

CALIFORNIA WORKPLACE SAFETY OFFICIALS ADOPT INDOOR HEAT ILLNESS RULE DESPITE STATE OBJECTIONS – WHAT EMPLOYERS SHOULD DO DURING LEGAL LIMBO

Insights
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In a surprise move, the Cal/OSHA Standards Board just adopted a new indoor heat illness rule hours after state officials took the unprecedented step of pulling approval of the proposed rule because of its financial impact on state agencies. While the rule should not proceed without Department of Finance approval, workplace safety officials plowed forward by unanimously adopting the standard yesterday – leaving California employers in legal limbo. What happened and what are the next steps for employers? [Ed. Note: The indoor heat rule took effect on July 23.]

Indoor Heat Standard in a Nutshell

The proposed rule – which would create only the second indoor heat standard in the country after Oregon’s – presents major challenges for employers seeking to meet the compliance obligations. [You can read about the proposal in our previous Insight here](#), but in sum:

- **Proactive Steps:** Employers will need to create a written prevention program and offer training to workers and supervisors about indoor heat illness topics.
- **Rigid Compliance Framework:** The rule will require employers to take certain steps once the indoor work area hits 82 degrees, including offering cool-down areas, additional rest periods, and observation obligations.

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Our Insight summarizes the key challenges and open questions raised by the rule, including heat measurement, control measures, and other issues.

But the Cal/OSHA Standards Board gave those concerns short shrift and moved ahead with adopting the rule. Many of us following these developments assumed the rule would be adopted with little fanfare during yesterday's scheduled vote.

Chaos in California

But things didn't go according to plan. On Wednesday night, the Department of Finance rescinded its approval of the Standardized Regulatory Impact Assessment (known as SRIA) – a requirement when any proposed regulation has an estimated economic impact exceeding \$50 million.

This threw yesterday's Cal/OSHA Board meeting into disarray. Worker advocates and organized labor members chanted and marched around the room after learning the Board would not vote on the rule. But after an initial adjournment and widespread uncertainty, the Board reconvened and voted to unanimously adopt the rule in defiance of the Department of Finance.

Where Do We Go From Here?

The California Office of Administrative Law now has 30 working days to review the rulemaking record to ensure that the agency satisfied regulatory requirements in passing the rule – certainly an uncertain prospect given the unprecedented events over the past couple of days. It must then either approve the rule and file it with the Secretary of State for finalization, or disapprove it and send it back to the agency.

Given the scrutiny the rule will surely face with the Office of Administrative Law, it is likely the Board will re-introduce the rule in an effort to salvage it. We could even see Cal/OSHA categorize it as an "emergency" rule ahead of the coming summer heat, thereby giving it a shorter rulemaking timeline. Another possibility: the California legislature could step in and pass an Indoor Heat law similar to Cal/OSHA's rule, which would not require SRIA approval.

The only thing that's certain is that we expect a tumultuous time ahead. So fasten your seatbelts and prepare for a wild

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What Should You Do?

You should spend this limbo period [familiarizing yourself with the proposed rule](#) so that you are ready for compliance before this summer. It appears inevitable that some form of indoor heat illness rule will take effect sooner rather than later, so preparation is a reasonable next step.

In the meantime, the Division of Occupational Safety and Health will continue to address indoor heat concerns by citing employers under the Injury and Illness Prevention Program Standard – requiring that you evaluate and correct workplace hazards, among other things.

Coordinate with your Fisher Phillips attorney to get a sense for the types of compliance documents and templates you will need to have at the ready once this rule takes effect. You may only have a short time to get your ducks in a row, so any pre-work you can do will only serve to your benefit.

Conclusion

We will continue to monitor developments and issue updates, so 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 author of this Insight, or any attorney in our [Workplace Safety Practice Group](#) or any one of [our six California offices](#).