



Heat Illness in the Workplace

How to Protect Your Company From Liability and OSHA Enforcement

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Agenda

- 01** OSHA National Emphasis Program
- 02** What is Heat Illness?
- 03** Bermuda Triangle FMLA/ADA/Workers Compensation
- 04** State and Federal OSHA Liability
- 05** Heat Illness Prevention Program

New Federal Heat Illness Standard

- October 27, 2021, OSHA published an ANPRM on heat injury and illness prevention in outdoor and indoor work settings.
 - Focus on effects of climate change, vulnerable populations
 - Rulemaking Process, OSHA estimates at least five years, and up to ten years
- https://www.osha.gov/sites/default/files/OSHA_FlowChart.pdf
- Potential for political intervention, public concern



New National Emphasis Program for Heat Illness

- NEP targets certain “high hazard” heat illness industries based on NAICS code for programmed inspections
- Instructs compliance officers to expand inspections to heat where conditions observed
- Compliance officers to look for employees exposed to high temperatures with regard to
 - training
 - acclimatization
 - access to water, rest, shade



Heat Illness in the Workplace



Heat Related Illness Types

- Heat Stroke
- Heat Exhaustion
- Heat Cramps
- Sunburn
- Heat Rash

- <https://www.cdc.gov/disasters/extremeheat/warning.html>

FACTORS:

Speed of heat gain/loss depends on

- Temperature of air and surrounding objects
- Air movement (wind or fans)
- Humidity (water vapor in air)
- Level of hydration
- Metabolic heat / employee work

Heat Index:

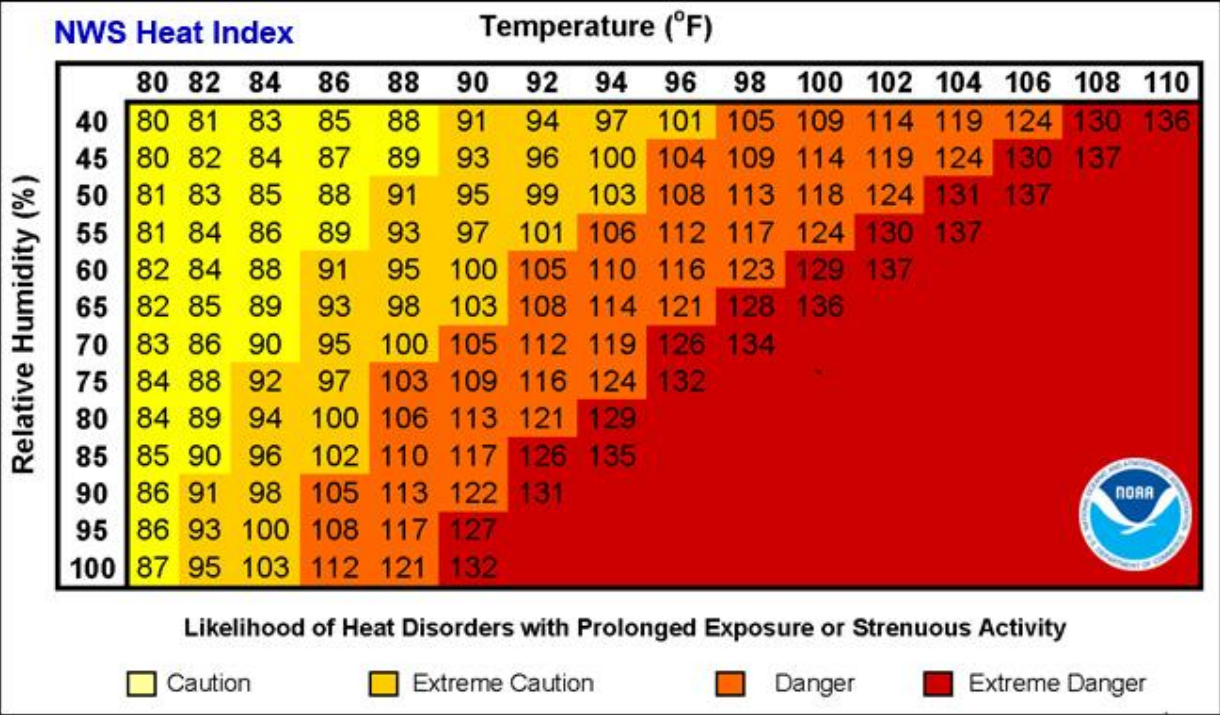
- Based upon temperature and relative humidity
- Solar radiation may increase heat index up to 15° F

Heat Stress

Is there a Heat Hazard?

