

Contractors Need to Update Policies and Procedures to Provide Recovery Periods for Outdoor Workers

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Contractors and other employers of outdoor workers are affected by the amended **California Labor Code**, effective January 1, 2014, that provides expanded protection to outdoor workers. Specifically, California Labor Code section 226.7 has been amended to include within the definition of “recovery period” a cool-down period afforded to outdoor workers. Since 2006, the California Code of Regulations has required employers of outdoor employees to allow their workers the opportunity to “take a cool-down rest in the shade for a period of no less than five minutes when they feel the need to do so to protect themselves from overheating.” (Cal. Code. Regs., tit. 8, § 3395, subd. (d)(3).) An employer who failed to provide these cool-down recovery periods was subject to citation, but it was unclear whether employees could bring an action directly against their employers.

Several key changes result from the Legislature's recent amendments to Section 226.7. Among other things:

1. Employers of outdoor workers are expressly prohibited from requiring employees to work during any “recovery period” afforded to outdoor workers pursuant to any applicable statute, regulation, standard, or order of the Industrial Welfare Commission, Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. This includes the protections afforded to outdoor workers in Code of Regulations, title 8, section 3395, subdivision (d)(3).
2. Employers who fail to provide a required cool-down period must now pay the employees one additional hour of pay at the employee's regular rate of compensation for each workday that they are not provided the required cool-down period. This change expands the penalties to employers from failing to comply with any cool-down regulations. Instead of being subject to citation, employers are now exposed to statutory damages to their employees.

Notably, California Code of Regulations, Title 8, Section 3395 provides that five minute rest periods must be afforded to outdoor workers whenever “they feel the need to do so to protect themselves.” No particular temperature is specified, and access to a shaded area during any cool-down period is also mandatory. In addition, employers are obligated to encourage employees to take cool-down rest periods, not just make them available upon request.

As a result of these amendments, at a minimum, employers of outdoor workers should be proactive in updating their handbooks, field manuals, and other written materials distributed to employees to make clear that five minute cool-down periods are available on request and encouraged whenever a worker feels the need to take a rest period due to warm temperatures. In addition, employers should consider adding signs, including in multiple languages as applicable, advising employees of their right to take a cool-down period and encouraging the same, as well as advising them of specifically designated shade areas. Employers who fail to comply with the above provisions are now directly subject to actions by their outdoor employees, including potential class actions brought on behalf of multiple workers.

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