



Sizzling Summer Safety Suggestions: Protecting Workers from Extreme Heat and Ensuring Compliance With OSHA's Heat National Emphasis Program

Insights

5.26.23

Last year, federal workplace safety officials implemented a new National Emphasis Program related to heat illnesses and injuries for both outdoor and indoor workers. As we discussed, OSHA put that in place on the heels of the agency proposing a permanent safety standard for hazards stemming from heat-related injuries and illnesses. What do employers need to do now before withering summer temperatures kick in across the country?

Are Employers Required to Address Heat Hazards?

Yes. There is no heat-related or heat stress standard in place for states covered by Federal OSHA, however. 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 National Emphasis Program (NEP) recognizes this and notes that: "Heat cases proposing a 5(a)(1) [general duty clause citation] are novel cases." Therefore, you should consider whether any such citations issued under the general duty clause for injury and illnesses that are heat related should be contested.

What About States Not Covered by Federal OSHA?

Following the guidance below will help employers keep their workers safe in the summer heat. But 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.

Nevada, for example, has a heat NEP in place, and employers in that state may also soon face a permanent rule related to heat hazards. Also, employers in California and Oregon must comply with permanent safety standards in those states on mitigating heat-related injuries and illnesses, and other states like Washington are in the middle of rulemaking, similar to Federal OSHA, to issue final rules on heat-related hazards.

If you are in a state covered by an OSHA state plan rather than federal OSHA, it is important to be familiar with specific state plan requirements. California, for example, requires that the following specific components be included in a written heat illness prevention plan: (1) methods for providing

specific components be included in a written heat illness prevention plan: (1) methods for providing sufficient water; (2) access to shade; (3) high-heat procedures; (4) emergency response; and (5) acclimatization methods. OSHA provides summary information on the State Plan responses [on its website](#).

What Does the Federal OSHA Heat NEP Entail?

As a reminder, NEPs are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries. 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.

In the heat NEP, which is effective until April 2025, OSHA will target workplaces where heat-related injuries or illnesses 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.

In 2021, OSHA published an [Advance Notice of Proposed Rulemaking](#) to initiate the rulemaking process towards a federal heat standard, so this NEP is one step along that process and allows OSHA to focus its resources during the rulemaking process.

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 create its list of worksites to be randomly inspected under the NEP. Other employers in non-construction settings may also be added to the list.
- **Expansion of Open Inspections Based on OSHA Logs and Observations:** OSHA will 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 complains of a heat-related hazard.
- **Expansion of Open Inspections Based on Weather:** During any open inspection where the heat index is 80°F or higher, CSHOs will ask employers whether the employer has developed any heat-related hazard prevention programs.
- **Programmed Inspections Based on Weather:** On days when the National Weather Service has issued a heat advisory or warning for an 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.

What Should You Do Right Now?

As you prepare for the summer months ahead, these are detailed steps you can take in order to avoid scrutiny under Federal OSHA's NEP, or under state OSHA plans with heat illness prevention standards, and protect your workers from heat-related injuries and illnesses:

- Draft a prevention program to mitigate heat-related injuries and illnesses;
- In state OSHA plan jurisdictions, review your heat illness prevention program plan against any state plan requirements, such as Cal/OSHA's heat illness prevention tools and sample procedures;
- 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;
- Provide unscheduled rest breaks and require work/rest periods (It is difficult to quantify specific breaks for specific scenarios in states covered by federal OSHA, so a best practice would be that when temperatures are above 87.8°F, there should be mandatory rest breaks of up to five minutes in shade every hour or 10 minutes every two hours. Review state OSHA plan resources for specific rest break requirements, such as California's rules on access to shade and cool-down breaks based on various temperature levels, and heightened high heat procedures required when temperatures exceed 95°F);
- Provide unlimited, easy access to cool water (federal OSHA has indicated that employees should drink 4 to 6 ounces every 15 to 20 minutes, but no more than 1 quart/hour and 12 quarts/24 hours; Cal/OSHA requires one quart per employee per hour for drinking for the entire shift where drinking water is not plumbed or continuously supplied);
- Provide access to shaded areas and cooling fans;
- Provide hats for outdoor work in the sun;
- Require a buddy system on hot days and enforce a procedure for employees to report heat stress symptoms;
- Ensure access to first aid/prompt medical attention for symptomatic employees;
- Consider changing start times and days during a project to avoid high-heat and/or rotating crews of workers;
- Provide training provided on how to prevent heat illnesses;
- Provide medical screening for workers who will work in high-heat settings; and
- Require acclimatization of new employees to heat. For acclimatization of employees to heat, here are the key things to know for new workers or workers who have not performed tasks in heated

are the key things to know for new workers or workers who have not performed tasks in heated environments for the past few weeks, as the following should be done for 1-2 weeks for these workers:

- Schedule new workers to work shorter amounts of time working in the heat, separated by breaks, in heat stress conditions;
- 20% first day: New workers should work only 20% in the heat of the normal duration on their first day in the heat;
- 20% each additional day: Increase work duration in the heat by 20% on subsequent days until the worker is performing a normal schedule in the heat;
- Ensure that workers do the same task during the acclimatization period that they will do during a full schedule in the heat;
- Give new workers more frequent rest breaks;
- Prior to the start of work, train new workers about heat stress, symptoms of heat-related illness, and the importance of rest and water;
- Monitor new workers closely for any symptoms of heat-related illness;
- Like all workers, use a buddy system and don't allow new workers to work alone; and
- If new workers talk about or show any symptoms, allow them to stop working, never leave them alone, and initiate first aid as needed.

Conclusion

While we provided lots of information, remember these three words for your employees: Rest, Water, Shade. You should take action now as temperatures rise, particularly where you have employees engaged in outdoor work, wearing heavy or bulky equipment/personal protective equipment, or where 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 in humid and hot conditions.

If you have any questions, contact the authors 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.

Related People





J. Micah Dickie

Associate

404.260.3419

Email



Robin Repass

Partner

202.978.3084

Email

Service Focus

Workplace Safety and Catastrophe Management

Industry Focus

Construction