DeLoache, Kyle@DIR

From: Cindy Sato <CSato@cea-ca.org>
Sent: Tuesday, June 27, 2017 12:26 PM
To: Neidhardt, Amalia@DIR
Subject: RE: Comments to Heat Illness Indoor Reg.- Additional comments

Amalia,

As noted in our comments below, we would like to see construction exempted from the heat illness prevention for indoor workplaces regulation. However, if that's not possible, we propose the following definition of "indoor" for the Division's consideration:

> "Indoor" means a building or facility that holds or has been issued a certificate of occupancy or temporary certificate of occupancy
> by the state of California or authority having jurisdiction. ~~means a space under a ceiling or overhead covering that is bound on at least~~
> ~~half of all sides by walls. A wall includes, but is not limited to, any door, window, retractable divider, garage door, or other physical barrier~~
> ~~that is temporary or permanent, whether open or closed.~~ ~~"Indoor" includes the space inside a vehicle.~~ All places of employment that
> are not indoor are considered outdoor and covered by section 3395.

Thank you,
Cindy

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From: Neidhardt, Amalia@DIR [mailto:ANeidhardt@dir.ca.gov]
Sent: Tuesday, May 23, 2017 4:11 PM
To: Cindy Sato <CSato@cea-ca.org>
Subject: RE: Comments to Heat Illness Indoor Reg.

Hello Cindy. Thank you for your interest and participation in this advisory process, and for submitting written comments. All comments received will be reviewed and taken into consideration.
Have a great day!

- Amalia Neidhardt

From: Cindy Sato [CSato@cea-ca.org]
Sent: Tuesday, May 23, 2017 4:04 PM
To: Neidhardt, Amalia@DIR
Subject: Comments to Heat Illness Indoor Reg.

Amalia,

Thank you for the opportunity to comment on the revised draft of the proposed Heat Illness Prevention in Indoor Places of Employment language. Since I will not be at this week's Advisory Committee meeting, please see comments below.

Since Labor Code Section 6720 allows for the standard to be limited to certain industry sectors, please consider excluding construction. Construction is one of five industries that is already covered by CCR Section 3395. Construction employers have had heat illness prevention programs in place since 2005. Over the last 12 years, the Division has devoted considerable resources educating contractors on their duties and responsibilities under the current heat illness prevention standard, while at the same time actively tracking heat illness cases and employer compliance with CCR Section 3395. Does the empirical evidence demonstrate that the construction industry needs additional heat illness prevention requirements or that contractors are excluding their indoor workers from the same heat illness prevention measures that they provide to their workers outdoors?

Despite the recent modifications that incorporated some of the language from CCR Section 3395, the proposed heat illness prevention for indoor work places language is still overly complex, burdensome and deviates too much from the current heat illness prevention standard for outdoor places of employment. We are concerned that building contractors will find themselves in many "gotcha" situations since they would have to have two heat illness prevention programs, one for work outdoors and one for work indoors. In fact, it is likely that a building project could have operations taking place outdoors and indoors simultaneously. It would be difficult for an employer to have to administer separate heat illness prevention plans for the same worksite and the same workforce, which could result in inadvertent non-compliance.

Cool-down Area – There is no reason for this language to be more prescriptive than CCR Section 3395 regarding access to shade. Please consider revising the first sentence to read, "'Cool-down area' means an area located as close as practicable to the work area, ~~isolated from radiant heat sources,~~ …" It is infeasible to have an area isolated from all radiant heat sources; a light bulb gives off radiant heat. In addition, please also consider the following language, "A cool-down area does not include locations where heat in the area defeats the purpose of providing relief and allowing the body to cool, such as locations where employees are exposed to radiant heat from the sun ~~or other sources~~ or high radiant heat work areas as specified in this section."

Heat Index – CCR Section 3395 does not require the use of the heat index. For consistency, the use of the heat index should not be mandatory.

Level I, Level 2, Level 3 – It is confusing to have so many levels. Please simplify this section so that the language is more similar to 3395 where there are minimum requirements and more stringent requirements for high heat.

Order to Take Special Action – Since this language affords greater latitude to the Division than is currently provided in CCR Section 332.3, this section needs greater transparency concerning how the Chief of the Division will determine that a location includes a high radiant heat source.

Heat Illness Prevention Plan – This language places a burdensome and impractical requirement to include "effective procedures to obtain active involvement of employees *and their representatives (emphasis added)* in developing and implementing the Plan." Please consider exempting employers covered by a valid collective bargaining agreement from this provision.

To reduce employer confusion and to promote greater compliance, the required contents of the Heat Illness Prevention Plans for outdoor workplaces and indoor workplaces should be as similar as possible.

Assessment of Heat Illness Risk – The language in this section is very confusing.
What is meant by heat exposure? How is the heat index determined using "heat exposure" at the greatest level or levels and during the course of the day or year when "heat exposure" is at or near the annual high? How would a contractor comply with this requirement assuming the building under construction is 50 floors?
Are "all locations" listed in section (1) the same as "each work area" where the heat index measurements are required to be posted in accordance with section (2)?

Reassess Heat Illness Risk – This requirement is overly burdensome for building construction. Tasks vary from day to day and sometimes throughout the day. It is not reasonable to require an employer to recalculate the heat index daily or multiple times during the day and repost the heat index measurements.

What are some examples of the kinds of information that would indicate that the existing assessment of heat illness is deficient that are not already contained in (d) (3)(A)?

Acclimatization – The language in (g)(2) is overly broad. It says that an employee who has been transferred to a new location would need to be closely supervised for the first 14 days even when there are no heatwaves or the work is not being performed in "high radiant heat work areas," meaning any place in an indoor work area.

Control Measures – There is no reason that pre-shift meetings need to occur more frequently under this regulation than they do under CCR Section 3395. In fact, pre-shift meetings are only required during high-heat. It is unclear when employers are required to conduct pre-shift meetings for indoor work.

The control measures are too complex and too prescriptive. First, there is the process to determine the heat index. Then, the employer must determine which Level of risk the heat index falls under. Next, the employer must follow specific requirements for encouraging water consumption at specified intervals. In addition, the employer must ensure either a ten or five minute preventative cool-down rest for every hour of work is provided as well as make available personal protective cooling equipment to all employees. This overly stringent process would need to be followed every time the employer reassesses the heat illness risk. As noted above, reassessing the heat illness risk is an overly burdensome requirement by itself.

What is the basis for requiring the mandatory ten and five minute cool-down rests every hour? This is a significant deviation from the mandatory rest periods required by Industrial Welfare Commission Wage Order 16 for Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, the CA Labor Code, CCR Section 3395 and collective bargaining agreements.

Do the Division's statistics from monitoring Section 3395 demonstrate that the current practice of employee directed recovery rest periods is not adequately providing relief to workers?

Training – There is no reason the training requirements need to be more stringent than they are under CCR Section 3395. For consistency, please consider using as much of CCR Section 3395(h)(1) and (2) as possible.

Recordkeeping – There is no reason the recordkeeping requirements for this section need to be more stringent than the recordkeeping requirements contained in CCR Section 3203, Injury and Illness Prevention Programs which only requires: "Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year."

Given the current training required by 3395 and recordkeeping requirements under 3203, what is the rationale for requiring the additional information: contents/summary of the training session, qualifications of the person(s) conducting the training, and employee names with their job titles of all persons attending the training?

Cindy