

OSHA Issues Landmark Proposed Heat Rule for Indoor and Outdoor Work

A Practical Guidance® Article by Alana F. Genderson, Kaiser H. Chowdhry, Heather MacDougall, Eldrin Masangkay, and Mathew J. McKenna, Morgan, Lewis & Bockius LLP



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The Occupational Safety and Health Administration announced its long-anticipated proposed rule Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings on July 2, 2024. The proposed rule takes a large-scale approach to regulating heat injury and illness issues, requiring employers to develop robust Heat Injury and Illness Prevention Plans for indoor and outdoor heat hazards, regularly monitor temperatures at the work site, and implement control measures at two distinct heat exposure thresholds. Once published in the Federal Register, the public is encouraged to submit written comments on the rule.

Applicability

According to the [preamble](#), “[h]eat is the leading cause of death among all weather-related phenomena in the United States.” OSHA designed the rule to broadly apply across industries and worksites in recognition that “[o]rganizations affected by heat hazards vary significantly in size and workplace activities.” OSHA claims that the proposed rule will provide flexibility for employers to comply by selecting the control measures that make the most sense for their operations.

While the [proposed rule](#) applies to all employers with a “reasonable expectation” of employee exposure to certain heat thresholds, it provides for some limited exceptions:

- Short-duration employee exposures to heat of 15 minutes or less in any 60-minute period

- Organizations whose primary function is firefighting or other emergency response activities
- Work activities performed in indoor work areas or vehicles where air-conditioning consistently keeps the ambient temperature below 80 degrees Fahrenheit
- Telework employees
- Sedentary work activities in indoor work areas that only involve a combination of sitting, occasional standing or brief periods of walking, and the occasional lifting of objects weighing less than 10 pounds

Heat Thresholds

Under the proposed rule, there are two applicable heat thresholds:

- An “initial heat trigger” equal to a heat index of 80 degrees Fahrenheit **or** a “wet bulb globe temperature” equal to the National Institute for Occupational Safety and Health (NIOSH) Recommended Alert Limit
- A “high heat trigger” equal to a heat index of 90 degrees Fahrenheit or a “wet bulb globe temperature” equal to the NIOSH Recommended Exposure Limit

Wet bulb globe temperature is a measurement of heat that accounts for the four major environmental heat factors: (1) ambient air temperature (measured in the sun), (2) humidity, (3) radiant heat (from sunlight or artificial heat sources), and (4) air movement (i.e., wind).

By contrast, heat index is a measurement of air temperature and humidity only, measured in the shade (often referred to as the “feels like” temperature).

Employers have flexibility to choose which measure of heat (heat index or wet bulb globe temperature) to monitor for compliance with the standard.

Monitoring Requirements

Whichever measure of heat they choose to monitor, employers are required to take certain steps for both indoor and outdoor work areas under the proposed rule.

Indoor Work Areas

Employers must identify each work area where there is a “reasonable expectation” of employee exposure to the applicable heat thresholds, develop a monitoring plan for each area where exposure is likely, and maintain records of on-site heat measurements for six months.

Employers must also reevaluate affected indoor work areas and update their heat monitoring plans whenever there is a change in “production, processes, equipment, controls, or a

substantial increase in outdoor temperature which has the potential to increase heat exposure indoors.”

Outdoor Work Areas

Employers must track local heat index forecasts or measure the heat index or wet bulb globe temperature as close as possible to the work area and monitor the work area with “sufficient frequency” to determine employee exposure to heat with “reasonable accuracy.”

Control Measures When Heat Thresholds are Reached

At the initial heat trigger, employers are required to perform the following:

- Provide access to potable drinking water in easily accessible areas, at a suitably cool temperature, and in quantities of 1 quart per employee per hour
- Allow and encourage paid rest breaks in designated break areas with artificial shade, natural shade, or air-conditioning
- Implement acclimatization plans for new employees and employees returning from a 14-day break
- Maintain effective and regular two-way communication with employees
- If using cooling personal protective equipment, ensure that cooling properties are maintained at all times during use
- Additionally, for indoor work areas only, employers must implement one of the following controls:
 - Increase air movement (and if appropriate dehumidification);
 - Air-conditioning; or
 - In cases of radiant heat sources, other measures to effectively reduce employee exposure

At the high heat trigger, employers are **further** required to do the following:

- Provide employees with hazard alerts preshift or upon determining the high heat trigger has been met; hazard alerts must include the importance of drinking water, employees’ right to take rest breaks, how to seek help for heat emergency, and the location of break areas and drinking water
- Provide 15-minute paid breaks every two hours in designated break areas with artificial shade, natural shade, or air-conditioning

- Implement one of the following methods for observing employees for signs and symptoms of heat illness:
 - Mandatory buddy system; or
 - Observation by supervisor or heat safety coordinator
- For employees alone at the worksite, the employer must maintain effective two-way communication and contact employees every two hours
- Place warning signs for **indoor** work areas with ambient temperatures regularly in excess of 120 degrees Fahrenheit

Heat Injury and Illness Prevention Plan Requirements

In addition to the above control measures, all employers covered by the standard must have a plan, referred to as the Heat Injury and Illness Prevention Plan (HIIPP), containing worksite-specific information developed with the input of “non-managerial employees and their representatives.”

