

OSHA UNVEILS PROGRAM TO COMBAT EXTREME HEAT IN THE WORKPLACE

Insights

Apr 14, 2022

Federal workplace safety officials just unveiled a program designed to scrutinize both indoor and outdoor workplaces for dangers related to extreme heat, putting employers on notice that they need to take steps to address the situation before withering summer temperatures kick in across the country. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) announced on April 12 that it has implemented a [new National Emphasis Program \(NEP\) related to heat illnesses and injuries](#) for both outdoor and indoor workers. [As we predicted](#), this NEP comes after OSHA previously issued inspection guidance to its compliance safety and health officers (CSHOs) focusing on heat-related hazards and comes on the heels of OSHA's [proposal](#) to create a permanent safety standard for hazards stemming from heat-related injuries and illnesses. What do employers need to know about OSHA's new NEP?

What is a National Emphasis Program?

Before we examine this specific situation, it's important to understand what we're dealing with. NEPs are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries. The agency uses inspection data, injury and illness data, NIOSH reports, and other information to create new emphasis programs or to evaluate existing NEPs.

Employers are selected for planned inspections under an NEP, and OSHA generally conducts planned inspections fourth on its list of priorities after Imminent Danger, Fatality/Catastrophe, and Complaint/Referral inspections.

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J. Micah Dickie

Partner

[404.260.3419](tel:404.260.3419)

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OSHA currently has 11 other NEPs in effect, ranging from combustible dust to COVID-19 to trenching and excavation.

What Does This New NEP Entail?

OSHA's goal in implementing this new NEP is to prevent heat-related illnesses such as heat stroke, heat exhaustion, heat cramps, heat syncope, heat rash, rhabdomyolysis (muscle breakdown), and acute kidney injury. The NEP will also focus on heat-related injuries, defined as an injury linked to heat exposure that is not considered one of the typical symptoms of heat-related illnesses (with the exception of kidney injury), such as a fall or cut that occurs after or during heat exposure.

To that end, OSHA will target workplaces where the above illnesses or heat-related injuries are prevalent during high heat conditions. This includes outdoor workspaces in a local area experiencing a heat wave, as announced by the National Weather Service, or working indoors near radiant heat sources, such as iron and steel mills and foundries.

Here are the highlights of the NEP and how employers will be selected for inspections under the NEP:

- **List of Employers for Programmed Inspections:** OSHA will utilize several NAICS codes of non-construction employers, listed in Table 1 of Appendix A of the NEP, to fill its list of employers that can then be inspected under the NEP. Each area office will inspect establishments in random number order. Other employers in non-construction settings may also be added to the list for random inspection through a list of NAICS codes in Table 3 to Appendix A that includes restaurants and an assortment of employers. OSHA can analyze data from employer OSHA injury and illness forms or other information gleaned from other governmental agencies to add additional employers to the list.
- **Expansion of Open Inspections Based on OSHA Logs and Observations:** OSHA now also instructs its CSHOs to open a separate, heat-related inspection of a workplace where, during another inspection by OSHA, the CSHO observes any hazardous heat conditions, notes any relevant illnesses or injuries recorded in the OSHA 300 logs or 301 Incident Reports, or where an employee brings a heat-related hazard(s) to the attention of the CSHO.

- **Expansion of Open Inspections Based on Weather:** During any open inspection where the heat index during the inspection is 80°F or higher, CSHOs will ask employers whether the employer has developed any heat-related hazard prevention programs. OSHA CSHOs will now document conditions relevant to heat-related hazards during open inspections.
- **Programmed Inspections Based on Weather:** On days when the National Weather Service has issued a heat advisory or warning for the local area, OSHA will use a table of NAICS codes attached to the NEP as Table 2 in Appendix A – mainly construction industry employers and worksites – to conduct heat-related inspections.
- **Coordination with DOL WHD:** OSHA will also use information from the Wage and Hour Division (WHD) of the Department of Labor to conduct inspections per the [Memorandum of Understanding between the OSHA and the WHD](#).
- **Follow-up from Prior OSHA Inspection:** Employers may be subject to a follow-up inspection if they have received an other-than-serious recordkeeping violation related for failure to record a heat-related illness or injury.

This new NEP will be effective until April 8, 2025, unless canceled or extended by another OSHA directive.

There is no heat-related or heat stress standard in place. Instead, federal OSHA has traditionally enforced heat-related hazards through its [General Duty Clause](#). This standard requires employers to provide a work environment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The NEP recognizes this and notes that: "Heat cases proposing a 5(a)(1) [general duty clause citation] are novel cases and must be submitted to the National Office following novel case procedures, until otherwise instructed." Therefore, employers should continue to consider whether any such citations issued under the general duty clause for injury and illnesses that are heat related should be contested.

Why is OSHA Focusing on Heat-Related Illnesses and Injuries?

In the NEP, OSHA notes that when the heat index (how hot the air feels when humidity is taken into account) is 80°F or higher, “serious occupational heat-related illnesses and injuries become more frequent, especially in workplaces where unacclimatized workers are performing strenuous work” such as intense arm and back/lifting work, carrying, shoveling, manual sawing, pushing and pulling heavy loads, and walking at a fast pace. OSHA notes that without easy access to cool water, or cool/shaded areas, when working in direct sunlight or areas where other radiant heat sources are present, such injuries are more likely.

Between 2015 and 2020, OSHA conducted nearly 200 heat-related hazard inspections per year (nearly half a percent of all inspections), which included approximately 15 heat-related fatality inspections annually. And in 2021, OSHA published an [Advance Notice of Proposed Rulemaking](#) to initiate the rulemaking process towards a federal heat standard. This NEP is one step along that process and allows OSHA to focus its resources during the rulemaking process.

OSHA will hold a meeting on May 3 to discuss its ongoing activities regarding heat-related hazards, including its [Heat Illness Prevention Campaign](#), compliance assistance activities and enforcement efforts. Employers can register for the event [here](#).

What About States Not Covered by Federal OSHA?

If you do business in a state where [a state agency rather than federal OSHA](#) enforces the OSH Act (such as California, Kentucky, or elsewhere), emphasis programs in those states may differ. OSHA's NEP states that within 60 days of the effective date of its new NEP, State Plans must submit a notice of intent indicating whether they already have a similar policy in place, intend to adopt new policies and procedures, or do not intend to adopt OSHA's NEP for heat-related injuries and illnesses. And, within 60 days of adoption, the State Plans must provide an electronic copy of the policy or a link to where their policies are posted on the State Plans' websites. The State Plans must also provide the date of adoption and identify differences, if any, between their policies and OSHA's. OSHA will provide summary information on the State Plan responses [on its website](#).

What Should You Do?

As you prepare for the summer months ahead, there are some steps you can take in order to avoid scrutiny under this NEP and protect your workers from heat-related concerns:

- Draft a prevention program to mitigate heat-related injuries and illnesses;
- Designate someone at each worksite to monitor worker health and conditions on days of extreme heat;
- Conduct a hazard analysis of job duties or positions that could involve exposure to extreme heat, including an analysis of outdoor and indoor workspaces; and
- Review your OSHA 300 logs from the past few years to quantify what injuries or illnesses, if any, are or could have been heat-related and implement plans to address those situations moving forward.

Conclusion

If you have any questions, contact the author of this insight, another member of our [Workplace Safety and Catastrophe Management Practice Group](#), or your Fisher Phillips attorney for guidance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on OSHA issues.