

## OSHA Publishes Proposed Heat Standard

On July 2, 2024, OSHA released its long-awaited national heat illness and injury prevention standard. If finalized, OSHA estimates that the proposed rule would help protect approximately 36 million workers in indoor and outdoor work settings. It applies to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agricultural industries with limited exceptions.

The proposed rule would require employers to develop a heat injury and illness prevention plan (HIIPP) with input from nonmanagerial employees that contains site-specific information to control heat hazards. The HIIPP must be in writing for employers with more than ten employees and must be made available to employees in a language that each employee, supervisor, and heat safety coordinator understands. Employers will need to re-evaluate the plan whenever a recordable heat-related illness or injury occurs and at least annually.

The fundamental elements of the proposed rule, which include components addressing rest, water, shade, and acclimatization, are nothing surprising as they are abatement strategies historically recommended by OSHA in prior guidance. However, the proposed standard includes an initial heat trigger with a heat index of 80 degrees Fahrenheit, at which employers must provide drinking water that is suitably cool, break areas with cooling measures, and implement an acclimatization protocol for new or returning employees. The high heat trigger of 90 degrees requires employers to provide employees with a minimum 15-minute paid rest break at least every two hours and a hazard alert reminding employees to drink water and take breaks, among other things.

The proposed standard also requires significant recordkeeping and other administrative obligations. These include requiring employers to:

1. conduct regular heat risk assessments to evaluate the potential for heat exposure in different job roles and settings;
2. implement systems to monitor workplace temperature and humidity levels;
3. maintain records of monitoring data for at least six months;
4. maintain records of heat-related incidents;
5. conduct audits of heat safety measures to identify areas for improvement and
6. provide employee training on heat-stress hazards.

OSHA will accept comments on its proposal for 120 days following publication in the Federal Register. All stakeholders should take an opportunity to review the proposed rule and submit appropriate comments.

Notwithstanding the public comment period, there is no doubt that the proposed rule will face legal challenges particularly in light of the recent SCOTUS case eliminating deference to federal agencies. In addition, if the proposed rule is not finalized by November (and perhaps even if it is) and there is a change in leadership at the White House, it is just as likely the rule may be short lived, at least in its current form.

Employers are reminded that, in the interim, OSHA may continue to cite an employer for heat hazards under the general duty clause.



John S. Ho

**Co-Chair,  
OSHA-  
Workplace  
Safety Practice**

jho@cozen.com  
Phone: (212) 883-4927  
Fax: (212) 509-9492

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