


APRIL 21, 2022 | OSHA INSPECTIONS, CITATIONS &amp; ENFORCEMENT

# OSHA Launches an Enforcement National Emphasis Program For Outdoor and Indoor Heat Illness Prevention

By [Beeta Lashkari](#) and [Eric Conn](#)

Last week, on April 12, 2022, OSHA announced that it has launched an enforcement [National Emphasis Program](#) (“NEP”) for Outdoor and Indoor Heat-Related Hazards. The Heat Illness NEP applies to both indoor and outdoor workplaces, including general industry, construction, maritime, and agriculture. The NEP is already  in effect – as of April 8<sup>th</sup> – even before OSHA made its April 12<sup>th</sup> announcement, and will remain in effect for three years unless canceled or extended by a superseding directive.

Secretary of Labor Walsh, joined by Vice President Harris, announced this new enforcement program at a speech at the Sheet Metal Workers Local 19 Training Center in Philadelphia with these remarks:

***“Tragically, the three-year average of workplace deaths caused by heat has doubled since the early 1990s. These extreme heat hazards aren’t limited to outdoor occupations, the seasons or geography. From farm workers in California to construction workers in Texas and warehouse workers in Pennsylvania, heat illness – exacerbated by our climate’s rising temperatures – presents a growing hazard for millions of workers.... This enforcement program is another step towards our goal of a federal heat standard. Through this work, we’re also empowering workers with knowledge of their rights, especially the right to speak up about their safety without fear of retaliation.”***

Below is an analysis of the mechanics of OSHA’s Heat Illness NEP:

## How Does the NEP Change Things?

In the “purpose” section of the NEP, OSHA states that this emphasis program is intended to augment OSHA’s current efforts with unprogrammed-related activities, e.g., complaints, referrals, and severe incident reports, by adding an enforcement program targeting specific high hazard industries or activities in workplaces where the heat hazard is prevalent, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service, or working indoors near radiant heat sources, such as iron and steel mills and

foundries.

In addition, the NEP focuses on vulnerable workers in outdoor and indoor environments by coordinating efforts with the Department of Labor's Wage and Hour Division (WHD). Specifically, the NEP set out that an additional source for heat inspections are referrals from WHD. When the weather is hot or a heat alert is issued for an area where the WHD is investigating, WHD is encouraged to make timely referrals to OSHA, per an August 4, 2021 Memorandum of Understanding between OSHA and WHD.

### **What Are OSHA's Inspection Goals?**

OSHA explains that heat-related inspections have accounted for only 0.5% of all federal inspections the last five years, the vast majority of which were unprogrammed. The NEP directive goes on to state that "[t]he number of unprogrammed activities makes clear the continued need for heat-related outreach and compliance assistance activities, as well as On-Site Consultation visits and programmed enforcement to lower reported fatalities, hospitalizations, and complaints or referrals to OSHA." Accordingly, the NEP provides that **"each Region is expected to have a fiscal year goal of increasing their heat inspections by 100% above the baseline of the average of fiscal years 2017 through 2021."**

Within a specified cycle, heat-related health inspections will be scheduled with the highest priority given to fatality inspections, and then to other unprogrammed inspections (i.e., complaints and referrals) alleging employee exposure(s) to heat-related hazards.

Additionally, OSHA states that to ensure abatement and to monitor the effectiveness of OSHA's enforcement and guidance efforts, follow-up inspections from worksites previously inspected for heat-related hazards will be included as part of the NEP program procedures.

### **How Does the NEP Work?**

- The NEP directs ***CSHOs who are investigating for other purposes to open or refer a heat related inspection for any hazardous heat conditions observed, recorded in the OSHA 300 logs, or where an employee brings a heat related hazard(s) to the attention of the CSHO*** (such as, employees or temporary workers exposed to high temperature conditions without adequate training, acclimatization or access to water, rest and shade).
- As part of the program, OSHA will ***initiate programmed (pre-planned) inspections in indoor and outdoor work settings in approx. 70 high-risk industries when the National Weather Service has issued a heat warning, alert, or advisory for a local area.*** See the full list of covered industries in the section below.
  - The NEP targets these industries based on:
    - Bureau of Labor Statistics data on incidence rates of heat-related illnesses and the days away from work rate;
    - Elevated numbers of fatalities or hospitalizations reported by employers to OSHA; and
    - The number of heat-related inspections, General Duty Clause citations, and Hazard Alert Letters between January 2017 – December 2021.
  - Area Offices may add establishments to their programmed inspections from among known establishments based on local evidence that heat exposures have occurred in the five years preceding the effective date

of the NEP for industries not otherwise included. The local evidence may be based on enforcement data from OSHA’s OIS database, employer-reported heat-related illnesses or fatalities, workers’ compensation data, media referrals, or referrals by other government agencies such as WHD, USDA, EPA, or departments of health.

