

APRIL 27, 2026 | OSHA RULEMAKINGS & STANDARDS

State OSH Plans and State Legislatures Press Ahead with Unique Heat Illness Prevention Rules and Laws

BY ERIC J. CONN, BEETA B. LASHKARI & ANDREA O. CHAVEZ

Building on our recent analysis of the latest National Emphasis Program (NEP), our attention now shifts from immediate enforcement trends to the evolving rulemaking and legislative landscape. At the federal level, while the rulemaking has been quiet (at least on the public-facing side), we wanted to make sure you were all aware that on Friday, April 10, 2026, [OSHA renewed and updated its Heat National Emphasis Program](#) (NEP). As you continue to keep your workforce safe from the heat this spring and summer, be aware that OSHA's enforcement focus on the heat illness hazard remains high even after a transition from the Biden to the Trump Administration.

We want to inform you of three important updates coming from Colorado, New Mexico, and Virginia. Our summaries are below.

Colorado House Committee Posts Scaled-Back Extreme Temperature Worker Protection Act

On March 19, 2026, the Colorado House Health and Human Services Committee posted a pre-amended version of HB26-1272, the Extreme Temperatures Worker Protections Act. The pre-amended bill includes significant amendments that substantially narrow the Act's scope, deleting immediate employer mandates and shifting its focus toward data collection and future rulemaking. If this version is enacted, HB26-1272 could take effect as early as August 12, 2026.

The bill has been referred to the House Appropriations Committee for further consideration.

In an April 2, 2026, press release from the Colorado House Democrats, bill sponsor Meg Froelich stated:

"Given Colorado's budget constraints, we're focused on collecting this important data to help us understand how extreme temperatures impact worker health and safety. Through data collection and readily available temperature-related injury and illness prevention plans, we're moving forward with a bill that puts workers first today and creates a roadmap for the future."

The bill as introduced imposed more direct compliance obligations on employers, including requirements to:

- Submit a Temperature-Related Injury and Illness Prevention Plan (TRIIPP) to the Division of Labor Standards

and Statistics (Division) for review by September 1, 2028;

- Ensure comprehensive worker training on temperature-related risks; and
- Face potential compensatory and punitive damages for intentional violations.

Those provisions have been removed in the pre-amended version of the bill.

Key Provisions of the Pre-amended Bill:

Data Collection

Before January 15, 2027, the Division will be required to establish on the Department of Labor and Employment (Department) website a public online platform for reporting temperature-related workplace injuries, illnesses, and emergencies. The Department will also collect data from the Colorado Department of Public Health and Environment, workers' compensation, and the Center for Improving Value in Health Care.

Model Temperature-Related Injury and Illness Prevention Plan

By July 1, 2028, the Division must develop a model Temperature-Related Injury and Illness Prevention Plan (TRIIPP). The model plan may address:

- Covered work activities;
- Temperature metrics and thresholds triggering protective measures;
- Monitoring protocols;
- Warm-up and cool-down breaks;
- Access to water and rest areas; and
- Emergency response procedures.

The final model plan must be published online by July 15, 2028, with annual updates thereafter. If this version of the bill is passed, rulemaking is scheduled to begin by January 15, 2028 to implement this requirement.

New Mexico Turns Up the Heat on Employer Heat Illness Prevention Obligations

The New Mexico Environment Department's Occupational Health and Safety Bureau (OHSB) released a revised draft of its heat illness and injury prevention rule on March 16, 2026, with several notable changes from the earlier version. A hearing will be held from May 4–8, 2026 to review the revisions, which generally strengthen the protections afforded by the rule. The rule could be formally adopted later this year.

Presumption of Violation

Perhaps the most significant addition is a new presumption of violation provision. If a worker is diagnosed by a medical professional with a heat illness or injury that occurred during their work shift, that diagnosis constitutes a violation of the rule. A heat illness or injury will require employers to adopt all specified schedules in the rule (e.g., acclimatization schedule, rest break schedule, etc.) for three years following the incident.

The presumption of a violation is rebuttable if the employer presents clear and convincing evidence to the contrary. However, notably, even a successful rebuttal does not relieve the employer of the duty to correct the underlying condition.

The rule also provides that credible evidence obtained by the agency or supplied by a third party may be used to establish a violation.

Affirmative Reporting Obligation

The revised rule adds a new reporting requirement: employers must report all heat illnesses or related injuries, including those requiring only first aid, to the agency within 24 hours of learning of the incident.

Broader Exemption for Incidental Heat Exposure

Not all changes tighten employer obligations. The revised rule expands the exemption for incidental heat exposure. The earlier draft exempted workers from the rule's requirements when heat exposures lasted fifteen minutes or less per hour and the heat index fell between 80 and 90 degrees Fahrenheit. The new version removes the 90-degree upper limit, exempting incidental exposures of fifteen minutes or less at any heat index above 80 degrees Fahrenheit.

New Exemption for Experienced Workers

In a similar vein, the revised draft adds an exemption from acclimatization protocols for new employees who previously worked in environments with a heat index of 80 degrees Fahrenheit or higher at moderate or greater work intensity.

Higher Threshold for "High Heat Conditions"

The definition of "High Heat Conditions" has been raised from 95 degrees Fahrenheit to 100 degrees Fahrenheit.

Annual Heat Exposure Assessments Required — With a Narrower Scope

The revised rule introduces an explicit requirement that heat exposure assessments be conducted annually for each worksite and updated whenever workplace conditions change in ways that affect heat exposure. Employers may no longer rely on the National Weather Service to determine outdoor heat index values; instead, heat index must be calculated by directly measuring temperature and relative humidity at the worksite. Additionally, employers no longer need to assess personal risk factors and acclimatization status.

