

I attended the Cal OSHA public comment meeting held in Ontario on May 25th, 2017, but I did not offer comments at the meeting for a variety of logistical reasons. However, I would like to offer them to Cal OSHA here, in a more concise/succinct manner, for consideration.

I will attempt to stay within the format of the public meeting, and organize my comments by section. Before I proceed, I wish to say that based solely on the many testimonials provided by the public that I heard during this meeting, it would seem obvious that Cal OSHA should schedule more inspection times in the garment and restaurant industries, if the stories are to be believed. One would think that a few well timed and well publicized inspections by Cal OSHA teams within each industry, in key cities across the state, might cause a lot of habits to be changed by industry.

Section B: Definitions

Cool Down Area includes the requirement that the area be “close” to work area. How close is “close”? 10 feet? 150 feet? Is close required on the same horizontal plane, or can I have a close area up a series of stairs or ladders, say, two floors above? Should close be measured in time distances, instead? If I can reach the area in ten minutes, is that close?

Because Vehicles are considered indoor areas (per later definitions in section B), how do I maintain a close cool down area when my employees are in vehicles? Not all vehicles are air conditioned, for instance, and the vehicle may not be able to serve as a cool down area.

Per the definitions, “Heat illness” means a serious medical condition... And then listed among the things considered to be serious medical conditions are heat cramps and heat exhaustion. We might debate heat exhaustion all day long as being serious or not serious, but heat cramps are NOT a serious medical condition. Any “condition” that can be alleviated/cured by sitting down and doing nothing should not be considered serious. Got a heat cramp? Stop what you are doing, and it will get better. Got a cold? Stop what you are doing, and it will get better. The difference is that a cold will take 48 hours of rest to be cured, and a heat cramp perhaps ten minutes. And yet, the department considers a heat cramp to be “serious”? Can you provide data on the number of fatalities each year from heat cramps? Disabling injuries from heat cramps? Heat exhaustion is on the borderline, from my medical experience: persons suffering from heat exhaustion should stop what they are doing, rest, and drink fluids. They will get better without any medical intervention. How serious is a condition that requires no medical care to get better? Heat syncope? Again, we can argue, but most treatment sources call it a “mild form of heat illness”. Mild heat illness does not equal a serious medical condition. Heat Stroke? Absolutely Serious. This will require medical intervention, or permanent damage to body systems may/likely will result, up to death. But tiredness, cramps and dizziness? Those are not serious medical conditions.

The definition of Heat wave seems overly complicated. Is it 80 degrees or more? Yes, then compute the average high temp of the last 5 days. Is the temp now at least 10 degrees more than the average high temp? Then it's a heat wave. If the heat is only 9 degrees more than the average, it is not. When an area has fairly consistent temperature rises/falls, this works better than locations in climates with rapid changes... for instance, mountain areas where it might be 70 degrees for three days, then 80, then 95, then back to 80 again, in a span of a week. Even a couple of 90 degree days in mountain passes may not trigger a heat wave warning, due to the low temperatures earlier in the week.

Indoor space: includes vehicles. This definition would mean that a typical UPS (United Parcel Service) "brown" truck is an indoor workplace. This may come back to cause problems with later portions of the law, as I will explain later.

Section D:

This section seems to require a lot of action/activity on the part of employers, to test and provide data. Why not allow an employer to assume a worst case scenario, and build their plans around that? I could say that my operations have a historic high temp of 100, and so I build a plan to protect my workers up to and beyond that number. What I don't have to do is actually go out and measure, repeatedly, 85 and 87 and 90 degree days, collect tons of data, only to be cited by the department because I collected on a day that was not near enough to the annual High to meet the standard. I may have plans in place to protect my employees from exposures, etc., but if I collected my data on June 1st, 6th, 23rd, 30th, July 7th, 14th, and 21st, I could still be cited by the department if they determine that the actual annual high was August 23rd. My data could have been within 0.5 to 1 degree of the annual high, but it won't matter: it was not "at or near" the annual high day.

I understand the common reply to statements of this nature ("But the inspector could cite me") is that "Trust us, we would not do that". I counter that expected answer with the following real life situation: Cal OSHA cited a company for failure to have/follow their outdoor heat illness plan, because they did not clearly specify the location of their water bottle availability. The company had water dispensers in their offices and breakrooms, as well as provided stacks of bottled water cases in the breakrooms, and cold bottled water in the refrigerators, but the inspector cited them because their heat illness plan did not specify WHERE in the breakrooms the water was located. In his mind, a three foot high stack of water, next to a water jug dispenser, in a 10' x 12' room, was not sufficiently spelled out in the plan to give an employee needing water the "location" in which to find it. Because the heat illness plan did not specify that the water was located inside the refrigerator, and located in the South East corner of the room, the company was cited.

