

OSHA Proposes Workplace Heat Safety Standard

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On July 2, 2024, the Occupational Safety and Health Administration (OSHA) released a long-awaited proposed rule to prevent heat-related injuries and illnesses in the workplace. OSHA initiated the rulemaking process in October 2021 as part of its ongoing heat-related illness prevention initiative.

The proposed rule applies to most employers under OSHA's jurisdiction and includes work in both indoor and outdoor settings, with exclusions for short-term exposure (15 minutes or less per hour), indoor sedentary work activities, indoor sites (including vehicles) kept below 80°F, remote work, and emergency response activities.

The proposed rule requires employers to develop a Heat Injury and Illness Prevention Plan (HIIPP) to evaluate and control heat hazards in the workplace. As part of the HIIPP, employers will have to designate a heat safety coordinator and develop a heat emergency response plan with the involvement of non-managerial employees and their representatives (if any).

Employers also would be required to monitor heat conditions at indoor and outdoor work areas. For indoor work sites, this includes implementing a monitoring plan covering work areas where employees are likely to be exposed to a heat index of 80°F and above. Employers must seek the input of non-managerial employees and their representatives when evaluating the work site to identify such areas. Records of indoor monitoring data must be maintained for at least 6 months.

The proposed rule requires employers to implement specific measures to mitigate heat-related risks to employees when the temperature reaches an Initial Heat Trigger (a heat index of 80°F), including the following:

- Access to cool drinking water (at least one quart of water per employee per hour);
- Break areas with cooling measures (such as air conditioning or natural shade);
- Controls for indoor working areas (such as air conditioning or fans);
- Paid rest breaks if needed to prevent overheating; and
- Regular and effective two-way communication.

The proposed rule also will require employers to implement acclimatization protocols upon the Initial Heat Trigger for new and returning workers to gradually increase their heat exposure to give their

bodies an opportunity to adjust.

If the High Heat Trigger is met (a heat index of 90°F), additional measures would be required, including the following:

- Mandatory, paid 15-minute rest breaks at least every two hours in break areas with cooling measures;
- Observation of employees for signs and symptoms of heat-related illness, such as a mandatory “buddy system” or observation by a supervisor or heat safety coordinator;
- A hazard alert to remind employees of the importance of drinking water, taking rest breaks, and how to seek help; and
- Warning signs at indoor work areas with ambient temperatures that regularly exceed 120 degrees.

Employers will need to train all employees on heat safety prior to any work at or above the initial heat trigger. The proposed rule also requires annual refresher training and supplemental training after certain heat-related injuries or illnesses at the work site.

The proposed rule is available at www.osha.gov/heat-exposure/rulemaking. It will soon be published in the Federal Register, triggering a 120-day public comment period. OSHA will then consider the comments and hold an informal public hearing before publishing a final rule.

The Supreme Court’s recent *Loper Bright* decision overturning the *Chevron* doctrine could make a final heat rule more vulnerable to legal challenges. In the OSH Act, Congress authorized OSHA to enact workplace safety standards that it deems “reasonably necessary or appropriate.” In *Loper*, the Supreme Court made clear that even though such terms delegate a degree of discretion to an agency, the judiciary must still evaluate such delegations for constitutionality, independently determine the boundaries of that discretion without affording any deference to the agency, and ensure the agency has engaged in reasoned decisionmaking within those judicially-determined boundaries.

Further, if the rule is not finalized before the November election, the rule’s future likely will hinge upon who wins the Presidential race.

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