



California Rural Legal
Assistance Foundation

WORKSAFE
safety, health, and justice for workers
seguridad, salud y justicia para los trabajadores



California **LABOR** Federation

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Amalia Neidhardt
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Sent Via Email

Re: Heat Illness Prevention in Indoor Places of Employment

Dear Ms. Neidhardt,

We would like to extend our appreciation to the Advisory Committee for providing us with the opportunity to provide comments. We appreciate that there is a tremendous amount of work done by all stakeholders and government agencies involved. We also appreciate your consideration and inclusion of these comments and our comments made at the advisory committee meeting on February 28, 2017. We are eager to move the process along to adopt a standard with a broad scope so as to protect all workers in all industries from the hazard of indoor heat.

Scope and Application

We appreciate the Division's inclusion of all industries in the discussion draft for this standard. Indoor heat impacts a range of workers, from workers in warehouses, restaurants, indoor recycling facilities, bakeries, and factories – often non-ventilated, even in the peak of summer – or in heat-intensive industries like laundry facilities, where workers are routinely expected to work for hours in high heat environments. In order for this standard to be effective it must apply to all workers, including temporary and contingent workers.

The California Labor Federation, sponsors of the legislation to create this standard, consistently hear from represented workers in every industry about the dire need for indoor heat protection. This is not a problem for just one industry sector or just one region of the state: this hazard affects everybody.

As far as threshold temperature and work load, we think that work around radiant heat sources should not have a threshold and we recommend amending this threshold to a heat index of no more than 80°F for all workers because it is important to account for humidity.

Workers performing light work under the proposed dry bulb temperature of 90°F can be severely impacted by the hazards of indoor heat, especially if the air is humid.

We also have heard from the Los Angeles and Bay Area affiliates of the Restaurant Opportunities Center – United (ROC United), a non-profit organization who work closely with restaurant workers and owners. ROC has shared that restaurant workers who may engage in light seated work are exposed to indoor heat temperatures of lower than 90°F for prolonged periods and feel the impacts of that heat on their bodies.

In many situations, workers in the same area will be engaged in both light work and moderate to very heavy work. Many workers perform many duties throughout the day, not just light work or heavy work. We want to be sure that the lower threshold of a heat index of 80°F applies to the entire workplace.

Warehouse Worker Resource Center (WWRC) Coordinator, Veronica Alvarado shares that some workers in the warehouses perform light work, i.e. moving material while seated, while others engage in a range of activities: heavy lifting, pulling, involving intense arm and trunk work. This work all takes place in the same place of employment.

Likewise, restaurant employees in the back of the house who might engage in moderate to very heavy work might be more impacted by high heat than restaurant employees who work in the front of the house engaged in light to moderate work. However, it is important to note that as fast-casual operations become more popular in the restaurant industry, workers blur the line between “back of house” and “front of house” operations. Many workers are in and out of the kitchen all day and exposed to high temperatures.

Recycling workers may also be engaged in light work while others are engaged in moderate to very heavy work in the same workspace.

It is incredibly important for workers to receive protection for all the work they perform even if their duties range or their workplace is fragmented. Therefore, the lower threshold heat index of 80°F must trigger an employer’s heat illness prevention plan for indoor heat for the entire workplace.

Additionally, the exception listed in number one regarding, “work areas with an air-conditioned, temperature controlled environment,” should be eliminated. Air conditioning equipment is not guaranteed to work, or to affect different parts of a building equally or effectively. The temperature in the working area, not the nature of equipment in the building, is what matters here. But if it is retained a definition for functioning air-conditioning system must be included.

Most importantly, heat illness has extreme detrimental impacts on one’s life, family, friends, and community.

We have heard from other workers in industrial size laundry facilities, restaurants, recycling facilities, and bakeries who are adversely impacted by indoor heat. ROC- LA shared the story of Maria Vasquez, who cooked in unsafe kitchens for over a decade. She worked cooking chicken on a stovetop, grill and at the fryer. The kitchen’s inadequate ventilation caused smoke and heat. Maria remembers smoke blowing in her face, hurting her eyes and causing long-term damage to her vision.

Another example of how heat stress has impacted the lives of workers is through our work in helping Domingo Blancas. Domingo Blancas worked as a janitor in a warehouse in Chino, California. In a workplace with no IIPP, Domingo incurred heat stroke and both the warehouse and staffing agency declined to deal immediately with his condition, leading to hospitalization and surgery. Domingo incurred a lot of debt and health related problems after his work related heat stroke. This incident impacted him and his family. It is important for the Division to take into account the different workers’ experiences and the impact heat related illnesses have on one’s life, family, and community, when creating this indoor heat standard.