- The NEP establishes **heat priority days when the heat index is expected to be 80°F or higher**. On these so-called heat priority days, OSHA will:
  - **Initiate compliance assistance in the targeted high-risk industries.**
  - **Inquire during inspections regarding the existence of any heat-related hazard prevention programs.**
  - **Continue to inspect any alleged heat-related fatality/catastrophe, complaint or referral.**
- The NEP **encourages employers to protect workers from heat hazards by providing employee access to water, rest and shade, as well as adequate training, and to implement acclimatization procedures for new or returning employees.**

**What Industries Are on the High-Risk Industries List?**

The list includes three tables of industries by NAICS code:



**What Can Employers Expect During an Inspection Under the Heat Illness NEP?**

During heat-related inspections, CSHOs are instructed to:

1. **Review OSHA 300 Logs and 301 Incident Reports for any entries indicating heat-related illness;**
2. **Review any records of heat-related emergency room visits and/or ambulance transport**, even if in-patient hospitalizations did not occur;
3. **Interview workers about symptoms** of headache, dizziness, fainting, dehydration, or other conditions that may indicate heat-related illnesses;
4. Determine if the employer has a **heat illness and injury program** addressing heat exposure, and consider the following:
  - Is there a **written** program?
  - How did the employer **monitor** ambient temperature(s) and levels of work exertion at the worksite?
  - Was there **unlimited cool water that was easily accessible** to the employees?
  - Did the employer require **additional breaks for hydration**?
  - Were there **scheduled rest breaks**?
  - Was there **access to a shaded area**?
  - Did the employer provide time for **acclimatization** of new and returning workers?
  - Was a **“buddy” system** in place on hot days?
  - Were **administrative controls** used (earlier start times, and employee/job rotation) to limit heat exposures?
  - Did the employer provide **training** on heat illness signs, how to report signs and symptoms, first aid, how to contact emergency personnel, prevention, and the importance of hydration?

5. Document conditions relevant to heat-related hazards, including:

- The heat index and additional weather data from that day, e.g., heat alerts from the NWS, data from the OSHA-NIOSH Heat Safety Tool App, saving a screenshot on a mobile phone or tablet.
- Observe and document current conditions and those at the time the incident occurred (for unprogrammed inspections), including:
  - Observed wind speed;
  - Relative humidity;
  - Dry bulb temperature at the workplace and in the shaded rest area;
  - Wet-bulb globe temperature at the workplace;
  - Cloud cover (no clouds, 25%, 50%, 75%, 100%); and
  - The existence of any heat advisories, warnings, or alerts the previous days.

6. **Identify activities relevant to heat-related hazards**, including:

- Potential *sources of heat-related illnesses* (e.g., working in direct sunlight, a hot vehicle or areas with hot air, or near a gas engine, furnace, boiler or steam lines);
- The **use of heavy or bulky clothing or equipment**, including personal protective equipment;
- Estimate **workload exertions** by observing the types of job tasks performed by employees and whether those activities can be categorized as moderate, heavy, or very heavy work, considering both average workload and peak workload; or
- **Duration of exposure** during which a worker is continuously or repeatedly performing moderate to strenuous activities.

**What is OSHA's Citation Guidance Under the NEP?**

No surprise – CSHOs are instructed to determine whether there is sufficient evidence to issue a **General Duty Clause** citation for heat-related hazards. Several other specific OSHA standards may also be applicable to address worker protection in hot environments including use of **personal protective equipment, sanitation (potable water), medical services and first aid, and recordkeeping**.

**How Does the NEP Affect State Plan States?**

The State Plans are strongly encouraged, but are not required, to adopt the NEP. By June 7, 2022, the State Plans must submit a notice of intent indicating whether they already have a similar enforcement program in place, or whether they intend to adopt new policies and procedures at least as effective as this NEP. OSHA will provide summary information on the State Plan responses to the NEP on its [State Plan Adoption of Federal OSHA Standards and Directives](#) website.

**In Other News**



OSHA has scheduled a public stakeholder meeting on May 3, 2022 to discuss OSHA's ongoing activities to protect workers from heat-related hazards, including the [Heat Illness Prevention Campaign](#), compliance assistance activities, and enforcement efforts.

Conn Maciel Carey's OSHA Team has already [registered](#) for the event and will be crafting written comments to

be submitted to the docket on behalf of our [Employers Heat Illness Prevention Rulemaking Coalition](#).

Contact us if your organization may be interested in participating in the fee-based coalition.