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Fed OSHA Heat Illness Rulemaking – Next Steps for Employers Heat Illness Prevention Rulemaking Coalition

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We are providing an update on [federal OSHA's Heat Illness Prevention rulemaking](#) and hopefully starting a meaningful dialogue with the employer community about potential next steps for this controversial rulemaking. Conn Maciel Carey's national OSHA Practice organized the **Employers Heat Illness Prevention Rulemaking Coalition** in 2021, and has worked closely with industry leaders for the last five years to advocate to OSHA for a reasonable, flexible, performance-oriented Heat Standard through OSHA's Advanced Notice of Proposed Rulemaking, Small Business review process, and the notice-and-comment period for federal OSHA's Notice of Proposed Rulemaking ("NPRM") stage last year, with a [comprehensive set of written comments](#). We are engaging with Industry now to float our thoughts on potential paths forward, to see if employers and trade groups may be interested in joining the Employers Heat Illness Prevention Rulemaking Coalition now, with a new, unique opportunity to influence OSHA's heat rulemaking.

Status of OSHA's Heat Illness Prevention Rulemaking

On December 2, 2024, former President Biden's OSHA [announced](#) a public heat illness rulemaking hearing that will begin on June 16, 2025. Last week, President Trump's OSHA issued a [press release](#) stating that the Heat Injury and Illness public rulemaking hearing will proceed as scheduled. Going through with the hearing will bring the proposed rule one step closer to final – essentially to the one-yard line.

Interestingly, the decision last year to schedule the hearing in June reflected, to us, an effort by the Biden Administration to maintain momentum for this rulemaking. This maneuver placed the new Administration in a position where it had to take an affirmative action to stop the hearing, which could have drawn public criticism. At the very least, it limited the ability of Pres. Trump's OSHA to quietly sideline the heat illness rulemaking – if that was going to be its intention. Hearing or no, we find it nearly impossible that OSHA will promulgate the rule as proposed, at least not in the next four years. It is still quite likely that OSHA will still move the heat rulemaking to "Long Term Action" (i.e., the backburner) after the hearing.

In the meantime, states with their own State OSHA agencies are producing heat illness standards left and right.

For example, in addition to existing standards in California (outdoor), Oregon, Washington, and Minnesota, several more states, including [California \(indoor heat\)](#), [Maryland](#), and [Nevada](#) have adopted heat standards, and a rule in [New Mexico](#) has also been proposed. Without a federal OSHA heat standard to provide a framework or baseline, these State OSH Plan standards are wildly different and in several incompatible. What's worse, some states that are covered by federal OSHA jurisdiction are also developing heat illness requirements through their state legislation, which laws would be preempted if there was a federal OSHA standard on the books. Indeed, the state of [Illinois](#), a federal OSHA state for private employers, is doing just that with a proposed extreme heat and cold workplace safety law.

Potential Path Forward

That brings us to today. While we could sit back and see how this all unfolds, without any real risk that the rule as currently proposed by fed OSHA will get promulgated in the near term, we could instead **take a more proactive approach and advocate now for promulgation of a rule that looks more like the one for which we advocated in [our public comments in January of this year](#)**. That is, one that is considerably more performance-based, simpler, more flexible, etc., while still protective of workers. To that end, we have been analyzing the pros and cons of pushing OSHA under a Trump Administration to take up the rulemaking and produce a heat standard we could all live with vs. letting the current, flawed proposed rule to sit idle for the next four years.

Pros:

- The absence of a federal OSHA heat illness standard is resulting already in a terrible **patchwork of state rules and laws** that layer burdensome and often conflicting requirements on to national employers. With no federal OSHA rule in place at all, there is **nothing there to preempt** the states from occupying that space, and they are doing that. As discussed above, the State OSH Plans in blue and purple states are producing heat illness standards at a dizzying pace, and state legislatures, even in federal OSHA states, are getting into the mix. We are old enough to remember what a headache it was during the pandemic having to research countless state, county, and local rules and laws for unique and changing workplace safety and health requirements. So, taking a proactive approach and advocating for promulgation of a more workable rule now should help cut down on this patchwork problem.
- If OSHA simply puts this rulemaking on the backburner over the next four years (or more), we are just **setting ourselves up** for the eventual promulgation of the deeply flawed rule that is already near the finish line. The next time there is a Democratic president in the White House, OSHA will inherit the rule as currently proposed – unduly prescriptive, “one size fits all”, infeasible, etc. – on the one-yard line, ready to finalize; i.e., we do not think promulgation of a heat illness prevention standard is a question of “if,” but rather “when.”. If OSHA, with a pro-business philosophy, acts now to promulgate a more performance-based, flexible rule, a future Democratic Administration would have a tough choice to make. They would be required to essentially start over and go through a new **full rulemaking process** to amend the rule, or leave it as-is and focus the agency’s limited resources on a hazard for which there is no rule already on the books.

