



June 15, 2018

To: rs@dir.ca.gov

Subject: Heat Illness Prevention in Indoor Places of Employment
Comments on Discussion Draft – May 16, 2018

The California Restaurant Association (CRA) is the definitive voice of the food service industry in the state of California representing over 22,000 food service establishments. Restaurants are highly regulated businesses which operate on very thin profit margins. The challenge for restaurants is to implement any new mandates in a way that mitigates negative impacts to the business given the strict regulatory environment in which they already operate.

We are concerned that the current version of the Heat Illness Prevention in Indoor Places of Employment draft standard is too complex. Employee safety is a top priority for the statewide restaurant community. We value our team members, many of which are long term employees that are like family, and they are crucial to the day to day success of our service to the public. Our members need to be able to clearly understand the Heat Illness Prevention in Indoor Places of Employment requirements so they can reasonably meet the proposed new mandates.

Additionally, we are concerned that the proposed standard conflicts with provisions of the California Retail Food code which states the required temperatures to heat, hold and reheat food. Health and safety as it relates to food service is of utmost importance. The draft revision on 5/16/18 of the Indoor Heat Illness Regulations defines high radiant heat work areas as an indoor radiant heat source that includes commercial kitchens. Restaurants that utilize commercial kitchens are required under the California Retail Food Code to heat specific types of food such as poultry, meat and seafood to temperatures between 145-165 degrees for 15 seconds. Restaurants are also required to hold heated food for service at 135 degrees until service has ended. Under the California Retail Food Code requirements, it is easy to assume that commercial kitchens will reach temperatures between 95 and 100 degrees during times of service. The 5/16/18 draft of the Indoor Heat Illness Regulations require employers to implement control measures for any work areas where the heat index exceeds 90 degrees, these control measures include the isolation of hot processes or work areas, shielding of radiant heat sources, insulating hot objects, air cooling systems and air conditioning systems. This is problematic for restaurants with commercial kitchens with equipment such as ranges, broilers and ovens that are constantly used during the food preparation process. It will be extremely difficult and expensive for a restaurant to isolate a work area vital to the food preparation process. If the 5/16/18 draft of the Indoor Heat Illness Regulations are implemented as written a chef in a commercial kitchen is going to find it extremely difficult to comply to with the California Retail Food Code and the Indoor Heat Illness Regulations.

While our primary concern is resolution of the conflicts between the 5/16/18 draft of the Indoor Heat Illness Regulations and the California Retail Food Code, we would like to offer the following comments on the draft standard as proposed.

(a) Scope and Application, (1) (B) Commercial and institutional kitchens

The kitchen is the heart of the house for restaurants and is home to industrial appliances used for the preparation of food as governed by the California Retail Food code. Restaurants ranging from delis to neighborhood cafes to food court establishments will have by definition a commercial and industrial kitchen. We don't think it is appropriate to lump restaurants with commercial and industrial kitchens into the scope section which includes heavy industrial uses such as manufacturing, steam plants, geothermal plants, boiler rooms and oil and gas extraction. We believe it is appropriate and consistent with the spirit of the intended regulations to remove commercial and industrial kitchens from this section.

(b) Definitions

Cool-down area: Restaurants have a limited amount of physical space and extremely little, if any is not already being utilized in the kitchen or for customer dining. To help address these space limitations we would encourage you to consider allowing for a cool down area for indoor employees to be outdoors if shade is provided in accordance with section 3395.

Indoor: We appreciate the flexibility provided in the definition of an indoor space. Many restaurants have patios and outside seating areas where customers are served by employees who travel indoors and outdoors during their shift. Additionally, outdoor patios and seating areas are often times cooled by misters and customers are offered water as part of their dining experience. Serving water and utilizing misters are used for cooling measures and we would not want them factored into the heat index.

Clothing that restricts heat removal- We agree with the following comments provided by the Cal Chamber business community coalition.

"The coalition agrees with the recommendation of The Phylmar Regulatory Roundtable (PRR) to revise this definition:

"Clothing that restricts heat removal" means full-body clothing covering the arms, legs, and torso that is any of the following:

- (1) ~~Waterproof~~ **Impermeable to water and water vapor, impermeable to air, or thermal insulating;** or
- (2) Designed to protect the wearer from a chemical, biological, radiological, or fire hazard; or
- (3) Designed to protect the work process from contamination.

Note: "Clothing that restricts heat removal" does not include clothing with flame-resistant or arc-rated properties if the shirt and pants or coveralls are constructed only of knit or woven fibers, have a fabric weight typical of work clothing, and work as the outer layer. "

Heart of the house employees wear chefs coats, aprons, pants, shirts and hats designed to protect our employees from contact with hot food items or cooking surfaces and for hygienic reasons. It is important to note that these items that are constructed of knit or woven fibers, serve as an outer layer of protection for our kitchen employees and to protect the work process in the kitchen from contamination.



