat index, at the location and times of greatest heat exposure, at specific intervals. Results must be retained and made available to employees, and Cal/OSHA, upon request.
- Consult with employees and union representatives about temperature and heat index measurements. Employers also would need to identify and evaluate, together with employees and their representatives, “other environmental risk factors for heat illness.”
- Closely observe employees working in such conditions during their first 14 days in role.

Prohibition against retaliation

The Standard would specifically prohibit employers from retaliating against employees for exercising rights granted to them by the regulation. Labor Code Sections 6310-6311 already prohibit retaliation against an employee because the employee reported a complaint about employee health or safety, reported a work-related injury or illness, or refused to perform work that would have created risk of harm to the employee and violated a Cal-OSHA standard.

Implications for employers

Affected employers may need to make adjustments to workspaces, work schedules, and productivity targets in order to comply with the Standard. In addition to creating and implementing a complaint heat illness prevention program, providing and maintaining a “cool-down area,” and training employees, employers will need to educate supervisors that employees in some circumstances have the right to take a “cool-down” break (potentially of an indefinite duration), and that

employees cannot be disciplined for entering or remaining in a cool-down area, requesting the employer's plan. In the absence of more guidance from Cal/OSHA, employers may find it difficult to be sure what indoor temperatures are "feasible" to achieve under different conditions, and to identify (or address) potential abuse of employees' rights to take cool-down breaks.

### What to watch

The Cal/OSHA Standard Board is expected to vote on the proposed regulation in the first quarter of 2024; the new regulation may be implemented just in time for next summer. It would become Section 3396 of Title 8, Division 1, Chapter 4 of the Code of Regulations. The current version is available here: <https://www.dir.ca.gov/oshsb/documents/Indoor-Heat-proptxt.pdf>. The Standard would be enforceable by Cal/OSHA pursuant to Labor Code Sections 6308 and 6317.

### Related People

- Kate LaQuay
- Sahar Shiralian