

OSHA RELEASES FIRST-EVER NATIONAL HEAT SAFETY RULE: 10 STEPS FOR EMPLOYERS

Insights
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In a groundbreaking move, federal workplace safety officials announced today the first-ever national heat stress rule aimed at protecting workers from heat-related illnesses and fatalities. The proposed regulations from the Occupational Safety and Health Administration (OSHA) could soon require you to implement robust measures to safeguard your employees from extreme heat both indoors and outdoors – and significantly impact your workplace safety protocols, regardless of industry. The proposal still needs to wind its way through a months-long administrative process and could even be derailed by new standards set by the Supreme Court that take aim at agency overreach, so you'll want to follow the process closely. What are the 10 steps you should consider taking to prepare for the new rule?

Why Did OSHA Propose Heat Safety Rule?

OSHA's initiative, years in the making, follows an increase in heat-related workplace incidents and is part of its broader effort to address the impacts of climate change on occupational health. Currently, the agency relies on its broad General Duty Clause to enforce heat safety in the workplace, which requires employers to furnish a workplace free from recognized hazards which may cause or are likely to cause death or serious physical harm.

The agency has made clear it believes this broad standard is insufficient given the growing number of heat-related worker injuries and fatalities. OSHA noted that "heat is the leading cause of weather-related deaths in the United States." The new rule aims to build on existing state-level

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heat standards, such as those in [California](#) and several other states.

Who Will The Rule Apply To?

The proposed standard would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agricultural sectors where OSHA has jurisdiction.

Who's Not Covered By the New Rule?

Notably, the proposed rule excludes short-duration employee exposure to heat. Additionally, you will not need to apply these new rules to "sedentary" employees, those in indoor job sites kept below 80 degrees, and remote workers. The same holds true for emergency response workers who are exempted under the rules. Finally, OSHA regulations don't cover public employees, so the new rules will not apply to government employers.

What Will the New Rule Require?

The proposed OSHA heat safety rule introduces several key requirements aimed at protecting workers from the hazards of excessive heat, including requiring employers to designate a heat safety coordinator and identify heat hazards in both outdoor and indoor worksites. These regulations are designed to address both immediate and long-term risks associated with heat exposure. Below is a detailed breakdown of the most significant new requirements:

Heat Hazard Identification and Assessment

Employers will be required to:

- **Conduct Regular Heat Risk Assessments:** You'll have to evaluate the potential for heat exposure in various job roles and settings. This involves identifying high-risk areas and tasks, especially during peak heat periods.
- **Monitor Workplace Temperatures:** You must implement systems to continuously monitor temperature and humidity levels, particularly during heat waves or periods of extreme heat.

Preventive Measures



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Workplace Safety

The rule will mandate several preventive strategies to mitigate heat-related risks:

- **Hydration:** You'll need to provide workers with accessible drinking water at all times. You will need to ensure that your employees have frequent access to water and encourage regular hydration.
- **Rest Breaks:** The rule will require you to implement scheduled rest breaks in cool or shaded areas to allow workers to recover from heat exposure. The frequency and duration of these breaks will need to increase with rising temperatures.
- **Shade and Cooling Areas:** You'll need to ensure that shaded or air-conditioned rest areas are available for workers to use during breaks. These areas should be sufficiently close to the worksite to allow for quick access.

Training and Education

The proposed rule puts a requirement on employers to:

- **Provide Heat Safety Training:** You will need to educate employees and supervisors about the dangers of heat-related illnesses, the symptoms, and the importance of preventive measures. It should include recognizing early signs of heat stress and appropriate first-aid responses. You'll need to provide annual refresher training for supervisors, heat safety coordinators, and employees, as well as supplemental training after changes in exposure to heat hazards, company policies and procedures, or the occurrence of the heat injury or illness.
- **Offering Acclimatization Programs:** You will also have to develop and implement acclimatization plans for new and returning workers. This involves gradually increasing workloads and exposure time to build up a worker's tolerance to heat.

Emergency Planning and Response

Some key requirements include:

- **Heat Illness Prevention Plan:** The proposed rule would require employers with more than 10 employees to develop and implement a written worksite Heat Injury and Illness Prevention Plan, including site-specific information to evaluate and control heat hazards in your workplace

(employees with 10 or fewer employees will still need a plan, but it can be communicated verbally). You will have to make the plan available to each employee performing work at the site and in a language that each employee, supervisor, and heat safety coordinator understands. You'll be required to evaluate the effectiveness of the plan whenever a heat-related illness or injury occurs that results in death, days away from work, medical treatment beyond first aid, or loss of consciousness, but at least annually. In developing and updating the HIIPP, you'll also be required to seek input from nonmanagerial employees and their representatives.

- **Emergency Medical Response:** You have to develop a Heat Emergency Response Plan and ensure that supervisors and workers are trained to respond effectively to heat-related emergencies, including providing first aid and contacting emergency services.