- Difficulty Determining When Heat Becomes A “Recognized Hazard” Likely To Cause Serious Injury Or Death
- Monitoring National And Local Weather Information Sources For Temperature And Humidity
- Utilizing Heat Monitoring Devices At The Work Site (Dry Bulb Temperature, Wet Bulb Temperature, Glove Thermometer, Relative Humidity, Wind Speed)
- Differences Between Fixed Worksites And Mobile Worksites

Heat Index



Heat Index	Risk Level	Protective Measures
Less than 91°F	Lower (Caution)	Basic heat safety and planning
91°F to 103°F	Moderate	Implement precautions and heighten awareness
103°F to 115°F	High	Additional precautions to protect workers
Greater than 115°F	Very High to Extreme	Triggers even more aggressive protective measures

IMPORTANT: Heat index values were devised for shady, light wind conditions. As such, exposure to full sunshine can increase heat index values by up to 15F. Also, strong winds, particularly with very hot, dry air, can be extremely hazardous. The Heat Index Chart shaded zone above 103F shows a level that may cause increasingly severe heat disorders with continued exposure or physical activity.

2022 Weather Predictions – High and Very High Hazards



Prevalence of Serious Heat Illness

- Employee Fatalities
 - 2019 → 43 work-related deaths due to environmental heat exposure
 - 1992-2019 → at least 907 work-related deaths, with an average of 32 fatalities per year (BLS, September 10, 2021).
- Diverse Workforce
 - Black and Hispanic workers had higher relative risks of heat-related fatalities compared to white workers from 2000-2010
 - 33% of workplace heat-related fatalities since 2010 have occurred in Hispanic workers (~18.4% of population)
 - Agricultural workers have 35 times the average risk of heat illness
- Climate Change
- Lifestyle Diseases
 - Three-year average of work-related deaths among U.S. workers has doubled since the early 1990s



COVID-19 and Heat Illness

- Increased risk factor for heat illness (COVID-19 and Long COVID-19)
- Screening for COVID-19 symptoms
 - Fever
- Face masks / face coverings
- Return to Work
- Acclimatization Challenges

Heat Illness Legal Liabilities

- Employer Obligations
 - General Duty Clause - Section 5(a)(1)
 - Whistleblower Protection – Section 11(c)
- 2017 Federal OSHA Statistics
 - 11 Citations
 - 55 Hazard Alert Letters
- Representative Cases
 - *Secretary of Labor v. Aldridge Electric, Inc.*, OSHRC Docket No. 13-2119 (OSHRC ALJ 2016)
 - *Secretary of Labor v. A.H. Sturgill Roofing, Inc.* (OSHRC 2019)
 - *Secretary of Labor v. USPS*, Nos. 16-1713, 16-1813, 16-1872, 17-0023, 17-0279 (OSHRC ALJ July 15, 2020)



