


AUGUST 30, 2024 | OSHA RULEMAKINGS & STANDARDS

# Fed OSHA's Heat Illness Prevention Proposed Rule Officially Published in the Federal Register

By Conn Maciel Carey LLP's [OSHA • Workplace Safety Group](#)

As you may recall, way back on July 2<sup>nd</sup>, OSHA “revealed” an [unofficial pre-publication version of a Notice of Proposed Rulemaking \(NPRM\)](#) for a federal **Indoor and Outdoor Heat Illness Prevention Rule**. After a peculiar delay (apparently the result of having to format the numerous tables, charts, and graphics from the 1,000+ page NPRM package), the [official NPRM was published in the Federal Register today, Friday, August 30<sup>th</sup>](#). 

We have reviewed the official NPRM, and, for better or worse, we can verify that OSHA did not make any substantive changes to the proposed rule from the version that had been revealed back in July.

In the official NPRM, OSHA maintains its previously suggested **120-day public comment period**. But 120-days from August 30<sup>th</sup> is December 30<sup>th</sup>. Since that is the week between Christmas and New Years, stakeholders will almost certainly request an extension of the comment period — a request that only the Grinch could refuse.

## What is in OSHA's NPRM for the Heat Illness Rule?

Below we have outlined our analysis of OSHA's proposed rule.

1. OSHA will require employers to develop and implement **comprehensive, site-specific written Heat Injury and Illness Prevention Plans (“HIIPP”)**.
  - The HIIPP must:
    1. Include a list all types of work activities covered by the HIIPP
    2. Include all policies and procedures necessary to comply with OSHA's heat illness rule
    3. Establish the employer's chosen heat metric
    4. Identify one or more specific Heat Safety Coordinator(s).
  - **The HIIPP** must be reviewed and evaluated at least annually, and whenever a heat-related illness occurs that requires medical treatment beyond first aid or worse.
  - Employers must involve non-supervisory employees (and their representatives) in the development, implementation, review, and updates to the HIIPP.
  - The HIIPP must be made available in a language each employee, supervisor, and Heat Safety

Coordinator can understand.

2. OSHA's proposal abandons the flexible approach it was considering for **Acclimatization Protocols** for new and "returning workers," and replace it with onerous and highly restrictive provisions:
  - OSHA has included proposals about the "Rule of 20%," which requires new employees to be gradually exposed to heat during their first week on the job (Day 1 = 20%; Day 2 = 40%; Day 3 = 60%; Day 4 = 80%).
  - For returning workers, returning to work after as few as 14 days away, OSHA is proposing a modified gradual exposure schedule, by which returning employees, during their first week back, are permitted to be exposed at no more than 50% on Day 1, 60% on Day 2, and 80% on Day 3.
3. For **outdoor work areas**, employers will be required to **Monitor Heat Conditions** by:
  - Tracking local heat index forecasts provided by the National Weather Service or other reputable sources; or
  - Measuring the heat index as close as possible to the work areas
  - Measuring the ambient temperature and humidity separately to calculate heat index; or
  - Obtaining a wet bulb globe temperature.
4. At **indoor work sites**, employers will be required to conduct special **Heat-Related Hazard Assessments** to:
  - **Identify work areas where there is a reasonable expectation employees may be exposed to heat** at or above an Initial Heat Trigger set by the rule (see below).
  - Develop and implement **monitoring plans** covering each potential high-heat work area, requiring the same type of monitoring or measuring as in outdoor work areas (except forecasts).
  - Whenever there is a **change in production, processes, equipment, controls, or a substantial increase in outdoor temperatures** that could increase indoor heat exposure, **employers must evaluate any affected work areas** to identify where there is a reasonable expectation employees may be exposed to heat at or above the Initial Heat Trigger, and update or develop a monitoring plan, accordingly.
  - Employers must **seek input from non-supervisors** when evaluating the work site, and in developing and updating monitoring plans.
5. Requirements at or above the **Initial Heat Trigger ("heat index of 80°F or a wet bulb globe temperature equal to the NIOSH Recommended Alert Limit.")** include prescriptive requirements:
  - Provide access to **potable drinking water**, such as that water must be: (i) placed in locations readily accessible to the employee; (ii) suitably cool; and (iii) of sufficient quantity to provide access to 1 quart of drinking water per employee per hour.
  - Provide sufficient **readily accessible break areas** to accommodate the number of employees at the workplace:
    1. For outdoor work sites or work in enclosed spaces (like a trailer), there must be at least one break area that has **air-conditioning, artificial shade (e.g., tent, pavilion), or natural shade**.
    2. For indoor work sites, employers will be required to provide at least one break area that is air-conditioned, or that has increased air movement and de-humidification.