Definitions

We are pleased to see many important worker protective definitions in this standard. We suggest amending and incorporating the following definitions into this standard:

“Acclimatization” should be amended to 7-14, as that is both what NIOSH and ACGIH recommend. We realize this departs from the outdoor heat standard but believe reflecting the best available evidence should be a higher priority.

“Cool rest area” needs a definition. We recommend the following: “A cool rest area is an area located close to the general work area, isolated from radiant heat sources, maintained at a heat index of no higher than 80°F and provided with seating and a supply of cool drinking water and cups.”

We have heard of workers not being provided a cool area to rest. WWRC coordinator Veronica Alvarado shares, that in warehouses if there are cool rest areas they are usually not accessible for workers to get to in time to take a rest and then get back to their shifts. For other workers, cool rest areas just don’t exist.

We have also heard that sometimes restaurant workers who may be exposed to high heat go outside to cool off. However, if the outdoor temperatures is hot, then they are not really cooling off- its just not an effective or practical way to cool off.

ROC-LA shares that many restaurant workers do not have a rest area to retreat to. Workers at a pupusa restaurant in Southeast Los Angeles recall sitting on a stool in the corner of the hot kitchen to “take a break.” Although they got brief relief from kitchen duties, they were still subject to a hot, uncomfortable rest area. Because the restaurant industry promotes a culture of, “If you can’t stand the heat, get out of the kitchen,” many workers feel resigned to unsafe kitchen conditions.

All too often, ROC is approached by restaurant workers who labored in unsafe conditions for years, only seeking help when the cumulative stress and pain essentially left them handicapped and no longer able to work. ROC-LA member Ernesto Sanchez (pseudonym) also shared the long-term impact of inadequate heat protections. Ernesto worked as a cook for over a decade in a high-volume, popular restaurant. He often switched between hot kitchen temperatures above 85 degrees and extreme cold in the walk-in freezer. The cumulative stress of working at both extremes of temperature resulted in chronic joint and back pain. Ernesto’s pain became so bad that he became effectively disabled, forced to rely on worker’s compensation and was unable to lift or carry his infant daughter. Cool rest areas need a definition so that workers can access and enforce their right to a cool down break.

"Heavy work" should include walking at a fast pace and frequent or extensive walking as part of the list rather than an example. Lifting heavy loads should be added to the definition. A range of metabolic rate 360-470 W should also be added.

“High Radiant heat” should include the term “but not limited to” when giving examples of high radiant heat that may not be captured in the examples listed in the definition.

“Light work” should include a metabolic rate of 115-235 W.

"Moderate work" should include light lifting and a metabolic rate of 235-360 W and lifting of light and moderate loads.

“Properly functioning air conditioning system” should be defined.

“Representative” needs to be included in the definitions. Representatives play a key role in advocating for workers. Workers and their representative also play a key role in developing the Heat Illness Prevention plan. Their role is even more important and crucial, especially, when workers are not protected by a collective bargaining agreement. The definition of representative should be consistent with the Labor Code’s definition of representative and cover workplaces where there is no collective bargaining agreement.

This is important because in cases where there is no collective bargaining agreement, worker center representatives have played key roles in reaching out to workers and educating workers on

their rights and have established trust and legitimacy with the workers they serve.¹ Thus, representative needs to be included in the definition and must be broad enough to include non-union representatives designated by affected workers.

According to the California Restaurant Association, restaurant and food service jobs represent 10% of the state's employment and these jobs are expected to grow over 10% in the next decade. Despite the industry's size and rapid growth, it is also one of the least unionized workforces. Less than 5% of restaurant workers are unionized. Non-profit worker centers and other community-based organizations have been key partners to educate and advocate for non-union, vulnerable workforces with different state agencies. ROC- LA currently has a formal partnership with the Labor Commissioner's office, the City of Los Angeles, Santa Monica, Oakland and the County of Los Angeles to inform workers of their wage and hour rights.

WWRC, the Warehouse Worker Resource Center is a non-profit organization, dedicated to improving working conditions in the warehouse industry in Southern California. WWRC was key in assisting Domingo Blancas and his co-workers navigate the Cal/OSHA process and subsequent citations against his employer for his indoor heat related accident. WWRC, many times in the absence of effective employer provided training, has provided workers with training on indoor heat and information on how to use their rights.

Worker centers representatives play an extremely important role in supporting and advocating for workers. Representatives must be one that is worker centered and selected and must be defined in the standard.

Heat Illness Prevention Plan

Worksafe is incredibly pleased that the discussion draft of the standard recognizes the important role workers and their representative play in the development of the heat illness prevention plan. Worksafe supports the language including workers and their representatives' involvement. We encourage the Division and advisory committee to continue to place importance and priority in having both involved.