Water Access Requirements Clarified

Rather than encouraging workers to drink a specific amount, the new version focuses on what employers must affirmatively provide: at least one quart of drinking water per hour, located as close as practical to where employees are working, with sufficient pauses permitted for employees to actually drink.

Paid Rest Breaks Explicitly Required Beginning at 80 Degrees

The revised rule makes clear that paid rest breaks must be provided whenever the heat index exceeds 80 degrees Fahrenheit, resolving an ambiguity in the earlier draft. It also adds a specific minimum rest schedule for conditions below the high heat threshold: at least 15 minutes of rest for every two hours of work when the heat index falls between 80 and 100 degrees Fahrenheit. Under high heat conditions, employers must comply with a more protective schedule, follow NIOSH recommendations, or implement an equally protective employer-designed schedule.

Ventilation Standard for Indoor Cooling Areas Revised

For indoor work environments equipped with mechanical ventilation systems that utilize outside air, the temperature must be maintained below 80 degrees Fahrenheit. The earlier draft required a minimum airflow rate of 15 cubic feet per minute per person. The outcome-based approach in the revised rule may give employers more flexibility in how they achieve compliance while placing the obligation squarely on achieving a measurable result.

Recordkeeping Obligations Narrowed

The recordkeeping requirements have also been scaled back. The revised rule removes two obligations from the earlier draft: employers no longer need to maintain records of heat acclimatization schedules and procedures for new and returning employees, or records of all heat illness and related injuries.

Updated Work Intensity and Work/Rest Schedule Tables

The revised rule also includes an updated employee Work Rest Schedule and new Work Intensity and Work Intensity in Relation to Occupational Activities tables.

Virginia Charges Ahead to Implement a Heat Illness Prevention Standard

On April 13, 2026, Governor Spanberger signed companion bills – SB 288 and HB 1092 – directing the Virginia Safety and Health Codes Board to develop and adopt heat illness regulations by no later than May 1, 2028. Unless another East Coast state beats it to the finish line, Virginia would be joining its neighbor, Maryland, as the second state on the East Coast to implement a heat illness standard.

Notably, this is not the first time Virginia has attempted to adopt a heat illness rule, as the legislature attempted to pass a similar bill in 2021. At the tail end of the year, in December 2021, the Virginia Safety and Health Codes Board narrowly voted 6-5 to reject a proposed Virginia Occupational Safety and Health (VOSH) standard aimed at protecting workers from extreme heat. This decision effectively ended the rulemaking process at the state level at that time, despite earlier unanimous support to initiate it.

The regulations will apply to employees working indoors and outdoors, and, similar to other existing heat illness rules, must include requirements for employers to: provide water, access to shade or climate-controlled environments when practicable, rest periods, acclimatization to working in heat, and effective training regarding heat illness prevention; implement heat and high-heat procedures when the temperature equals or exceeds heat thresholds set by the Safety and Health Codes Board; and establish effective emergency response procedures.

Notably, the bills specify that there will be exemptions for: (a) heat exposure during the provision of emergency services that involve emergency law enforcement, emergency medical services, firefighting services, rescue and evacuation operations, emergency highway construction or maintenance, or emergency restoration of essential utilities, including electric and telecommunication utilities; and (b) heat exposure lasting no longer than 15 consecutive minutes.

In developing the regulations, the Virginia Safety and Health Codes Board is directed to consider the 2021 Draft Heat Illness Prevention Standard of the Virginia Department of Labor and Industry and standards created by federal OSHA, the National Institute for Occupational Safety and Health, the American Conference of

Governmental Industrial Hygienists, the American National Standards Institute, the Maryland Occupational Safety and Health Division, the Oregon Occupational Safety and Health Division, and the California Division of Occupational Safety and Health.

Interestingly, Nevada OSHA's heat illness prevention rule is not included in the mix. Nevada OSHA's heat illness prevention rule is the type of performance-based, flexible rule for which we have been advocating on behalf of our Employers Heat Illness Prevention Rulemaking Coalition on the federal level since OSHA started its rulemaking in 2021.

The Virginia Safety and Health Codes Board is also directed to convene an advisory panel to assist in developing the regulations, where the advisory panel will include (i) employee advocates and stakeholders as at least half of its membership and (ii) stakeholders from the agriculture and business industries and public institutions of higher education.

Conclusion

As we have discussed, without a federal heat illness prevention standard, this type of state-by-state rulemaking and legislation – particularly with states like Colorado that are otherwise under federal OSHA jurisdiction – is creating a complex “patchwork” legal and regulatory landscape. Our coalition (and many other industry groups) have been advocating for fed OSHA to overhaul and advance (rather than sit on) its heat illness prevention rulemaking, in part because, otherwise, the “patchwork problem” will continue to grow.

We have been monitoring state-level regulation of heat illness hazards closely. State Plan States with standards in place already include California, Oregon, Washington, Minnesota, Colorado (agriculture only), [Maryland](#), and [Nevada](#). In addition to Colorado (general industry), New Mexico and Virginia, all as discussed above, and several other states, like [Illinois](#) and [Arizona](#), are in the midst of proposing heat illness prevention rules. Although we certainly want to ensure that any federal OSHA rule that is promulgated is reasonable, workable, and effective, such as the one for which we have been advocating, at the very least, having a federal rule will create greater consistency across the country, particularly because states under federal OSHA jurisdiction, like Illinois and Colorado, will be preempted from promulgating their own standards or laws. In addition, many State OSH Plans may elect to simply follow the federal standard identically rather than promulgated unique standards.