ROONEY RIPPIE & RATNASWAMY LLP
Kingsbury Center, Suite 600, 350 W. Hubbard St., Chicago, IL 60654 | P. 312-447-2800 | F. 312-447-2899 | www.r3law.com

(312) 447-2818
darren.hunter@r3law.com

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Via E-Mail (rs@dir.ca.gov)
Amalia Neidhardt, MPH, CSP, CIH
Research and Standards
Division of Occupational Safety and Health
California Department of Industrial Relations
1515 Clay Street
Oakland, CA 94612

Re: Heat Illness Prevention in Indoor Places of Employment – Proposed Rulemaking

Dear Ms. Neidhardt:

On behalf of several clients who have manufacturing and warehousing businesses in the State of California, we are submitting these comments to address certain specific areas of concern regarding the draft of the proposed rule identified as "Option B: Create Standalone Indoor Standard" that was posted on February 15, 2018.

At the outset, I want to emphasize that these businesses have sophisticated health and safety programs, including heat stress programs that are compliant with section 3395, and devote significant measures and resources above regulatory requirements towards occupational health and safety for the benefit of their employees. These businesses understand and recognize the importance of taking reasonable and appropriate measures to prevent heat illness in the workplace. These businesses, however, want to ensure the standards that they are subject to are clear and straightforward to ensure compliance.

We will address each area of concern in order:

Section (d)(2): As currently written, this section is not realistic in manufacturing and warehousing settings, will likely lead to employee abuse, and is not enforceable. The specific language of concern is: "[E]mployees shall be allowed **and encouraged** to take a preventative cool-down rest in a cool-down area **when they feel the need to protect themselves** from overheating." While the intent of this section is desirable, the application puts employers in a position of non-compliance. This provision can be amended in such a way so as to reduce the likelihood of employee abuse and to create a more definitive standard.

To achieve this goal, we suggest revising this provision as follows: *Employees shall be allowed to take a preventative cool-down rest in cool-down areas, as appropriate, to protect themselves from overheating.*

Section (d)(2) also creates a "monitoring" standard that is not defined and not readily enforceable. This "monitoring" standard is also superfluous and unnecessary in the context of the entire rule. Specifically, this section states that an individual employee who takes a preventative cool-down rest "shall be monitored and asked if he or she is experiencing symptoms of heat illness."

To correct this problem, we suggest deleting the reference to monitoring and revising this section as follows: *An individual employee who takes a preventative cool-down rest shall be asked if he or she is experiencing symptoms of heat illness.*

Section (e)(1)(A): This section requires employers to perform an assessment in writing of the environmental risk factors for heat illness, including heat index measurements and all other environmental risk factors, as applicable. The requirement to assess **all** other environmental risk factors is vague. We also suggest implementing a six-month record retention period for maintaining heat index measurements.

To achieve these goals, we suggest revising this section as follows: *This assessment shall be in writing and shall include heat index measurements (to be maintained for six months) and any other applicable environmental risk factor for heat illness.*

Section (e)(1)(B): As currently written, this section is vague and will be difficult for employers to demonstrate compliance. We suggest revising the language to make it more prescriptive and straightforward. We also suggest removing the reference to "annual high" as the trigger, in order to be consistent with the other requirements in the proposed standard.

Section (e)(2)(C): As currently written, this section requires employers to provide personal protective equipment ("PPE") "to the extent possible" to reduce the risk of heat illness. This standard is vague and will lead to arbitrary enforcement. We suggest using a more appropriate legal standard, as follows: *to the extent feasible.*

Section (f)(3): As currently written, this section infers that it is necessary to contact emergency medical services for **all** heat illness matters, and, if necessary, transfer the employees to an emergency medical provider. This level of attention is clearly not necessary for **all** cases and we do not believe it is contemplated as such by the Department. Furthermore, as currently written, the nature and scope of emergency medical services is unclear. For example, many businesses have on-site emergency responders who are capable and qualified to respond.

With these comments in mind, we suggest revising section (f)(3) as follows: *If necessary, contact emergency medical services, including, but not limited to, on-site emergency response personnel or off-site emergency response personnel, to observe the employee at the place of employment and provide the appropriate level of care given the attendant circumstances. If necessary, arrange for transportation of the employee to an off-site medical provider for observation and care.*

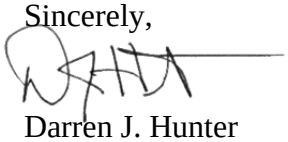
Section (g)(1) and (2): These sections require "close observation" of employees by a supervisor or designee during acclimatization. The term "close observation" is vague and subject to multiple interpretations. For most places of employment, "close observation" is not realistic, as supervisors and designees have multiple work duties and responsibilities throughout the shift in addition to observing employees.

With these comments in mind, we suggest changing the heading of section (g) as follows: *Observation during Acclimatization*. We further suggest revising the term "close observation" each time it is used in section (g)(1) and (2) to: *reasonable observation*.

Furthermore, section (g)(1) requires employers to track each "heat wave" based on predicted temperatures of at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature the preceding five days. While it may be fairly routine to track temperatures, it is not routine to track temperatures in this manner, particularly given varying meteorological locations and methodologies. We believe the method of tracking set forth in this section should be more prescriptive to avoid the possibility that an employer may be found out of compliance despite exercising good faith at all times.

We appreciate your consideration of our comments. Should you have any questions or require any additional information, please do not hesitate to call me at (312) 447-2818 or email me at darren.hunter@r3law.com.

Sincerely,



Darren J. Hunter