Including worker involvement in this standard is important because workers are experts in their workplaces and can come up with the solutions to help assess, identify, and correct heat hazards in their workplaces. Workers and their representatives should be encouraged to develop the plan and come up with innovative ways to help assess the harm and develop procedures i.e. for control, rest, hydration, and training.

A requirement should be added for annual review of the adequacy of the plan and history of heat illness with updating of the plan as necessary.

Hydration and Rest

Hydration and rest are key to helping workers stay safe and healthy while working in places of employment where indoor heat is a hazard.

¹ See Fine, Janice, *Worker Centers: Organizing Communities At The Edge of The Dream*, EPI/Cornell University Press, February 2006.

We support the current language encouraging workers to drink water and that it should be readily accessible and provided free of charge and without retaliation.

We have heard of employers charging workers for water, or forbidding them from carrying water, or being unable to take a break to drink water because its too far.

Restaurant line cooks report that a combination of fast work pace, being short staffed, and poor management practices like favoritism add up to strict rules about hydrating while working. Some workers are even penalized for drinking water while working. Many workers have shared with the ROC that the ability to cool off with clean drinking water, without being harassed to get back to work, is essential.

Additionally, access to cool down breaks is extremely important to helping workers stay safe while working in the heat. We support the language in the standard regarding the importance of cool down periods.

We have heard of workers not having access to cool areas to take breaks. This is problematic because if workers are unable to take breaks in cool areas, its not an effective way to cool down. We have also heard of workers whose break areas are not in an area that is close enough for them to access.

Cool down periods must be provided in areas that are actually cool and accessible. And workers must not be retaliated against for doing so; in fact workers should be encouraged to do so.

First Aid and Emergency Response

It is important to have clear roles and responsibilities for first aid and emergency response. Equally important is that workers must be trained on who is responsible for implementing the first aid or emergency response. This is particularly true for warehouse workers, many of which are temporary and are particularly vulnerable to workplace injuries related to heat and other labor violations.²

One study revealed, “Temporary workers have about 50 percent greater risk of being injured on the job than direct hires and twice as likely as regular workers to be stricken by heat illness.”³ Another issue is employer accountability as temporary workers tend to be shuffled between the host employer and staffing agency. This results in workers not knowing who is supposed to assist them when they experience heat illness.

² Struna, et al., *Unsafe and Unfair: Labor Conditions in the Warehouse Industry Points to Pressures in the Logistics Industry* (July 2012) Vol. 5 Issue 2, U.C. Riverside Policy Matters: Quarterly Publication., pp. 1 & 6.; Cornelio, Deogracia and Warehouse Workers United, *Shattered Dreams and Broken Bodies: A Brief Review of the Inland Empire Warehouse Industry* (June 2011) p.10.

³ Grabell, et al., *Temporary Work, Lasting Harm*, Pro Publica (Dec. 18, 2013) <<http://www.propublica.org/article/temporary-work-lasting-harm>> [as of Mar. 20, 2017].

If workers do not know to whom they need to report when there is a heat illness incident or whether an employer even has a first aid or emergency response, could be a matter of life, severe injury or even death. For example, in our work with warehouse workers, who are largely hired through temporary staffing agencies, many often do not know to whom they are supposed to report, or are in fact penalized for reporting a health and safety issue. In our work with other temporary or contingent workers confusion about who to report to often comes up as an issue- and one that ultimately can be quite dangerous.

We recommend including language in the standard about dual employers' requirements not only within this section of the standard but throughout.

Close observation of unacclimatized employees

We support the inclusion of this section in the standard. It is especially important for new workers and temp workers.

It is an extremely dangerous and an avoidable hazardous situation when new workers are not watched closely and they experience heat illness or were unable to identify if their co-workers were experiencing heat illness. New workers (or workers who are transferred from one department to another where heat is an issue) are at a greater risk of heat illness cause their bodies have not had time to acclimate to the heat and so they need to be watched closely. Ultimately, there are many situations in which workers may be unacclimatized. All workers should be treated as unacclimatized and close observation of such employees is necessary.

Short term exposure limits

We are in agreement with other advocates as to the short-term exposure limits. The table should take into account worker experiences, even brief encounters of heat and how extremely dangerous this can be, especially for unacclimatized workers. We would like more information on how the two tables relate to the recommendations by ACGIH, which are referenced in the bill.

Engineering Controls and Administrative controls

Deadlines for installing or implementing engineering or administrative controls need to be added to the standard. We also recommend amending this section by removing the words "feasible and applicable." If such controls are necessary, employers should be required to implement them or equivalents to such controls listed in the standard as examples.

