3 Things Employers Need to Know About California's Impending Indoor Heat Illness Rule

Insights
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California regulators are about to adopt a far-reaching heat illness standard for indoor work areas that will be triggered when the temperature reaches 82 degrees Fahrenheit. If adopted in its current form, the Cal/OSHA Standard Board's rule will present numerous challenges for California employers – but especially for warehouses, distribution centers and manufacturing plants where the indoor temperature cannot be readily controlled, particularly where dock bays or doors need to remain open during the workday. But the good news is that the latest proposal released on August 4 scales back some of the troubling requirements that existed in prior versions, providing some measure of relief for employers. What are the three things you need to know about this impending new obligation? **[Ed. Note: The indoor heat rule took effect on July 23, 2024.]**

1. Proposed Rule Has Rigid Compliance Framework

The proposed regulation adds the following requirements for employers with indoor work areas when the temperature reaches 82 degrees:

- **Written Prevention Program**: You must establish, implement, and maintain a written Indoor Heat Illness Prevention Program that includes procedures for accessing water, close observation, and cool-down areas – as well as emergency response measures.
- **Training**: You'll need to provide "effective training" to employees and supervisors on heat illness topics.
- **Cool-Down Areas**: You must provide access to cool-down areas which must be maintained at a temperature below 82 degrees, blocked from direct sunlight, and shielded from other high radiant heat sources.
- **Additional Rest Periods**: You'll have to "allow and encourage" employees to take preventive cool-down rest periods – and monitor employees taking such rest periods for symptoms of heat-related illness.
- **Observation Obligation:** Finally, you will need to closely observe new employees during a 14-day acclimation period, as well as employees working during a heat wave where no effective engineering controls are in use.

2. There Will 2 Main Challenges for Employers

In order to comply with the proposed rule, there will be at least two main challengers for employers:

Measuring Heat

The first major challenge will be the requirement that employers measure the temperature and heat index when the temperature reaches 87 degrees Fahrenheit (or 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in a high radiant heat area). The temperature must be measured when employers reasonably suspect that this threshold is met and, again when the temperature is expected to be 10 degrees or more about the previous measurements.

Control Measures

The second and perhaps most vexing challenge for employers will be the rigid hierarchy of control measures required when the temperature reaches 87 degrees Fahrenheit, or 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in a high radiant heat area.

As the first step in this process, employers must use engineering controls to reduce and maintain both the temperature and the heat index below the required threshold. Engineering controls would make the work environment cooler by, for example, installing air conditioning or cooling fans.

But where feasible engineering controls are not sufficient to reduce the temperature and heat index, the next step involves using administrative controls that minimize the risk of heat illness. An administrative control may be a change in work practices such as modifying shifts so that employees are working at time of day when it is cooler. And if engineering and administrative controls are infeasible, employers must use personal heat-protective equipment such as water-cooled or air-cooled garments to minimize the risk of heat illness.

3. Silver Lining: Recent Revisions Provide Modest Clarity and Relief

While challenges will exist, the good news for employers is that the latest revised draft of the proposed rule released on August 4 made the following substantive changes, most of which provide some compliance relief:

Exception where employees are present indoors for brief durations

The revision adds an exception for any indoor work location where employees are present for less than 15 minutes in any one-hour period. To meet that exception, however, that indoor location must not normally be occupied or be "contiguous" with a normally occupied location. This exception addresses stakeholder concerns over the proposed rule applying where an employee might spend just a brief duration indoors – for example, retrieving equipment or other items from a storage shed. The exception also makes clear it does not apply to vehicles and shipping containers.

Where employees work both indoors and outdoors, employer may comply with solely the indoor heat illness rule

Under the latest modification, employers may comply with the proposed indoor heat illness rule for employees that "go back and forth between outdoors and indoors." This addresses concerns over employers having to comply with two competing heat illness rules simultaneously depending on whether an employee is working at any given moment. Practically, however, an employer cannot comply with the engineering controls required under the indoor heat illness rules for outdoor work since the outdoor temperature cannot be reduced.

Clarified definition of "clothing that restricts heat removal"

Where employees wear "clothing that restricts heat removal," control measurements are triggered at 82 degrees Fahrenheit rather than 87 degrees. The revisions broaden the exception such that this does not include clothing demonstrated by the employer to be constructed only of knit or woven fibers, or otherwise an air and water vapor permeable material, provided other requirements are met.

Feasibility exception for cool-down areas blocked from direct sunlight and shielded from high radiant heat sources

The term "cool down area" is revised to mean an area blocked from direct sunlight and shielded from other high radiant heat sources *"to the extent feasible."* Practically, this feasibility exception is a high burden for employers as feasible is often equated by Cal/OSHA with being possible.