Heat Illness Legal Liabilities

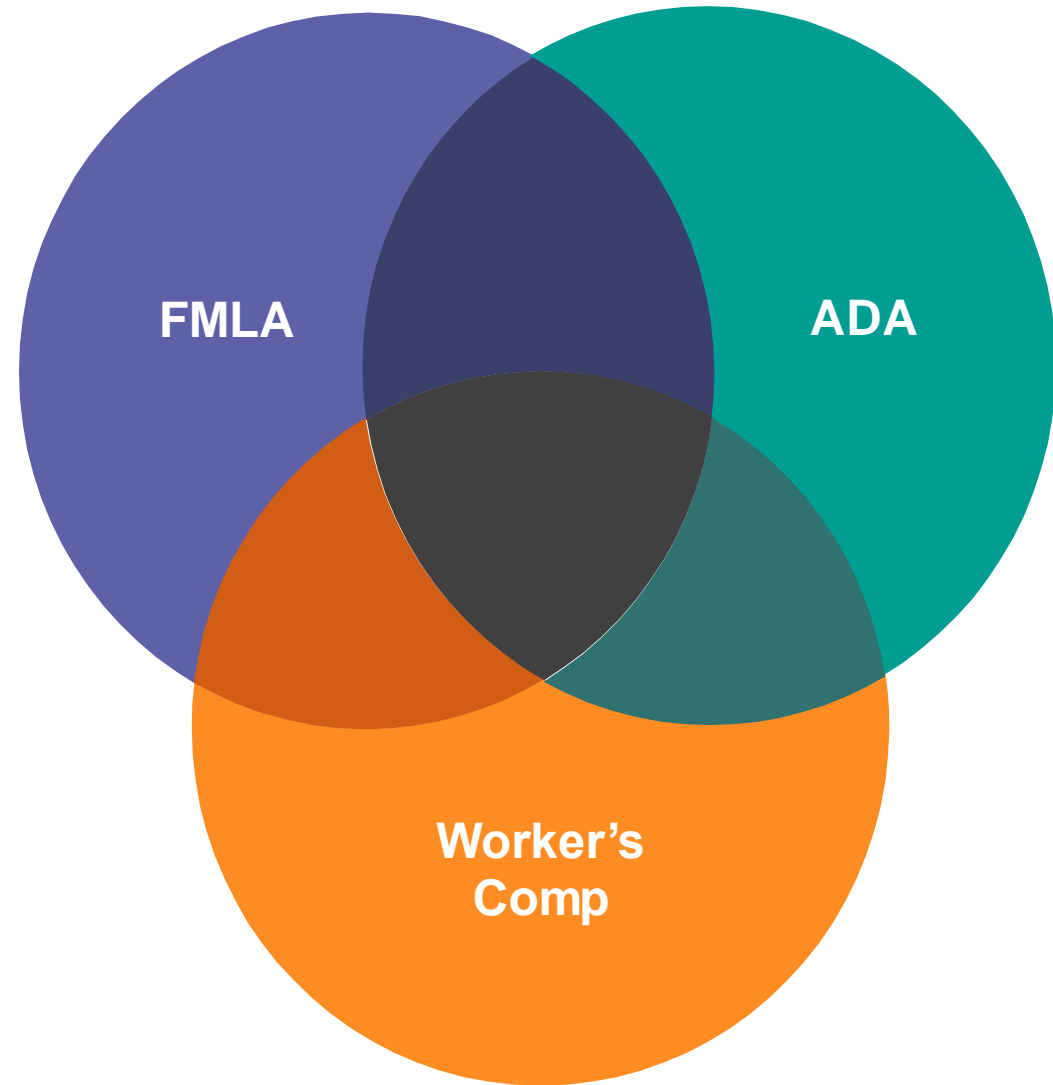
Employee Rights

- American with Disabilities Act (ADA)
- Protected “Disabilities” that May Be Affected by Heat
 - Obesity
 - Diabetes
 - Cardiovascular Disease
- Duty to Hire and Accommodate Qualified Employees with Disabilities

Family and Medical Leave Act (FMLA)

- Employee Entitlement for Unpaid Leave for Heat Related Illness

The ADA, FMLA, and Worker's Comp Overlap





Heat Illness Legal Liabilities

Workers' Compensation

- An employee who incurs an illness that arises out of and in the course of the employment relationship is protected
- An employee who has a pre-existing condition that is aggravated or accelerated by the workplace is also protected
- An employer cannot retaliate against an employee because he or she files a WC claim