Training

We support the inclusion of the need for training that is literacy sensitive and culturally and linguistically appropriate. Effective training is key to preventing work place injuries and fatalities. UCLA-LOSH conducted an analysis looking at the injury experiences of workers in

the low-wage labor market. ⁴The data was drawn from a groundbreaking survey of 4,387 low-wage workers in New York, Los Angeles, and Chicago.

Their analysis found that workers who had received health and safety training on the job had significantly better injury outcomes than those who had not received training—they were more likely to receive medical care, more likely to notify their employers of injury, less likely to encounter a negative reaction from employers, more likely to receive workers' comp paperwork, and more likely to file. When workers receive training in a language they understand and on how to recognize heat related illness symptoms, importance of breaks, water, acclimatization, emergency procedures, and how to report etc. they are better apt to protect themselves.

In our experience we have heard from worker advocates that some supervisors are unable to identify when someone was actually having a heat related sickness. We have also heard of employers training workers in a language the workers don't understand or with written materials when many workers have low or no literacy skills. Or training workers in 5 minutes and then having workers sign a sheet indicating that they have been trained. This is not sufficient.

Proper training on acclimatization is a critical part of preventing heat illnesses and fatalities, and is extremely important.

Dr. Michaels, former assistant Secretary of Labor for the Occupational Safety and Health Administration, emphasized "Over the past three years, lack of acclimatization was the cause in 74 percent of heat-related citations issued." ⁵

Thus, one effective way to ensure workers take proper precautions is through proper and adequate education. Workers must be taught the best ways to cool down, including the mechanisms whereby the body seeks to return to a proper temperature

We have also heard employers claim they train workers but workers just don't understand the curriculum and its not the "employers" fault. However, it is the employer's responsibility to provide training in a manner that workers can understand. If workers do not understand training then employers must evaluate and involve workers so as to have a more robust and effective training.

A critical component of having an effective training is having worker and their representative involved. We recommend including language requiring employers to involve workers and their representative in the development of the training curriculum and its application.

We also recommend including language requiring worker training to be interactive and in-person. This allows for important discussions on heat illness. These concepts on worker

⁴ Riley, et al., *Patterns of Work Related Injury and Common Injury of Workers in the Low Wage Labor Market Workers in the Low-Wage Labor Market Report to the Commission on Health and Safety and Workers' Compensation California Department of Industrial Relations* (March 2015)

<http://www.irle.ucla.edu/publications/documents/Patterns_Work_Related_Injury.pdf> [as of Mar. 20, 2017].

⁵ Annual Summer Campaign to Prevent Heat-Related Illnesses: "Water. Rest. Shade." US Labor Department https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26052 [last visited Mar. 21, 2017].

involvement are not new, and in fact have been incorporated in some of the more recent standards. Such standards include: the new Workplace Violence Prevention in Health Care, Blood Borne Pathogen Standard, and the Hotel Housekeeping Musculoskeletal Injury Prevention Standard (which is still in the rule making process).⁶

Additionally, in a letter to SEIU, Federal OSHA states: “[It] believes that the *effectiveness* of training is enhanced by trainer/trainee interaction, although this is not written in all the OSHA standards. However, in assessing the adequacy of an employer's training program OSHA will question employees to determine if they understood the training.”

Additionally, we recommend requiring the substance of the training include: how to report a heat illness injury, who to contact in case of emergency, and workers’ right to refuse unsafe work.

In closing, we would again urge the Division to amend the basic threshold to a heat index of no more than 80°F for all workers. We strongly believe that 90°F allows extreme discomfort while generating a significantly higher risk of illness and even death, given the unpredictability of workloads, variations in individual acclimatization, and other factors.

We appreciate all of the work going into establishing a strong and comprehensive regulation for indoor heat and the opportunity to be a part of this process.

Sincerely,

Signed electronically
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⁶ Workplace Violence Prevention in Health Care, Cal. Code of Regs., Tit. 8 § 3342 (e) “The employer shall have an effective procedure for obtaining active involvement of employees and their representatives in developing training curricular and training materials, participating in training sessions and reviewing and revising the training program.”; Blood Borne Pathogen Standard, Cal. Code of Reg., Tit. 8 §1910.1030 (g)(2)(G) “Information and Training: The training program shall contain at the minimum the following elements. (G) (14) Interactive questions and answers with the person conducting the training session. ; Hotel Housekeeping Musculoskeletal Injury Prevention, Petition 526 (d)(2)(G) “An opportunity for interactive questions and answers with a person knowledgeable about hotel housekeeping equipment and procedures; ”

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