Clarifies that premium pay is available for cool-down rest period violations

The revisions add that here "preventative cool-down rest period has the same meaning as recovery period in Labor code subsection 226.7(a)" – affording employees daily premium pay where they are not taking necessary recovery periods. This change is designed to green light civil wage and hour litigation where an employee is not afforded a recovery period requiring the employer to compensate for premium pay.

Exception for vehicles with effective and functioning air conditioning

An exception to the requirement for temperature monitoring and control measures is added for vehicles with "effective and functioning air conditioning." This change addresses stakeholder concerns over the rule applying to vehicles that are outside the active control of employers.

Recognizing integrated training under both outdoor and indoor heat illness standards

Under the proposed regulation, employers are required to train all employees on the risks of heat illness in the workplace. This training must include both environmental and personal risk factors

for heat illness, and the employer's procedures for complying with the indoor heat illness prevention regulation. Supervisors must also receive additional training that includes requirements related to responding to symptoms of heat illness and instructions on monitoring and responding to hot weather advisories. The revisions make clear that an employer's training program for indoor heat illness "can be integrated" into its outdoor heat illness training. Training employees on both indoor and outdoor heat illness obviously affords greater efficiencies, particularly given the substantial existing safety training mandates for California employers.

What's Next?

Cal/OSHA has already published several "discussion drafts" and held three advisory meetings about the proposed indoor heat rule before issuing the August 4 revised draft. At this point, the agency has invited further public comment by August 22, so now is your chance to weigh in with any further input.

The proposed regulation has gone through a number of revisions since first being introduced years ago, but this latest draft is most likely fairly close to being adopted. It is likely that the regulation will be voted on by early 2024.

Conclusion

We will continue to monitor developments and issue updates. As always, Fisher Phillips will be ready to assist employers in complying with the regulation (whenever it takes effect) with compliance documents and templates. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have further questions on how to comply, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Workplace Safety Practice Group or any one of our six California offices.

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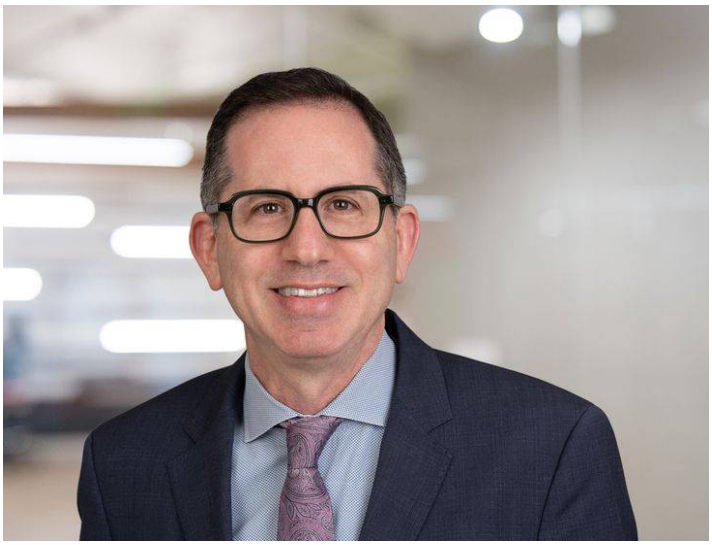

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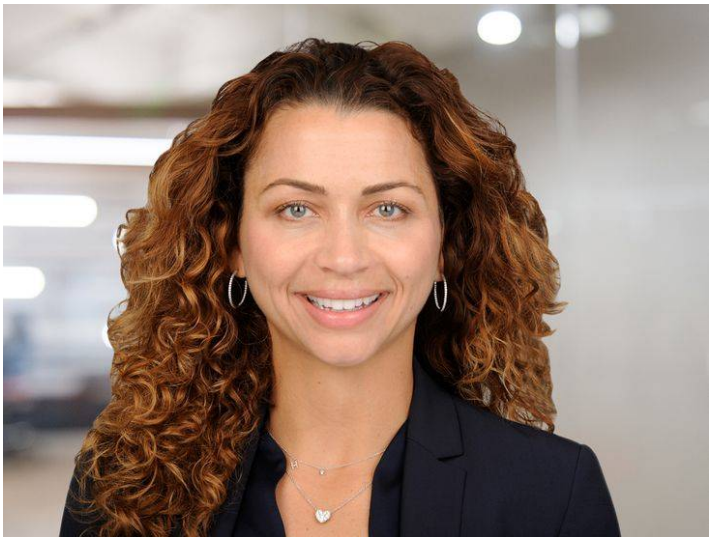

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