- For indoor work areas, OSHA will be requiring **Engineering Controls** including:
    1. increased air movement (e.g., fans or comparable natural ventilation), and de-humidification;
    2. air-conditioned work areas; or
    3. in cases of radiant heat sources, other measures that effectively reduce employee exposure to the radiant (e.g., shielding/barriers, isolating heat sources).
  - Allow for and encourage employees to take **Paid Rest Breaks**.
  - Maintain a means of effective, **two-way communication** with employees and regularly communicate with employees.
  - If employers provide employees with cooling PPE, employers must ensure the cooling properties of the PPE are maintained at all times during use.
6. Requirements at or above the **High Heat Trigger** (“heat index of 90°F or a wet bulb globe temperature equal to the NIOSH Recommended Exposure Limit.”) are in addition to those for the Initial Heat Trigger (see above) and include:
- **Mandatory 15-minute minimum paid rest breaks at least every two hours** (the time it takes to walk to/from the break area and the time to don/doff PPE are not included);
  - Observation for signs and symptoms through either a **mandatory buddy system, or regular observation by a supervisor** or a Heat Safety Coordinator (with a ratio of no more than 20 employees per supervisor);
  - **Hazard alerts**; and
  - **Signage** for excessively high heat indoor work areas.
7. Requirements for heat illness-related **emergency response and planning**.
8. Comprehensive and recurring heat illness related **training, including initial, annual, and supplement training, all of which must be provided in a language and at a literacy level each employee understands, and with the opportunity for questions and answers about the training materials**; and
9. New heat illness-related **recordkeeping** requirements.

**Final Phase of the Employers Heat Illness Prevention Rulemaking Coalition:**

Conn Maciel Carey’s national OSHA Practice is organizing a coalition of safety-conscious employers and trade groups to work with OSHA to improve OSHA’s proposed heat illness rule and help the agency finalize the most reasonable and effective heat illness standard.

Now that we have an official NPRM in the Federal Register, the “fun” begins, and **it is time for your organization to secure a seat at the table with CMC’s Employers Heat Illness Prevention Rulemaking Coalition**. For the “Final Phase” of OSHA’s heat illness rulemaking, we will be coordinating with coalition participants to:

1. Continue to analyze the Notice of Proposed Rulemaking;
2. Present to the coalition members about the proposed rule and areas of concern we have identified;
3. Solicit your input about the direct and indirect burdens and costs associated with OSHA’s proposed rule;
4. Prepare our most comprehensive set of written comments about the rule;
5. Testify at a rulemaking hearing (if there is one);
6. Participate in multiple EO 12866 stakeholder meetings with the White House’s Office of Management and

Budget;

7. Engage in any other formal or backchannel advocacy opportunities with the decisionmakers at OSHA or the Administration that we see; and
8. Educate coalition members about the rulemaking and the final regulation through regular email updates and/or calls and virtual meetings.

From this point forward, our updates about OSHA's Heat Illness rulemaking will go only to coalition participants, so contact Eric Conn ([econn@connmaciel.com](mailto:econn@connmaciel.com)) as soon as possible if your organization is interested, is officially in, or if you have any questions about our plans and advocacy strategies for the rulemaking.