If this is the way that Cal OSHA will apply the letter and intent of the current law to companies, then we as companies should prepare to have it applied in a similar manner to the new law. Which means, if we have high temperature data testing of 89, 88, 89, 90, and 90 in June and July, but there's a 91 degree day in late August, then we have not complied with the law in D(1). This gives us a constantly shifting target, to monitor and watch every day, in order to ensure we actually ARE testing on the highest day (and, subsequently, doing all the other things required once we have that data).

D(2) requires us to post this information in all work areas. This could be dozens, or hundreds, of locations in a facility as large as mine. For instance, I have a tower that is 18 stories tall, that has two sides and ceilings. Thus, it is an "indoor" location, even though it snows inside in the winter. Also remember, every vehicle on my job is a potential indoor work location.

Even if I manage to do all of the above postings exactly right... under section D(3)(b), I have to redo the postings each time a new high temperature comes along. This is another citation trap:

an inspector can simply point to a work location, and cite because a posting is not close enough, has blown away, been rained upon, etc., and is no longer visible.

I am also curious if Cal OSHA will consider these postings to be "safety related" signage, because by Cal OSHA law, I am forbidden to ever remove any safety signage from my plant. After a few years, there are going to be a lot of these notices everywhere, if I am not allowed to remove old ones.

And finally, under section D(3)(c), I have to redo all my assessments and postings if someone gets sick (heat illness), regardless of why they got sick. And as there is no clear, bright line on heat illness at the lesser end (sweating? Headache? Nausea? Are any of those symptoms enough to trigger "an incident of heat illness"?), one could have to reassess, retest, repost, etc., the entire plan, simply because someone got warm and needed to "sit down a bit, and rest".

Section F:

F(2): Requires effective observation and monitoring for signs of heat illness. My first problem is the same as I have had the entire process: Sweating is a sign of heat illness. Thirst is a sign of a heat illness. Headaches are a sign of a heat illness. One must also recognize that failure to sweat, and lack of thirst, are also signs of heat illnesses. Thus, this law would require I monitor employees for sweating, or lack of sweating. For being thirsty, or not being thirsty.

The leeway allowed by the law for methods of observation is nice. However, I am not convinced it will be applied fairly across all industries. A supervisor certainly cannot directly watch or observe a dozen employees driving delivery vehicles across the city or region. The leeway granted could allow the company to use radios or phones to communicate, however, what happens if they decide to do texting? Is one way communication acceptable? Probably not, but it's not spelled out well. If a response is required, what actions must be taken by the employer if an employee doesn't respond to a text, or answer his radio or cell phone? Do they initiate a rescue attempt?

If you have a supervisor directly observing employees, it is likely that the supervisor is working in the heated environment. Do we thus need an observer of the observer? Can one manager observe 20 supervisors, who each in turn observe 20 employees? Who observes the manager? Can a single person be both an observer and an observee? Can I observe a worker, and ask the worker to observe me observing him?

F(6) also runs into the problems of "signs or symptoms of heat illness", in that once again, any employee that is sweating must be offered first aid, cannot be left alone, etc..

Section H:

Technically, this doesn't have any limits on when it needs to occur. It is assumed to be during hot periods, but it simply states that companies will hold pre shift meetings to review the heat plan. Every day? In December? Will a meeting once or twice through the hot season meet the requirement (the requirement is to hold meetings, not 10 meetings, not a meeting every day... simply holding meetings) In some places where the source of heat (oven/kiln, etc.) is constant (and you may or may not be working there, due to break downs, etc.), do you have to do this reminder every single day/shift? Is that effective?

One small grammar problem with this portion of the standard is found in subsection H(b): The employer shall encourage employees to consume water at least every 15 minutes.

Is this to be read as: The employer must, every 15 minutes, encourage their employees to drink water? Or, alternately, that the employer must (at least once) encourage their employees to drink water at a rate of once every 15 minutes?

Subsection C also puts more burden on an employer to ensure their employees are taking a break, rather than a lesser standard of providing the areas, time, and encouraging them to do so. With this law in place, an employer can be cited because one employee decided to NOT take a break, despite it being required by the company, in the SOP's, etc.. If the employer does not FORCE (ensure) that every employee takes the break, they are citable. That's a high bar to set for some employers, that may try to do their best for employees, but are incapable of physically forcing every one to take a break.

