# California's New Indoor Heat Illness Rule: 3 Things Employers Need to Know Now to Prepare

Insights
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A new heat illness standard for indoor work areas will affect California employers as soon as this summer. This rule – which the California Occupational Safety and Health Standards Board voted to adopt on June 20 – creates the second ever indoor heat standard in the country and places considerable compliance obligations on employers. The new rule applies to all indoor work areas where the temperature reaches 82 degrees, which presents numerous challenges for California employers, particularly for warehouses, distribution centers, restaurants, and manufacturing plants where indoor temperature cannot be readily controlled. We expect this rule to take effect on August 1, if the Office of Administrative Law expedites its review. Here's what you need to know about the new rule and the steps you should take to comply. **[Ed. Note: In a surprise move, the indoor heat rule took effect early on July 23.]**

**1. Workplace Requirements When Temperatures Rise to 82 Degrees**

As discussed in our prior Insight, the Board adopted the indoor heat rule back in March, despite state officials having pulled approval because of the rule's financial impact on state agencies. California's Office of Administrative Law ultimately rejected that rule, and to address state agency concerns, the Board last revised the rule to exempt correctional facilities.

The new rule includes a rigid compliance framework for employers with indoor work areas when the temperature reached 82 degrees. Employers are required to comply by doing the following:

***Develop a Written Heat Illness Prevention Plan***

Employers must create and implement a written Indoor Heat Illness Prevention Plan that includes procedures for accessing water, acclimatization, cool-down areas, measuring the temperature and heat index, and emergency response measures

This must be a tailored plan to your workplace conditions. In recently published FAQs on the new rule, Cal/OSHA has emphasized that a Heat Illness Prevention Plan that "is little more than a restatement of the safety orders does not satisfy the standard; instead, it must be specific and customized to the employer's operations."

***Provide Fresh, Pure, and Suitably Cool Drinking Water***

Employers must provide employees with fresh, pure, and suitably cool drinking water, free of charge. The water must be located as close as practicable to the areas where employees are working and in indoor "cool-down areas." If there is no running water, you must provide each employee with one quart of drinking water per hour. You also must encourage the frequent consumption of water during these high-heat conditions.

***Cool-Down Rest Periods***

Employers must provide access to cool-down areas for recovery and meal and rest periods. Cool-down areas must be maintained at a temperature below 82 degrees, blocked from direct sunlight, and shielded from other high radiant heat sources, to the extent feasible.

Employers must allow and encourage employees to take a "preventative cool-down rest" in a cool-down area when employees feel the need to do so to protect themselves from overheating. During the preventive cool-down rest, the employer must monitor the employees, encourage them to remain in the cool-down area, and must not order them back to work until any signs or symptoms of heat illness have been abated.

Significantly, the rule makes clear that a preventative cool-down rest period "has the same meaning as 'recovery period' in Labor code subsection 226.7(a)" – affording employees daily premium pay when they are not taking necessary recovery periods. This change is designed to green light civil wage and hour litigation when an employee is not afforded a recovery period requiring the employer to compensate with premium pay.

***Acclimatization***

Employers must closely observe employees who are newly assigned to high heat conditions for signs of heat stress during their first 14 days of work in these conditions, as well as any employees working during a heat wave where no effective engineering controls are in use.

***Training Requirements***

Employers must effectively train non-supervisory and supervisory employees on the risks of heat illness in the workplace. This training must include both environmental and personal risk factors for heat illness, and your procedures for complying with the indoor heat illness prevention regulation. Supervisors must receive additional training that includes requirements on responding to symptoms of heat illness and instructions on monitoring and responding to hot weather advisories.

**2. Additional Requirements When Temperature Reaches 87 Degrees (or 82 Degrees Under Specific Conditions)**

You'll need to follow additional requirements when the temperature or heat index reaches 87 degrees, or 82 degrees in places where employees wear clothing that restricts heat removal or work in a high radiant heat area.

***Measuring and Recording Requirements***

You must measure and record the temperature and heat index when it is first "reasonable to suspect" that it either reaches 87 degrees (or 82 degrees with employees wearing heat restrictive clothing or working in a high radiant heat area). Those initial steps must be taken where employees are working and when exposures are expected to be greatest.

Measurements must be taken again when they are reasonably expected to be at least 10 degrees above previous measurements.

You must have procedures to actively involve employees and their union representatives, if applicable, in planning, conducting, and recording measurements, as well as in identifying and evaluating all other environmental risk factors for heat illness.

You must maintain records of these measurements (including the time, date, and location of the measurement) for 12 months or until the next measurements are taken, whichever is later.

Notably, however, an employer has the option of not taking measurements, and instead, assuming a work area triggers the control measures, as discussed below. In that event, the employer will need to follow the hierarchy of control measures.

***Control Measures***

The new rule requires employers to follow a hierarchy of control measures for reducing the risk of heat illness. This will likely bring significantly increased costs for employers, particularly where engineering controls such as air conditioning systems and other building upgrades are contemplated. These control measures are not required for vehicles with effective and functioning air conditioning.

First, employers must use engineering controls to reduce the temperature and heat index to below 87 degrees Fahrenheit (or 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas). Cal/OSHA cites the following examples of engineering controls that may be effective at minimizing the risk of heat illness:

- Isolation of hot processes
- Isolation of employees from sources of heat
- Air conditioning
- Cool fans and cooling mist fans

- Evaporative coolers (swamp coolers)
- Natural ventilation where the outdoor temperature/heat index is lower than the indoor temperature/heat index
- Local exhaust ventilation
- Shielding from a radiant heat source
- Insulation of hot surfaces

If engineering controls cannot bring the temperature and heat index below 87 (or 82 degrees when applicable), the next step requires employers to use administrative controls to minimize the risk of heat illness. But even then, you must use engineering controls to reduce the temperature and heat index to the lowest feasible level.

Examples of administrative controls are acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work/rest schedules, reducing work intensity or speed, reducing work hours, changing required work clothing, and using relief workers.

Cal/OSHA has clarified through FAQs that whether engineering controls are feasible is a "fact-sensitive question" that includes an evaluation of the size, configuration and location of the indoor workspace, the sources of radiant heat, and the nature of the work being done by workers, among other things."

Finally, if feasible engineering and administrative controls are insufficient, as a last resort, employers must use personal heat-protective equipment, such as water-cooled or air-cooled garments to minimize the risk of heat illness, as feasible.

**3. Notable Exceptions**

Here are some notable exceptions to the new rule that may apply in your workplace:

***Brief Indoor Exposures***

The indoor heat rule recognizes an exception for any indoor work locations where employees are exposed to temperatures below 95 degrees Fahrenheit for less than 15 minutes in any one-hour period. The exception also makes clear it does not apply to vehicles without functioning air conditioning and shipping or intermodal containers.

***Teleworking and Emergency Operations***

The rule does not apply to teleworking situations where the location is the employee's choice and not under the control of the employer. Nor does the rule apply to emergency operations directly involved in the protection of life or property.

**Want to Learn More?**

We are continuing to monitor these developments and will provide updates as appropriate. As always, Fisher Phillips will be ready to assist you in complying with the new rule.

**Conclusion**

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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