Heat Illness OSHA Standards

- State plan heat illness standards:
 - CA (outdoor heat standard; proposed indoor heat standard)
 - CO (agriculture, effective 5/22)
 - MD (law required MD-OSHA to adopt by 10/22)
 - NV (proposed rule)
 - OR (effective 6/15/2022)
 - WA (outdoor heat standard, 5/1-9/30, 89 degrees+, proposed changes)



State-Specific Heat Illness Standards – California

- Started as an emergency standard; made permanent in 2006 under 8 CCR 3395
- **Applies to all outdoor places of employment**
– one that is not an indoor workplace
- **Cal/OSHA can (and does) cite employers for indoor heat hazards under its IIPP standard**
– rulemaking for an indoor heat standard underway



State-Specific Heat Illness Standards – California

- **Primary requirements:**
 - ✓ **Develop and implement a written heat illness prevention program.**
 - ✓ **Train all employees and supervisors about heat illness prevention**
 - ✓ **Emergency response procedures**
 - ✓ **Acclimatization**
 - ✓ **Provide enough fresh water so that each employee can drink at least 1 quart per hour.**
- - applies regardless of temperature
- ✓ **Provide access to shade.**
 - applies when temperature exceeds 80°F
 - if less than 80°F, still have to make shade available upon request.
 - need to encourage workers to take preventive cool down rest if they feel the need
 - risks for employees driving vehicles without AC.



State-Specific Heat Illness Standards – **California**

- **Enhanced requirements when temperatures equals or exceeds 95°F (aka high heat procedures)**
 - **only for certain industries**
 - **agriculture**
 - **construction**
 - **landscaping**
 - **oil and gas extraction**
 - **transportation of heavy materials unless workers are vehicles with AC and work does not require loading/unloading**



State-Specific Heat Illness Standards - Oregon

- Emergency Temporary Rule Issued July 8, 2021
 - In effect for 6 months (January 3, 2022)
 - In response to June 2021 Pacific Northwest heat wave
 - Heat index thresholds:
 - > 80°F
 - Access to shade (not A/C) and cool drinking water
 - Training
 - > 90°F
 - Communication and observation
 - Emergency Medical Plan
 - Acclimatization



State-Specific Heat Illness Standards - Oregon

- Permanent Rule Issued May 9, 2022
 - Effective **June 15, 2022**
 - Heat Illness Prevention Plan – temperature monitoring
 - Acclimatization Plan
 - Supervisor and Employee Training
 - Heat index thresholds:
 - > 80°F (+)
 - Access to shade (not A/C)
 - Cool drinking water (32oz / hr)
 - > 90°F (+)
 - Communication and observation (actively monitor temperature)
 - Work/Rest Schedule
 - **Exempt:**
 - Exposed < 15 min / hr
 - Heat generated from work process
 - still have basic requirements
 - Emergency operations
 - Operations with artificial cooling to reduce temperature below 80°F



State-Specific Heat Illness Standards - Oregon - Sample Work/Rest Schedule

<u>Adjusted temperature (°F)[†]</u>	<u>Light work (minutes work/rest)</u>	<u>Moderate work (minutes work/rest)</u>	<u>Heavy work (minutes work/rest)</u>
90	Normal	Normal	Normal
91	Normal	Normal	Normal
92	Normal	Normal	Normal
93	Normal	Normal	Normal
94	Normal	Normal	Normal
95	Normal	Normal	45/15
96	Normal	Normal	45/15
97	Normal	Normal	40/20
98	Normal	Normal	35/25
99	Normal	Normal	35/25
100	Normal	45/15	30/30
101	Normal	40/20	30/30
102	Normal	35/25	25/35
103	Normal	30/30	20/40
104	Normal	30/30	20/40
105	Normal	25/35	15/45
106	45/15	20/40	Caution [†]
107	40/20	15/45	Caution [†]
108	35/25	Caution [†]	Caution [†]
109	30/30	Caution [†]	Caution [†]
110	15/45	Caution [†]	Caution [†]
111	Caution [†]	Caution [†]	Caution [†]
112	Caution [†]	Caution [†]	Caution [†]

*With the assumption that workers are physically fit, well-rested, fully hydrated, under age 40, and have adequate water intake and that there is 30% RH [relative humidity] and natural ventilation with perceptible air movement.