Part J recordkeeping:

First, this could be a huge recordkeeping nightmare, depending upon the number of working places, number of high heat days, etc..

Why are job titles required on training records? Honestly, if I record names of my employees who were trained, why the need for title? It's just another place where if I fail to document line 7, part A, subpart B(d)(a2), then here's your citation. Why should I be cited for doing the training, but missing some non-important aspect?

General statements of concern with the policy as written:

Where is temperature to be measured? Desk? Near the bakery oven? Shop? Pottery Furnace, HVAC room? Break room? Cooler/Milk case? Do I average across places/types? If I find a hot spot in a large area, does that make the entire area a hot work environment, or only the locations above 85? I can measure near a desk lamp, and get a reading over 85 degrees. Does that reading cover the entire office? If I have a personal heater in my office, could that make the area a high heat workplace?

Several places mention things to be done Per Day or Per Shift. Cal OSHA needs to remember that not all work is done neatly inside the box of a 9 to 5 workday, Monday through Friday. At my plant, we have over 14 different working shifts, that start at various times in the day, and that run for different lengths of time. We have 8 hour shifts, 10 hour shifts, and 12 hour shifts, for example. What about those whose shifts cross over "day"? 8pm to 8am, covers two "days"... what if 1 is hot, other is not? What if the following morning heats up faster than predicted... how do you do a pre-shift meeting when the shift is now 11 hours old, because the night was cool, but the morning hot?

What about business with indoor and outdoor workers? Do they operate two separate programs, with two separate training requirements, warnings, etc.? What if a company has two Shop Machinists, and ten field repairmen: Separate programs/trainings/tracking for each? Can we do one for all? What if one of the shop repairmen goes out into the field a bit more often than the other? Do they get trained differently?

If an outdoor worker moves into an indoor space (packing shed, or gazebo with wind walls), does that count as Shade under the outdoor rules, but a hot environment under the indoor rules?

There is still the problem of "any sign or symptom of heat illness" requiring actions, since headaches, sweating, redness/blushing are all signs of heat illness (as well as a ton of other things). Even worse? Thirst is a sign of a heat illness (heat exhaustion). So is "not thirsty" (heat stroke). So, if your employees are thirsty, or not thirsty, they are exhibiting signs of a potential heat illness. Do these signs/symptoms therefor trigger actions? Sweating (heat illness, heat exhaustion) is also a sign. Lack of sweating (heat stroke) is also a sign. Once again, does a sweating or non-sweating employee trigger actions? Is the presence of a sweating employee enough to begin writing citations?

Inside a vehicle is indoor: My question to Cal OSHA is how they expect UPS to follow these rules for indoor workplaces. UPS vehicles are NOT air conditioned... that's why those brown

trucks drive with their doors open. The back of those trucks (the storage area for packages) is guaranteed to exceed 85 degrees on a typical warm California day, thus making the driver's work area a hot environment.

Therefore, USP must have people observing these delivery drivers the entire time they are out on the roads of LA, San Diego, Barstow, etc.? How? How does UPS set up a cool down area for mobile drivers? Many US Postal service vehicles are contracted out (rural delivery), and many of those drivers don't have Air Conditioned vehicles. Will the same rules apply to them?

If an hourly employee is driving their personal vehicle to/from a convention/conference, for example, that vehicle is an indoor workplace, correct? As an hourly employee, they are paid for their travel time, and they are considered to be working. What if that vehicle has no Air Conditioning? What if they are stuck in a traffic jam, at 4 pm, on a hot day? Will the company be cited for not providing a cool down area? Not observing their employees in hot work environments? Not encouraging them to drink water, and not holding a pre-shift meeting each day of the convention (at the local convention hotel?) with their employee to warn about the dangers of traffic and hot cars?

I truly believe that good employers are already working to provide employees with information and protection from heat illnesses. I believe the state should simplify this confusing amalgam of regulations, and require that every employer have a Heat Illness Prevention Plan, and then the state can check compliance with the plan during inspections. And instead of inspecting and citing companies that don't have a map that shows the exact location of FREE water bottles in the breakroom refrigerator, or the cases of FREE water bottles situated next to the cool water dispensers in the employee breakroom, the State could send those inspectors into the WORST offending businesses, places of employment that don't provide ANY breaks, break areas, water, restrooms, or potable water.

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