

OSHA Publishes Hotly Anticipated Proposed Heat Standard

Alert

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At long last and at the tail-end of what is on track to be the hottest summer on record, the Occupational Safety and Health Administration (OSHA) issued its first proposed heat standard on August 30, 2024. OSHA's Notice of Proposed Rulemaking for [Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#) (Proposed Rule) puts pen to paper on one of the largest initiatives of the Biden Administration. The public now has 120 days to provide comments, meaning that a final rule will not be issued before the November general election.

The Proposed Rule aims to protect workers from indoor and outdoor extreme heat, and applies to *all* OSHA-covered sectors in construction, maritime, agriculture, and general industry, encompassing approximately 36 million workers.

OSHA launched its [National Emphasis Program – Outdoor and Indoor Heat-Related Hazards](#) in 2022 and has conducted thousands of heat-related [inspections](#) under this directive and leveraged the General Duty Clause and other standards for purposes of enforcement. However, there is currently no federal OSHA standard to regulate heat hazards in the workplace.

REQUIREMENTS FOR SUBJECT EMPLOYERS

The Proposed Rule is intentionally broad, as OSHA determined that workers in both outdoor and indoor work settings are at risk of heat exposures. The thousands of heat-related inspections conducted in recent years focused on a number of sectors, including construction, manufacturing, maritime, agriculture, transportation, warehousing, food services, waste management and remediation services. Given that breadth, the comprehensive scope of the Proposed Rule is expected; it applies to all employers conducting

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indoor and outdoor work in all general industry, construction, maritime and agricultural settings. As drafted, the Proposed Rule does not apply to the following work settings:

- Work activities without a reasonable expectation of exposure at or above the initial heat trigger (a heat index of 80°F or wet bulb globe temperature of the National Institute for Occupational Safety and Health Recommended Alert Limit);
- Short-duration exposures above the initial heat trigger (15 minutes or less per hour);
- Specified firefighting and emergency response activities;
- Indoor work activities that are air conditioned to below 80°F;
- Telework; and
- Sedentary work activities.

Employers who do not fall into an exception are subject to the Proposed Rule.

The most broadly applicable requirement in the Proposed Rule requires subject employers to develop a site-specific Heat Injury and Illness Prevention Plan (HIIPP) to deal with heat risks. This plan must include:

- Identifying heat hazards by tracking local forecasts;
- Implementing engineering and work practice control measures;
- Implementing a heat illness and emergency response plan;
- Providing training to employees and supervisors; and
- Retaining records.

If the employer has more than 10 employees, the HIIPP must be written and must be provided to employees. As part of the HIIPP, the employer must designate at least one heat safety coordinator, and involvement of non-managerial employees and their representatives is required. The HIIPP must be reevaluated annually or anytime a recordable heat-related illness occurs. Training is required prior to any work: at or above the initial heat trigger, on an annual basis thereafter, and on a supplemental basis. Supervisors require additional training on the policies and identifying heat-related illness.

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HEAT TRIGGER LEVELS

OSHA created categories of requirements based on temperature. OSHA developed an initial heat trigger of 80°F based on the heat index value at a worksite and, as the heat index rises above 90°F, the “high heat trigger,” additional heat safety practices are required from employers. See below for a summary table and further details outlining these requirements:

WORKSITES WITH EXPOSURES ABOVE INITIAL HEAT TRIGGER (80°F)

If there are potential exposures above the initial heat trigger (80°F), the Proposed Rule requires employers to:

- Provide suitably cool drinking water in locations readily accessible and in sufficient quantities to allow for one quart of water per hour per employee;
- For outdoor work, provide shaded areas or air-conditioning for rest breaks;
- For indoor work, provide mechanisms to reduce exposure, like via shielding or fans, from sources of radiant heat. For rest breaks, there must be an area air-conditioned or that has increased air movement;
- Gradually acclimatize both new and returning employees to heat exposure. For example, a new employee is restricted to 20% of a normal work shift exposure duration on the first day of work, 40% on the second day of work, 60% of the third day of work and 80% on the fourth day of work;
- Provide paid rest breaks if needed; and
- Provide a mechanism for two-way communication to “regularly communicate” with employees.

WORKSITES WITH EXPOSURES ABOVE HIGH HEAT TRIGGER (90°F)

When the heat index is above 90°F, i.e., the “high heat trigger,” employers have the following additional requirements:

- Provide 15-minute paid rest breaks every two hours;
- Implement a method of observing employees for heat-related illness symptoms through either a mandatory buddy system or observation by a supervisor. If an employee is working by themselves, the employer must maintain effective, two-way communication and make contact at least every two hours; and
- Notify employees about the importance of drinking plenty of water, the employees’ rights to rest breaks, how to seek help, and procedures for a heat emergency.

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WORK SITES IN EXCESSIVELY HIGH HEAT AREAS

When there are exposures in “excessively high heat areas” (i.e., indoor work areas with ambient temperatures that regularly exceed 120°F), employers are also required to place warning signs about heat hazards.

TAKEAWAYS

The Proposed Rule shows OSHA’s growing concern regarding heat-related injuries and fatalities. Data from 1992 to 2022 indicated 1,042 workers died from exposure to environmental heat. Furthermore, from January 2017 to December 2022, there were 1,054 reportable events, though OSHA speculates these numbers underreport the true count of heat-related injuries and fatalities.

To combat this hazard, OSHA has utilized the General Duty Clause to enforce the heat standard for years. However, the Proposed Rule is a level up, as it contains prescriptive requirements that will change the way employers operate in areas with extreme heat. Given the timeline, if the Proposed Rule is finalized early next year and employers get 150 days to comply, it could be in place and ready for immediate impact in summer 2025. As with any proposed standard, employers should review the Proposed Rule and determine if they have questions or concerns based on their operations. Since many locations are in the hottest weeks of the year now, it is an excellent time to consider “what if” the Proposed Rule were in place now to determine whether it would be implementable at your workplace.

Employers can submit written comments on the Proposed Rule until December 28, 2024. For more information on OSHA’s Proposed Rule and how it could affect your business, or for assistance preparing comments on the Proposed Rule, please contact the Stinson LLP OSHA team or the Stinson LLP contact with whom you regularly work.

For more information on OSHA’s proposed heat standard, please contact [Brittany Barrientos](#), [Alisa Ehrlich](#), [Nanette Kalcik](#), [Bailey McGowan](#), [Greta Reyes](#), [Betsy Smith](#) or the Stinson LLP contact with whom you regularly work.

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