(c) Provision of water

Restaurant employees have full access to cool drinking water during their shifts. We acknowledge the importance of water to help cool and hydrate. (d) Access to Cool Down Areas

CRA agrees with the following comments provided by the Cal Chamber:

The draft language states that “the employer shall have and maintain one or more cool-down areas at all times.” The cool-down area should be required only when this standard applies, as there are times when employees are not present, or when the temperature may drop below the threshold.

- (1) The employer shall have and maintain one or more cool-down areas at all times **when covered by this standard**. The cool-down area shall be at least large enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the cool-down area without having to be in physical contact with each other. The cool-down area shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the size of the cool-down area during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(e) Assessment and Control Measures

- (1) We agree with the following comments provided by the Cal Chamber business community coalition:

The Coalition recommends clarifying and simplifying paragraph (1) of this subsection, as well as clarifying when an employer is required to assess temperature and when to assess heat index. In paragraph (1), the employer is required to assess the environmental risk factors. In subparagraph (1) (A) the employer is required to describe the environmental risk factors, and in subparagraph (1)(B) the employer is required to use assessments that are representative of the environmental risk factors. To simplify requirements so employers can more readily comply with them, consideration of environmental risk factors should be combined into one provision.

The Coalition suggests the paragraph (1) be revised as follows:

- (1) (A) The employer shall measure the temperature in work area where employees are working when any of the following conditions are anticipated:
- a. The temperature equals or exceeds 90 degrees Fahrenheit; or
 - b. Employees wear clothing that restricts heat removal and the temperature equals or exceeds 80 degrees Fahrenheit; or
 - c. Employees work in high radiant heat work areas and the temperature equals or exceeds 80 degrees Fahrenheit.
- (B) The employer shall measure the heat index where the work processes generate or use water that creates or contributes to relative humidity, and the temperature equals or exceeds 90 degrees Fahrenheit.
- (C) Assessments shall be taken in work areas and at times when employees are exposed to the highest expected temperature or heat index.



(D) The assessments shall identify and consider the environmental risk factors for heat illness defined in section (b) Definitions, as applicable.

(E) The temperature and heat index assessments shall be in writing; and shall include the date, time, location, environmental risk factors and descriptions of all measurements.

(G) Employers may use representative measurements for multiple work areas that share similar conditions.

(2) (A) Engineering controls – Many restaurants in California, especially those in coastal communities prone to cooler weather, lease commercial space in older buildings that were constructed without air conditioning. It would be extremely expensive and costly for a tenant to install air conditioning to meet the requirements in this standard. Additionally, this section is problematic for restaurants with commercial kitchens which equipment such as ranges, broilers and ovens that are constantly used during the food preparation process. It will be extremely difficult and expensive for a restaurant to isolate a work area vital to the food preparation process. If the Discussion Draft of the Indoor Heat Illness Regulations are implemented as written a chef in a commercial kitchen is going to find it extremely difficult to comply to with the CA Retail Food Code and the Indoor Heat Illness Regulations.

(B) Administrative controls -Restaurant employees such as chefs, sous chefs, line cooks, pastry chefs and bakers are acclimatized to the kitchen environment. During the lunch and dinner service time periods at restaurants it is unfeasible to reduce work intensity or speed. Food orders need to be prepared in accordance with the time and temperature relationships as outlined in the California Retail Food code, deviating from those procedures would put our employees and customers at risk for food borne illness.

(h) Training

The restaurant industry is currently operating in a tight labor market and many of our members are constantly looking for qualified supervisory and non-supervisory employees. Once an employee is hired our members need them to begin work right away. Additionally, many non-supervisory employees in our industry such as bar tenders and servers work at more than one restaurant or bar. We would suggest that this section be revised to require the employee to become self-certified and the certification stays with the employee so it can cover any change in employment. It is to the benefit of the employee to be certified through only one heat illness prevention training that will cover multiple jobs, instead of requiring the employee to sit through repeated heat illness prevention trainings every time they pick up a new shift at a new restaurant or bar. There is statutory precedent set on both the food handler card and alcohol server card. Additionally, restaurant employees, such as servers, who work in both indoor and outdoor areas should be able to receive one training that covers both indoor and outdoor heat illness prevention requirements.

(i) Heat Illness Prevention Plan

Restaurants with outdoor dining areas should be able to provide one written Heat Illness Prevention Plan that covers both indoor and outdoor areas of work.



We appreciate the opportunity to provide comment on the current version of the Heat Illness Prevention in Indoor Places of Employment draft standard. Overall, we are concerned about the complexity of the standard as written and the inherent conflict with portions of the California Retail Food Code. Our members want to be in compliance with California's regulations, so it is important to make sure the final standard is clear and easy to implement. Our employees are the heart of our business and their safety as well as the safety of our customers is of important concern. We would like to continue to work with you to provide input into the crafting of this regulation that takes into account the very unique nature of our members businesses.

Sincerely,

A handwritten signature in black ink that reads "Katie Hansen". The signature is fluid and cursive, with the first name "Katie" being more prominent than the last name "Hansen".

Senior Legislative Director
California Restaurant Association

Copy: André Schoorl, Juliann Sum, Eric Berg, Amalia Neidhardt