Recordkeeping and Reporting

Employers will need to:

- **Maintain Indoor Monitoring Data:** You'll be required to maintain written or electronic records of indoor monitoring data for a minimum six months.
- **Create Incident Reporting Processes:** You will have to maintain detailed records of heat-related incidents, including illnesses and near-misses. This data should be used to review and improve heat safety practices.
- **Conduct Regular Audits:** You need to deploy regular audits of heat safety measures and your overall compliance with the new standards. These audits will help identify areas for improvement and ensure ongoing adherence to the regulations.

Additional Requirements for High-Risk Industries

Specific industries, such as agriculture and construction, face higher risks of heat exposure and could see additional requirements under the new rule. They include:

- **Enhanced Protections:** For industries with heightened heat exposure risks, you may need to implement additional safeguards, such as more frequent rest breaks, specialized training, and more rigorous monitoring of environmental conditions.

- **Special Considerations for Vulnerable Workers:** You may also have to offer enhanced protections for vulnerable populations, including temporary, seasonal, and immigrant workers, ensuring they receive adequate training and resources to manage heat stress.

What's Next?

OSHA began the rulemaking process in October 2021, culminating in today's unveiling. The proposed rule will soon be formally published in the Federal Register and members of the public will be permitted to submit comments for 120 days after the date of publication in the Federal Register. Agency officials will then review all of the comments and hold at least one public hearing to discuss the feedback. This process should take several months at least, so expect the next substantive news on this front by late 2024. **[Editor's Note: The proposed rule is scheduled to be formally published in the Federal Register on August 30, 2024.]**

The agency will then take all of the comments into account and publish the rule in final form, perhaps with substantive revisions based on the feedback it receives. We expect that to happen in the first half of 2025.

There are two key dynamics that could come into play to derail the rule, however:

- If we see a change in executive leadership in the White House come January 2025, all bets are off when it comes to the future of the rule.
- Regardless of which party controls OSHA in 2025, you can expect legal challenges to the rule that could see a court block the rule from taking effect as scheduled. Opponents of the rule will no doubt be encouraged by last week's landmark SCOTUS ruling taking power away from federal agencies and handing more authority to judges – which could make it far easier for a conservative judge to delay or strike down the rule before it ever takes effect.

Larger Context Considerations

The next year will see OSHA turning up the heat on employers who don't take heat safety seriously, regardless of what happens with this proposed rule. The agency has already conducted about 5,000 federal heat-related

inspections using its National Emphasis Program (NEP) related to heat illnesses and injuries for both outdoor and indoor workers. NEPs are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries.

The heat NEP is effective until April 2025, and it will see OSHA 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 or indoor workspaces near radiant heat sources (such as iron and steel mills and foundries).

If you want more detail about the NEP, including how employers will be selected for inspections, [you can read our full insight here](#).

10 Steps Employers Should Take to Protect Workers this Summer – and Beyond

Regardless of the fate of this proposed rule, here are 10 steps you can take to protect your workers from heat-related injuries and illnesses – and avoid legal scrutiny.

- 1. Plan ahead.** Draft a prevention program to mitigate against heat-related injuries and illnesses. Conduct a hazard analysis of all of your job duties or positions that could involve exposure to extreme heat, including an analysis of outdoor and indoor workspaces. If you are in a state OSHA plan location, review your heat illness prevention program plan against any state plan requirements.
- 2. Train your workers.** Provide training to all of your workers on how to prevent heat illnesses, and make sure managers know to take the lead when it comes to spotting potential problems and ensuring compliance.
- 3. Don't take risks.** Provide medical screening for all workers who will work in high-heat settings.
- 4. Keep an eye out.** Designate someone at each worksite to monitor worker health and conditions on days of extreme heat. You may also consider requiring a buddy system on hot days and enforcing a procedure for employees to report heat stress symptoms.
- 5. Let them rest.** Provide unscheduled rest breaks and require work/rest periods. It's difficult to quantify specific

breaks for specific scenarios in states covered by federal OSHA, so a best practice is requiring rest breaks of up to [five minutes](#) in shade every hour, or 10 minutes every two hours, when temperatures are above 87.8°F.

6. **Provide water.** Provide unlimited, easy access to cool water. 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.
7. **Offer cover.** Provide access to shaded areas and cooling fans. Provide hats for outdoor workers in the sun.
8. **Be flexible.** Consider changing start times and days during a project to avoid high-heat hours. Or consider rotating crews of workers to minimize work during the hottest hours.
9. **Get your workers ready.** Require an acclimatization period for workers not used to working in the heat. This not only includes new employees but existing workers returning to heat exposure or those working during seasonal changes as the weather gets warmer. [OSHA provides a full list of detailed recommendations that you should implement for a one-to-two-week period](#), including guidance on work periods, rest breaks, job tasks, and more.
10. **Be prepared for the worst-case scenario.** Ensure access to first aid and prompt medical attention for symptomatic employees.

Conclusion

If you have any questions, contact the authors of this insight, any 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 workplace safety issues.