Revisions to California’s Heat Illness Prevention Standard To Take Effect on May 1, 2015

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California has long been at the forefront of protecting employee safety and health. In 2005, California became the first state to pass a heat illness prevention standard (Cal. Code of Regs. tit. 8 § 3395). The California Division of Occupational Safety & Health (Cal/OSHA), within the Department of Industrial Relations (DIR), states that its enforcement experience and review of heat illnesses and fatalities has demonstrated that serious injuries or deaths may have been avoided if employees were better hydrated, took advantage of more cool-down breaks, been acclimatized, or had received more timely emergency aid.

Accordingly, on April 7, 2015, DIR, in conjunction with Cal/OSHA, announced that major revisions to California's heat illness prevention standard (Cal. Code of Regs. tit. 8 § 3395) have been approved by the Office of Administrative Law. The revised standard will take effect on May 1, 2015. The revised standard makes a number of changes to the existing heat illness standard. The revised standard institutes additional requirements for the provision of and access to water and shade and creates additional obligations during periods that high-heat procedures are required. The revised standard also includes new language regarding emergency response procedures, acclimatization, and training.

Employers should immediately review and update their heat illness prevention plans. As part of that review, employers should make necessary process changes and train their employees to ensure compliance with the revised regulations. Below is a brief discussion of the revised standard.

California’s Heat Illness Standard Applies to “Outdoor Places of Employment”

California’s heat illness prevention standard applies to “outdoor places of employment.” Cal/OSHA has taken the position that an outdoor place of employment is best thought of as not an indoor workplace. Thus, a workplace with a roof and enclosed sides is generally considered to be an indoor workplace. However, Cal/OSHA has aggressively taken the position that some structures that are hotter than the outside environment are considered to be “outdoor” places of employment subject to the heat illness standard. Such buildings likely include structures with a lack of air circulation or insulation, such as sheds, huts, and packing sheds. This interpretation—while only stated in agency guidance—greatly expands the scope of the standard’s applicability.

Potable Water

The heat illness standard previously required that employees be provided with access to potable drinking water. If drinking water is not continuously available, an employer must provide at least one
quart of water per employee per hour of the shift. The water must be provided at the beginning of the shift, unless the employer maintains effective procedures for replenishing water such that employees can drink at least one quart of water per hour.

The revised standard now states that water must be “fresh, pure, suitably cool, and provided to employees free of charge.” Water is considered to be “suitably cool” if it is cooler than the ambient temperature, but not so cool as to cause discomfort. Water must also be located as close as practicable to where employees are working.

Access to Shade

The previous version of the standard required employers to provide shade when the temperature exceeded 85 degrees Fahrenheit. The employer was required to provide shade for at least 25 percent of its employees. Shade must be provided as close as practicable to the areas where the employees are working.

Following the revision, employers are now required to provide shade when the temperature exceeds 80 degrees Fahrenheit. Additionally, the shade provided must be able to accommodate the number of employees on recovery or rest periods. During meal breaks, the employer must provide shade sufficient to accommodate the number of employees that remain onsite for the meal period. The area where shade is located cannot deter or discourage employee access or use. For example, if shade is placed on muddy ground or around branches, bushes, or thorns, it could discourage or deter employee access or use.

Preventative Cool-Down Periods

The standard also allows and encourages employees to take a minimum of five minutes as a cool-down rest period when the employees feel they need to do so to protect themselves from overheating. Access to shade must be provided for such purposes.

The revised standard now further requires employers to monitor employees taking cool-down rest periods. Employers must ask an employee if he or she is experiencing symptoms of heat illness. Employers are to encourage the employee to remain in the shade. Employers may not order an employee back to work until any signs or symptoms of heat illness have abated.

Additional High-Heat Procedures for Certain Industries When Temperature Reaches 95 Degrees

The standard also institutes high-heat procedures for the following industries: (a) agriculture; (b) construction; (c) landscaping; (d) oil and gas extraction; and (e) transportation or delivery of agricultural products, construction materials or other heavy materials (except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading).

Employers in these industries are required to implement high-heat procedures when the temperature is at or above 95 degrees Fahrenheit. Employers must ensure that there is effective communication between employees and supervisors. Effective communication can be by voice, observation, or electronic means. A cell phone or text messaging device may be used if reception in the work area is reliable.

Employers must now affirmatively observe and monitor employees for alertness and signs of heat illness. The revised standard requires employers to institute an effective observation and monitoring
system. Such a system may use one or more of the following: (1) one supervisor or designee observing 20 or fewer employees; (2) a mandatory buddy system; (3) regular communication with employees, such as by radio or cell phones; or (4) other effective means of observation. Employers must also designate one or more employees that are authorized to call for emergency services. If there is no such designee on shift, the employer must instruct other employees to call for emergency services where required.

