



**Christine L. Owens**  
Executive Director

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[www.nelp.org](http://www.nelp.org)

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Sent via Email: [rs@dir.ca.gov](mailto:rs@dir.ca.gov)

**Re: Heat Illness Prevention in Indoor Places of Employment**

**California Office**  
2030 Addison Street  
Suite 310  
Berkeley, CA 94704  
510-982-5945

Dear Ms. Neidhardt,

The National Employment Law Project (NELP) respectfully submits these comments on the February 15, 2018, discussion draft of the proposed standard on Heat Illness Prevention in Indoor Places of Employment.

**Washington State Office**  
317 17th Avenue South  
Seattle, WA 98144  
206-324-4000

NELP is a non-profit law and policy organization with 45 years of experience advocating for the employment and labor rights of the nation's workers, and over 15 years of advocacy in California on behalf of low-wage workers and workers locked out of employment opportunities. Throughout the country and in California, NELP has advocated to improve workplace safety and health, especially for the most vulnerable workers.

We appreciate the opportunity to comment on the development of this important standard. California has been a leader in developing standards and protections for workers, and we urge Cal/OSHA to establish a standard that uses the strongest possible measures to protect workers from hazardous indoor heat exposure.

NELP is concerned that the latest version of the proposed language does not adequately protect workers' health and safety. Specifically, we are concerned about the following issues:

**Critical Protections Not Required Until Temperature Reaches 90°F**

Many of the most effective protections against heat illness, such as using fans or air conditioning, slowing workloads, or providing protective equipment, are not mandated in this draft language until the workplace temperature (or heat index in certain facilities) reaches 90 degrees Fahrenheit. Workers are at risk for heat illness in much lower heat indices and temperatures. The standard should require the control measures at significantly lower heat levels. Based on established evidence of the factors that can raise a person's core body temperature to dangerous levels, adequately protecting workers requires the trigger for risk assessment and other basic precautions to be as close as possible to a heat index of 80 degrees.

The standard should also use the heat index, rather than temperature. The heat index is a more accurate indicator of the effect of heat on core body temperature. The current proposal, which only uses heat index at worksites with processes that involve water, ignores other sources of moisture that can increase workplace humidity, including human activity, livestock, standing water, or atmospheric moisture.

## **Revised “Indoor” Definition Weakens Worker Protections**

Revisions in the February 15, 2018, draft significantly weaken protections for workers by exempting employers who can demonstrate that any opening such as a window or door keeps the workplace temperature less than 5 degrees above the outdoor temperature. Such workplaces would instead be regulated under the outdoor heat standard.

This proposal is dangerous for many reasons, most importantly because adoption of the structure of the outdoor heat standard would mean workplaces meeting the “5 degree criteria” would be exempt from having any high heat procedures at all unless part of a construction, agriculture, or oil and gas operation. The outdoor heat standard is not suitable for indoor workplaces. Warehouses, restaurants, laundries, factories, and countless other workplaces contain substantial and unique heat exposure hazards, are where risk factors like humidity, radiant heat and heat-trapping clothing are most likely to occur, and are where, critically, employers retain a significantly greater ability to control environmental conditions and heat exposure. Allowing employers in these industries such an easy loophole would leave workers vulnerable to heat illness.

As written, a warehouse with open windows that keep the indoor temperature at 104 degrees Fahrenheit on a 100 degree day would be exempted from critical protective measures such as engineering controls, administrative controls, and providing protective equipment. With only 40% humidity, that warehouse would feel like 109 degrees to a worker. This is a totally unacceptable loophole and a completely unacceptable risk. We urge the return to the prior definition of “indoor” without any exceptions for openings to the outdoors.

## **Inadequate Consideration of Heat Illness Factors**

This draft does not require specific adjustments in control measures for workers who must wear heavy clothing, are unacclimatized, exposed to radiant heat, or engaged in heavy work. These factors significantly affect heat illness risk. Work at a heat index of even 80 degrees can be unsafe for workers with these added risks, and we strongly urge specific control measures in the standard that adjust for these factors.

## **Preventative Rest Breaks Not Required**

In a step backward from prior drafts, the latest language does not require mandatory hourly preventative rest breaks, even at the highest temperatures. Hourly rest breaks are instrumental in high temperatures to reduce the risk of heat illness, and we urge their return to the control measures in this standard.

## **Weakened Transparency and Worker Engagement**

Basic requirements from prior drafts that promoted transparency have been left out of the current version. These include posting heat illness risk assessments in work areas, ensuring workers’ rights to measure temperatures with their own instruments, and obtaining the active involvement of workers and their representatives in developing and implementing Heat Illness Prevention Plans and measuring workplace heat indices. Workplace transparency and worker engagement are critical to improving safety outcomes and we urge the reinstatement of the sections mentioned above.

### **Exception for Office Settings**

We are pleased that Cal/OSHA removed references to a “light work” exemption from the proposed standard, but remain concerned about the use of broad carve-outs to the rule. Heat illness can impact workers who are sedentary, and so there should not be any broad exceptions for them. The use of a broad exception for office environments will leave workers at risk, including janitorial workers and others doing heavier work in office settings. A properly set heat index trigger for protections to apply will effectively take employers in climate-controlled environments out of the rule’s requirements while ensuring there are not gaps in coverage for workers who need protections.

California urgently needs a strong and comprehensive indoor heat standard to protect workers’ safety and health. NELP urges Cal/OSHA to develop a standard that addresses the above issues and provides effective protections for workers, based on scientific guidelines and the experiences shared by workers who face indoor heat hazards firsthand.

Sincerely,



Nayantara Mehta  
Senior Staff Attorney