

Blog Post

Cool for the Summer: Workplace Safety in the Sizzling Summer Heat

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Last year was the hottest year on record and 2024 could be even warmer. Employers should be on high alert as we head into the hottest season of the year, summer. With heat already being the leading cause of death among all weather-related phenomena, employers across industries should be familiar with their obligations to keep employees safe from heat-related illnesses, injuries, and death in the workplace.

Heat-related injury and illness prevention has been a focus of the Department of Labor's Occupational Safety and Health Administration (OSHA) for years. No OSHA standard specifically addresses occupational exposure to heat. However, Section 5(a)(1) of the Occupational Safety and Health Act requires an employer to provide a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees. An employer's responsibility to provide a workplace free from known safety hazards includes protecting workers from extreme heat. OSHA uses the general duty clause as authority for most citations relating to heat-related illnesses or fatalities. To cite an employer for violating the general duty clause, OSHA must prove:

- The employer failed to keep the workplace free from a hazard to which employees were exposed;

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- The hazard is recognized;
- The hazard was likely to cause death or serious physical harm; and
- There was a feasible and economically viable way to correct the hazard.

Employer responsibilities regarding heat may also derive from certain standards in addition to the General Duty Clause. Particularly:

- **Personal Protective Equipment (PPE) Standard:** Requires employers to conduct a hazard assessment to determine the appropriate PPE to be used to protect employees from identified hazards.
- **Recordkeeping Standard:** Requires employers to record certain work-related injuries and illnesses. For purposes of heat illness, if a worker requires intravenous fluids, the worker's condition must be recorded. If the worker, however, is only instructed to drink fluids, then the condition is not recordable.
- **Sanitation Standard:** Requires employers to provide potable water for employees.
- **Medical Services and First Aid Standards:** Requires employers to have individuals onsite adequately trained to render first aid if there are no medical facilities within close proximity.
- **Safety Training and Education Standard for Construction:** Contains education and training requirements for construction employers regarding hazards and unsafe conditions.

Inspections

Workplace inspections by OSHA can be triggered by a number of occurrences including:

- **Complaints** or as a part of an inspection for a different potential violation/complaint.
- **Fatality Reporting:** When employers report a death in the workplace.

- **National Emphasis Program (NEP):** Addresses hazards that pose a particular risk to specific industries expected to have the highest exposures to heat-related hazards and resulting illnesses and deaths.
- OSHA's NEP sets forth detailed procedures for OSHA offices to focus on heat-related complaints and to schedule site visits in specific industries. Among other things, it directs inspectors to determine if the employer has a heat illness and injury program addressing heat exposure.
- 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.
- OSHA site inspections could lead to citations for employers who fail to properly care for their employees in hazardous heat.

Citations and Proposed Penalties

Failing to account for the dangers of heat-related workplace hazards can have severe financial consequences for employers. The following are examples of recent citations and proposed penalties issued by OSHA for heat-related violations:

- \$65,000 in penalties against a waste management company following the death of an employee who died of a heat stroke after experiencing extreme heat in a confined space while cleaning baghouses on a roof.
- \$151,527 penalty against a landscape servicing company following the death of an employee who died of heat exhaustion after he was trimming weeds. The employer stated that water was available, but did not know about shade, air conditioning or acclimation.

Employers should be aware that OSHA may assess penalties up to \$16,131 for each serious and other-than-serious violation. Additionally, the maximum penalty for willful or repeated violations is \$161,323 per violation. Penalties can add up, especially if multiple employees are exposed to heat-related dangers or if the employer was subject to prior penalties for similar violations.

State Law Requirements

Employers should also be aware that many states run their own OSHA-approved plans which adopt heat standards not addressed by federal OSHA standards. For instance:

- **California's** Heat Illness Prevention Standard requires employers to provide training, water, shade, and planning. A temperature of 80°F triggers the requirements.
- **Colorado** has rules specific to Agriculture industries.
- **Minnesota** has a standard applicable to indoor places of employment.
- **Oregon** has standards which apply to various industries.
- **Washington** has an outdoor heat exposure rule that applies to outdoor workers year round and contains training and other requirements.

These standards can expose employers to additional risks on top of risks posed by OSHA's standards.

Heat Illness Prevention and Response

Employers with workers exposed to high temperatures should establish a detailed heat prevention illness and injury prevention program to minimize heat-related risks for their employees. Understanding existing hazards, creating training for employees and supervisors 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 creating an employee heat-safety program. Prevention policies may include hydration stations, built-in mandatory rest breaks, and reducing certain types of work on high-temperature days or during certain particularly warm times of the day. Employers should also monitor workers for signs of illness, plan for emergencies, and train workers on heat prevention. Heat illness prevention and response is industry-specific, and employers should be aware of heat-related risks in their specific industries. If heat-related injuries do occur, employers should accurately record such instances. Additionally, employers should pay particular attention to any new rules that arise from OSHA to ensure compliance with any changes to employer duties.

To learn more about this topic, join us on Wednesday, May 22, for our “Handling Employee Exposure to Extreme Temperatures: OSHA Requirements and Implications for Employers” webinar. Click [here](#) to register. For questions relating to OSHA’s efforts to prevent heat-related injury, illness, and death, contact your Akerman Labor & Employment attorney.

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