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Virginia Charges Ahead to Implement a Heat Illness Prevention Standard

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As we approach the warmer months ahead, heat illness prevention remains a top priority for regulators at both the federal and state levels. Most recently, the Virginia House of Delegates and Senate have introduced 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, 2027. 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.

Fast forward to today, as we have previously reported, both federal and state agencies are collectively taking a more aggressive approach to address the growing threat of heat illness in the workplace.

Federal OSHA [concluded a rulemaking hearing](#) on its proposed rule on July 2, 2025. Additionally, seven states have already passed and implemented heat safety standards in the past few years, including California, Oregon, Washington, Minnesota, Colorado, [Maryland](#), and [Nevada](#). Several other states, such as [Illinois](#), [Arizona](#), and [New Mexico](#), are also engaged in efforts to promulgate a heat illness rule.

The proposed Virginia legislation would apply to employees working indoors and outdoors. Similar to other existing heat illness rules, the regulations 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 high-heat procedures when the temperature equals or exceeds 80 degrees Fahrenheit; and
- establish effective emergency response procedures.

Notably, the bills specify that there will be exemptions for:

- heat exposure during the provision of emergency services that involve emergency law enforcement, emergency medical services, firefighting services, rescue and evacuation operations, or emergency restoration of essential utilities, including electric and telecommunication utilities, and
- heat exposure lasting no longer than 15 consecutive minutes.

The proposed bill currently before the Senate reaches far beyond implementation of a heat illness rule though and has elevated potential liability for employers. The Senate is considering a provision that would provide employees with a private right of action that employees can bring in state court against their employer for any violation of the regulations passed by Virginia Safety and Health Codes Board. An employee would be able to recover statutory damages of \$1,000 per violation and an injunction. If the court finds that the employer knowingly violated the regulations, the court will also award an additional \$1,000 as liquidated damages.

If one of the companion bills is fully approved by the General Assembly and signed by newly appointed Governor Spanberger, the Board will convene an advisory panel to assist in developing and producing a proposed heat illness rule, and at least half of the membership will consist of employee advocates, employee stakeholders, and stakeholders from the agriculture and business industries.

In developing a proposed rule, the Virginia Safety and Health Codes Boards will be evaluating and considering the prior 2021 Draft Heat Illness Prevention Standard of the Virginia Department of Labor and Industry (that did not pass) 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, the Virginia Safety and Health Codes Boards did not include Nevada OSHA's heat illness prevention rule 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 Fed/OSHA started its rulemaking in 2021.

Employers are well advised to stay up to date on this evolving legislation throughout the current term and the anticipated rulemaking in Virginia. VOSH continues to enforce heat illness under the General Duty Clause and continues to be a priority for the agency, and even more so now under a Democratic-led administration. According to the [Virginia Department of Health](#), more than 4,000 people visited emergency rooms or urgent care for heat-related illness last year, which is roughly 25% more than the average over the past decade, and there has been a steady increase in the number of heat-related cases over the past decade.

Employers would be wise to develop or review their existing programs as needed in preparation for the warmer months ahead. If you have questions about federal OSHA or state-level efforts to regulate occupational heat illness, please contact us. In particular, there is still a lot of runway associated with Fed/OSHA's rulemaking, especially if OSHA adopts the changes we suggested to make any standard more flexible and performance-based, and issues another Notice of Proposed Rulemaking. If you have any questions or are interested in joining us, please contact Eric Conn at econn@connmaciel.com and Beeta Lashkari at blashkari@connmaciel.com.