Cons:

- If we act now and get OSHA to promulgate a final rule like the one for which we advocated, that means that there will be a specific Heat Standard on the books. In the absence of a federal standard, OSHA must continue to rely on its **General Duty Clause** (“GDC”) for enforcing heat illness hazards, and typically, it is

tougher for OSHA to enforce under the GDC than it is under a specific standard. While OSHA’s Heat National Emphasis Program (“NEP”) – which was set to expire this month, but was quietly extended by Biden’s OSHA just a few days before Trump’s inauguration until April 8, 2026 – may provide an additional avenue for OSHA to get into workplaces to evaluate heat illness prevention efforts, it does not make issuance of GDC citations any easier. Indeed, in searching OSHA’s GDC database, it appears that there have only been 16 GDC citations issued for high heat hazards this year (many of which are under contest). With a specific standard, it will be easier for OSHA to issue citations, so the number of citations could rise. Nonetheless, if our compliance obligations are more manageable (as we would expect them to be under the type of performance-based, flexible rule that we would push), then it will be tougher for OSHA to affirm citations under this scheme than under the one currently proposed. The runway for OSHA to continue to rely on its GDC for enforcing heat illness hazards is not infinite. At some point – in four years, eight years, or whenever there is a Democratic Administration next – there will be a specific standard that we really dislike.

- Inevitably, there are **costs** associated with compliance whenever a rule is promulgated. At a minimum, existing programs must be reviewed to ensure that they capture all of the necessary elements of a new rule. So, the question here is, do we take those costs now, or later? That is a question of timing. With respect to the cost burden, we think that is less of a question since it is very likely that any costs associated with compliance would be less burdensome under the type of rule for which we advocated than under the rule as currently proposed.

Next Steps

On **April 24, 2025 at 1:00 PM ET**, we will hold a virtual [Open Meeting of CMC’s Employers Heat Illness Prevention Coalition](#) to analyze and discuss our potential paths forward and next steps. This meeting is open to everyone, not just those who have already joined our rulemaking coalition, because we are faced with a new opportunity to affect the future regulation of heat illness. We plan to do some polling during the meeting, including to ask:

- **Should we participate in the public rulemaking hearing?**

We certainly think that we should, at least in part to continue to advance the comments we have been promoting since the ANPRM phase of this rulemaking. We typically request multiple speaking spots, and want to confirm that you all would like us to proceed, as usual. 

- Assuming that we request to participate in the rulemaking hearing, would any of you want to **volunteer to participate** with us?

OSHA generally takes testimony more seriously when it is presented directly by an employer or industry representative, rather than their legal counsel. Of course, if you do participate, we will be sure to prepare draft talking points in advance, as well as work with you to prepare for anticipated questions from OSHA and/or members of the public (though, only registrants are allowed to ask questions, as the hearing will be virtual). If you wanted to just present the prepared testimony, we could field questions. Please note that while participation in our coalition provides anonymity, the hearing process is public. Presenters are identified by name and organizational affiliation. Although the public hearing about the rulemaking will take place virtually in June, we must submit a notice of intention to appear (“NOITA”) by **no later than May 2, 2025**. While the hearing is open to the public, only individuals who file a NOITA by that date may testify

at the hearing.

- At the hearing or otherwise (e.g., through an open letter to, or in discussions with our senior leadership contacts at, OSHA/SOL), do we want to **proactively advocate for OSHA to promulgate an amended version of a heat standard** that more closely aligns with the one we described in our public comments, rather than the one currently proposed?
- If we want to proactively advocate for promulgation of the type of performance-based, flexible rule for which we have been advocating, **do we think the new [Nevada](#) heat illness prevention standard provides a good model?**

We included a point about this in our public comments, so we assume that you all still agree, but we would love to know whether you have different thoughts having now been operating under that rule for a little while now. In particular, we think the rule does a good job at balancing the needs of different workplaces, accounting for different geographies, providing for the assessment of different work tasks, etc. As even fed OSHA recognizes, heat illness is one of the most difficult hazards to address in a “one size fits all” standard. Although there may have been an attempt to account for this, the reality is that the proposed rule came up short in this regard. The Nevada rule seems to be consistent with our goal: promulgation of a heat illness prevention standard that it is effective in its purpose – protecting employees from heat illness hazards – and reasonable in the burdens it places on employers.

Here is a [link to register for our strategy meeting on April 24, 2025 at 1:00 PM ET](#).

In the meantime, of course, we welcome any/all thoughts you might have on any of this or questions you may have about participating in our **Employers Heat Illness Prevention Rulemaking Coalition**. The more organizations in our group, the more effective we will be in our advocacy efforts, especially now. Please let us know if you are interested, and/or have any questions.