The HIIPP must include:

- A comprehensive list of all work activities covered
- All policies and procedures necessary to comply with the standard
- Identification of the heat metric to be used for determining the applicable heat thresholds
- Designation of one or more heat safety coordinators responsible for implementing and monitoring the HIIPP
- A heat illness and emergency response plan
- If employees at the work area wear vapor-impermeable clothing, the employer must evaluate heat stress hazards relating to such clothing and implement policies and procedures in the HIIPP to protect employees from such hazards
- For affected indoor work areas, a heat monitoring plan

The HIIPP must be made readily available to all employees at the affected work area(s) in language(s) that all employees, supervisors, and heat safety coordinators understand.

Other Requirements

Training: All employees and supervisors expected to perform work at or above the initial heat trigger must be trained (1) before performing such work and (2) on an annual basis on a variety of heat topics.

Consultation: Employers are required to seek the input and involvement of non-managerial employees and their

representatives when evaluating the worksite for heat hazards and when developing and implementing the HIIPP.

HIIPP Review: Employers must review and evaluate the effectiveness of their HIIPP on an annual basis and any time a heat-related illness or injury occurs that results in death, days away from work, medical treatment beyond first aid, or loss of consciousness.

No Cost to Employees: The implementation of the rule's requirements must be at no cost to employees, including paying employees their normal rate of pay when employees are “allow[ed] and encourage[d] . . . to take paid rest breaks . . . if needed to prevent overheating.” This requirement, which applies to both the initial and high heat triggers—and is beyond the required minimum 15-minute paid rest break every two hours at or above the high heat trigger—could lead to employee abuse.

Immediate Next Steps

Once the rule has been published in the Federal Register, those impacted have 120 days to submit written comments to OSHA. OSHA may schedule an informal public hearing to entertain oral comments if requested during the comment period.

What Lies Ahead

The proposed rule has not yet been officially published in the *Federal Register*. In OSHA's regulatory agenda published on July 3, the agency indicated that it would publish the notice of proposed rulemaking for the heat rule on “08/00/24.” The 120-day public comment period will not commence until official publication.

It remains to be seen whether the proposed rule will become final under the current administration, and the outcome will likely largely depend on the results of the upcoming election. If there is a change in administration, a final heat rule could be challenged through the Congressional Review Act (CRA), which act could be used in the next presidency to block recently completed rules and regulations.

Of critical importance, a CRA challenge would prevent OSHA from issuing a “substantially similar” rule or regulation in the future on the topic of heat. As such, OSHA will have to decide whether to publish the final rule and expose the rule to a possible CRA challenge in the event of a change in leadership.

A final heat rule is also likely to be challenged in court, particularly in light of the U.S. Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Department of Commerce* (overturning Chevron deference).

While the outcome of a heat rule plays out, OSHA is continuing to prioritize heat-related inspections under its National Emphasis Program (NEP)—Outdoor and Indoor Heat-Related Hazards, launched in 2022, using Section 5(a)(1) (the General Duty Clause) of the OSH Act for enforcement, even though using this section for heat enforcement became more difficult following the Occupational Safety and Health Review Commission's 2019 decision in *Secretary of Labor v. A.H. Sturgill Roofing, Inc.* Since the launch of the NEP, OSHA has conducted more than 5,000 federal heat-related inspections.

Heat remains a high priority issue for OSHA nationwide. Regardless of whether the newly proposed rule takes effect, employers should consider reviewing and updating their heat illness prevention programs to help address heat hazards and minimize enforcement risk.

Related Content

Resource Kits

- [Environmental Resource Kit](#)

Practice Notes

- [OSH Act Compliance, Employee Health, and Workplace Security State Practice Notes Chart](#)
- [OSH Act Requirements, Inspections, Citations, and Defenses](#)

Statutes & Regulations

- 89 Fed. Reg. ____ ([prepublished version](#))(Proposed Rule: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings)

Cases

- *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024)

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Kaiser H. Chowdhry advises clients on employment law issues. He focuses on a full range of employment litigation, including Title VII, Wage and Hour, and OSHA matters. Kaiser also counsels clients regarding HR practices, reductions-in-force, and litigation avoidance. Before joining Morgan Lewis, Kaiser participated in the firm's Public Interest Fellowship Program embedded with the Humane Society of the United States, where he worked primarily on litigation matters involving wildlife abuse.

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