

Blog Post

# Keep Cool: OSHA Targeting Heat-Related Injuries in the Workplace

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Last year was the deadliest weather year in a decade for the contiguous United States, according to the National Oceanic and Atmospheric Administration, and climatologists predict that 2022 will be the hottest year on record. Employers should pay particular attention as we head into summer. With heat already being the leading cause of death among all weather-related phenomena, climate change only increases the frequency and intensity of extreme heat conditions and the risk of related illness and injury. Employers across industries should already be familiar with their obligations to keep employees safe from heat-related illnesses, injuries, and death in both outdoor and indoor workplaces. The Occupational Safety and Health Administration (OSHA) issued enforcement guidance on this issue last fall, but now an OSHA standard is coming. OSHA standards are mandatory rules that must be followed, whereas guidance offers recommendations for compliance with general workplace safety and training initiatives where standards have not been defined.

Heat-related injury and illness prevention has been a focus of the Department of Labor's Occupational Safety and Health Administration for years. Just last month, OSHA issued a National Emphasis Program Instruction describing policies and procedures for implementing a National Emphasis Program (NEP)

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to protect employees from heat-related hazards and resulting injuries and illness in outdoor and indoor workplaces. NEPs are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries. The NEP Instruction identifies industries being targeted and encourages the federal Wage and Hour Division and OSHA offices to work together to initiate referrals and exchange information regarding complaints, inspections and investigations.

The NEP Instruction incorporates OSHA enforcement guidance issued last September for heat-related hazards. While the NEP Instruction only provides guidance, OSHA signified its intention to go further and create a more specific standard applicable to heat-related hazards in October 2021 when it published an Advance Notice of Proposed Rulemaking for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings ("Advance Notice").

### The NEP Instruction

The stated goal of the NEP Instruction is "to reduce or eliminate worker exposures to heat-related hazards that result in illnesses, injuries, and deaths, by targeting industries and worksites, including worksites with radiant heat sources, where employees are exposed to heat-related hazards and have not been provided adequate protection that includes cool water, rest, cool areas, training, and acclimatization." Acclimatization is a process where employees slowly expose themselves to working in the heat, helping them to engage protective physiological changes to prevent heat-related reactions.

Compliance and safety officers are instructed to assess hazards on heat priority days, when the heat index is in excess of 80°F or higher. When the heat index is 80°F or higher, serious occupational heat-related illnesses and injuries become more frequent, especially where workers are engaging in strenuous

work such as pushing, pulling, or lifting heavy materials, and in direct sunlight. This is not to suggest that heat-related injuries and illnesses cannot occur in temperatures below 80°F; in fact, the NEP Instruction specifically acknowledges that they can and do occur.

The NEP Instruction sets forth detailed procedures for OSHA offices to focus on heat-related complaints and to schedule site visits. Among other things, it directs inspectors to determine if the employer has a heat illness and injury program addressing heat exposure, and consider, in particular, the following:

- Is there a written program?
- How did the employer monitor ambient temperature(s) and levels of work exertion at the worksite?
- Was there unlimited cool water that was easily accessible to the employees?
- Did the employer require additional breaks for hydration?
- Were there scheduled rest breaks?
- Was there access to a shaded area?
- Did the employer provide time for acclimatization of new and returning workers?
- Was a “buddy” system in place on hot days?
- Were administrative controls used (earlier start times, and employee/job rotation) to limit heat exposure?
- Did the employer provide training on heat illness signs, how to report signs and symptoms, first aid, how to contact emergency personnel, prevention, and the importance of hydration?

During a site visit, the OSHA representative may use the Heat Safety Tool, a smart phone application jointly developed by OSHA and National Institute for Occupational Safety and Health (NIOSH). The Heat Safety Tool can calculate the heat index at the

location and, in turn, determine a risk level. The application even provides heat protection reminders depending on the determined risk level, like suggestions regarding fluid intake, necessary rest, acclimatization, and signs and symptoms of heat injury.

OSHA site inspections could lead to citations for employers who fail to properly care for their employees in hazardous heat. Earlier this year, OSHA fined an employer almost \$25,000, finding that it exposed its workers to hazards due to a high ambient heat. OSHA also found that the employer failed to adequately train a person to perform first aid, and to ensure they were available to render assistance in heat-related emergencies. The inspection and resulting sanctions were prompted by an incident where an employee died after being exposed to almost 100-degree temperatures while working outside.

### State Plan Deadline

Several states have OSHA-approved job safety and health programs operated by individual states rather than federal OSHA, referred to as “State Plans.” The NEP Instruction notes that State Plans are encouraged, but not required, to adopt the Instruction. However, on or before June 7, 2022, State Plans must submit a notice of intent indicating whether they already have a similar policy in place, intend to adopt new policies and procedures, or do not intend to adopt the NEP Instruction.

### The Advance Notice

With the Advance Notice, OSHA began its rulemaking process to consider a heat-specific injury and illness prevention standard. For decades, OSHA has relied upon the authority provided by the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act), when citing employers for heat-related hazards in the workplace. Under the General Duty Clause, employers have a duty to prevent heat-related

illnesses and deaths in both indoor and outdoor workspaces. With the growing need to prevent heat-related illness and injuries of workers, a specific standard would more clearly outline an employer's obligations to protect employees.

When OSHA published the Advance Notice, it initiated a comment period where members of the public were encouraged to review and submit comments to assist OSHA in crafting a specific heat-related injury and illness prevention standard. In February 2022, after the public comment period closed, the Heat Injury and Illness Prevention Work Group of the National Advisory Committee on Occupational Safety and Health (NACOSH) met to begin working on recommendations on the Agency's heat injury and illness prevention guidance and rulemaking activities.

### Suggested Actions for Employers

Employers with workers exposed to high temperatures should establish a heat prevention illness and injury prevention program to minimize heat-related risks for their employees.

Understanding the hazards that exist, creating training to recognize symptoms of heat-related injuries and illness, and developing policies and processes surrounding prevention of heat-related illness and injuries should all be considered when thinking about employee heat safety. Prevention policies may include hydration stations, built-in rest breaks, and reducing certain types of work on heat priority days or during certain times of the day. Employers should also monitor workers for signs of illness, plan for emergencies and train workers on prevention. Additionally, employers should pay particular attention to any new rules that arise from OSHA's ongoing rulemaking process to ensure compliance with any changes to employer duties.

For questions relating to OSHA's efforts to prevent heat-related injury, illness, and death, contact your Akerman attorney.

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