State-Specific Heat Illness Standards - Washington

- Permanent Rule Issued July 5, 2008
 - Outdoor Heat Exposure Only
 - May 1 – September 30
 - Temperature thresholds:
 - > 52°F – chemical resistant suits
 - > 77°F – double-woven clothing
 - > 89°F – all other clothing
 - Requirements:
 - Training regarding heat illness
 - Include heat exposure in Accident Prevention Program
 - Encourage employees to consume H₂O or other hydration
 - Employees responsible for self-monitoring
 - Employees showing signs & symptoms must be relieved and monitored
 - Exempt:
 - Exposed < 15 min / hr



State-Specific Heat Illness Standards - Washington

- Enhanced Temporary Rule Effective July 13, 2021
 - Expired November 6, 2021
 - In response to June 2021 Pacific Northwest heat wave
 - Added prescriptive measures for “high heat” (> 100°F)
 - Water required to be “cool”
 - Have and maintain one or more areas with shade at all times while employees are present.
 - May use artificial body cooling methods in lieu of shade
 - Ensure employees take preventative cool-down rest periods
 - 10 min / 2 hr.



State-Specific Heat Illness Standards - Washington

- Permanent Rulemaking Initiated August 17, 2021
 - Stakeholder meetings ongoing
 - No draft language yet
- **L&I Will Adopt 2022 Temporary Rule (6/1/22?)**
 - Acclimatization
 - Lost when > 7 days away
 - Access to shade
 - Other measures appropriate
 - Additional > 89°F Requirements
 - Mandatory rest breaks – 10 min / 2 hr
 - Effective communication
 - Effective observation
 - Training
 - Acclimatization
 - Rest periods
 - Preventative measures

- 1) Heat acclimatization program for new employees returning to work from absences of three or more days
- 2) Formalized work/rest regimen based on environmental working conditions and metabolic heat
- 3) Guidelines for removal of employees through worksite monitoring when employees are exhibiting signs and symptoms of heat-related illness
- 4) Provide cool, climate-controlled areas where employees can recover when signs of heat-related illnesses are recognized

OSHA Heat Illness Prevention Program

OSHA Heat Illness Prevention Program

- 5) Ensure employees and supervisors understand the signs, symptoms and prevention of heat-related illnesses and disorders
- 6) Provide employees with information on certain medical conditions and medications that may increase the risk of developing heat-related illness.
 - Advise employees to consult with their doctors or pharmacist
- 7) Track weather conditions at the job site
 - dry bulb temperature, wet bulb temperature, globe thermometer temperature, relative humidity, and wind speed

OSHA Heat Illness Prevention Program

- **Evaluating Employee Work Tasks To Determine Metabolic Heat**
 - Feasibility of Assessing Specific Work Tasks (tools, weights, repetitions, etc.) to Determine Potential Employee Heat Generation
 - Individual Employee Pre-Existing Physical Health Conditions
 - Employer Restrictions On Inquiries Into Employee Pre-Existing Health Condition (GINA, ADA, Employee Privacy)
 - Employer Restrictions On Company Conducting Medical Examinations (ADA, Employee Privacy)



OSHA Heat Illness Prevention Program

Employer Challenges To Address

- Heat Acclimatization
 - Determining when Environmental Conditions Require Acclimatization
 - Identification of Particular Jobs for Acclimatization
 - Availability of Sufficient Employees To Perform Work
 - Impact of Time Off Work
 - Impact on Collective Bargaining Agreements
- Work/Rest Regimen
 - Determining when Environmental Conditions Require Regimen
 - Determining Time Frame for Work/Rest Period
 - Availability of Sufficient Employees To Perform Work

Heat Illness Prevention Program

Removal Of Employees

- Objective Criteria for Signs And Symptoms of Heat Related Illness For Removal
- Difficulty Determining Whether Individual Employee is Experiencing Heat Related Illness

thank you

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