The revised standard also requires the employer to conduct pre-shift meetings during high heat conditions. The pre-shift meetings must: (1) review the high-heat procedures; (2) encourage employees to drink plenty of water; and (3) remind employees of their right to take a cool-down rest when necessary.

Agricultural employers must also ensure that employees take a minimum ten minute net preventative cool-down rest period every two hours. Such cool-down rest periods may be conducted concurrently with a meal or other rest period required pursuant to the California wage orders or the California Labor Code.

Emergency Response Procedures
The revised standard requires employers to implement effective emergency response procedures. Such procedures must include: (1) an effective communication system by voice, observation, or electronic means; (2) an effective response to signs and symptoms of heat illness, including first aid measures; (3) the ability to contact emergency medical services and, if necessary, transport employees to a location where they can be reached by an emergency medical provider; and (4) the ability to provide emergency responders with clear and precise directions to the work site.

Acclimatization
Employers are required to closely observe all employees during a heat wave. The revised standard defines a “heat wave” as any day where the temperature is at least 80 degrees Fahrenheit and at least ten degrees Fahrenheit higher than the average daily high temperature in the preceding five days. Employers are also required to closely observe and monitor employees who have been newly assigned to a high heat area for the first 14 days of employment.

Training
The prior standard required employers to provide effective training on heat illness. Topics included but were not limited to: (1) environmental and personal risk factors for heat illness; (2) the importance of drinking water; (3) different types of heat illness and common signs and symptoms of each; (4) the importance of reporting signs and symptoms; and (5) procedures for contacting emergency medical services.

The revised standard provides further detail regarding training requirements. Specifically, employers are obligated to also train employees in: (1) the employer’s responsibility to provide water, shade, cool-down rests, and access to first aid; (2) the employees’ right to exercise their rights under the standard without retaliation; (3) the concept, importance, and methods of acclimatization; and (4) appropriate first aid and/or emergency responses.

Heat Illness Prevention Plan
Under the prior standard, employers were required to prepare a heat illness prevention plan. The revised standard augments the required content of the heat illness prevention plan. Employers must
now establish, implement, and maintain an effective heat illness prevention plan. The plan must be available at the worksite and must be provided in English, as well as in the language understood by the majority of the employees. The heat illness prevention plan may be included as part of an employer’s injury and illness prevention plan.

At minimum, the heat illness prevention plan must contain: (1) procedures for provision of water and access to shade; (2) high heat procedures; (3) emergency response procedures; and (4) acclimatization methods and procedures.

**Summary & Suggested Steps**

The revised heat illness standard aims to further reduce the health-related risks associated with outdoor employment. We expect Cal/OSHA to be vigilant in enforcing the revised standard as the calendar turns to the hotter summer months.

The revised standard institutes the following new or amended requirements:

- **Water** must be “fresh, pure, suitably cool” and located as close as practicable to where employees are working.

- **Shade** must be provided when temperatures reach 80 degrees (down from 85 degrees) and sufficient to accommodate all employees on recovery or rest periods, and those onsite taking meal periods.

- **Employers** must observe and monitor employees taking a “preventative cool-down rest” for symptoms of heat illness. Employers must encourage employees to remain in the shade and may not order employees back to work until symptoms are gone. Employees with symptoms must be provided appropriate first aid or emergency response.

- **Employers in certain industries** must institute high-heat procedures if the temperature reaches or exceeds 95 degrees Fahrenheit. Such procedures must ensure effective observation and monitoring. Employers must conduct pre-shift meetings that include a review of the high-heat procedures, encourage employees to drink water, and remind employees of their right to take cool-down rest periods.

- **Emergency response procedures** must include effective communication, appropriate response to signs and symptoms of heat illness, and procedures for contacting emergency responders to help stricken workers.

- **Acclimatization procedures** include the observation of all employees during a heat wave and close observation of new employees during their first two weeks on the job.

- In addition to previously required content, training programs must now include content regarding: (1) the employer’s responsibility to provide water, shade, cool-down rests, and access to first aid; (2) an employee’s right to exercise his or her rights under the standard without retaliation; (3) acclimatization; and (4) appropriate first aid and/or emergency response.

- **Heat illness prevention plans** must include additional specific content.
Given the revised standard and the upcoming late spring and summer months, it is crucial that employers immediately examine and revise their heat illness prevention plans, injury and illness prevention plans, training materials, policies, and workplace procedures to ensure that they reflect the revised heat illness standard.

As part of that review, employers should ensure that policies and procedures exist for providing effective monitoring of employees on cool-down periods or during high heat conditions. It is also crucial that effective communication exists to ensure an effective response with first aid measures or contacting emergency responders. Employers must be vigilant in ensuring that sufficient water and shade is provided at the worksite and that supervisors are encouraging employees to drink water and take cool-down rest periods. Employers should ensure that employees and supervisors are appropriately trained on the revised standard, and that documentation of that training is maintained.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings San Francisco lawyers:

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