



November 20, 2018

To: rs@dir.ca.gov

Subject: Heat Illness Prevention in Indoor Places of Employment
Comments on Discussion Draft – October 24, 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.

The most recent revisions to the indoor heat illness prevention regulations have been simplified and we urge Cal OSHA to continue to simplify the regulation to ease compliance and protect employees. 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. Restaurants need to be able to clearly understand the eventual regulations on indoor heat illness prevention, so they can reasonably meet the proposed new mandates.

Restaurants use commercial cooking equipment like gas ranges, broilers, ovens and fryers to prepare menu items for our customers. The California Retail Food Code requires restaurants to heat eggs, meat, poultry and fish to specific temperatures to ensure food safety. We are concerned that the proposed indoor heat illness regulations may conflict with regulations which affect our ability to heat and hold food to the necessary temperatures to protect the public's health and safety from food borne illnesses and comply with the Retail Food Code. We would like to work with Cal OSHA to participate in the development of FAQs and guidance documents to address these concerns regarding the engineering controls and the California Retail Food Code.

We would like to offer the following comments on the 10/24/18 draft of the Indoor Heat Illness Regulations as proposed:

(a) Scope and Application

We would like to thank Cal OSHA for taking our concerns into account and removing “commercial and industrial kitchen” language from the regulation which would have unnecessarily captured delis, coffee shops, juicers, smoothie shops and ice cream shops which do not utilize high radiant heat generating appliances in their operations.

(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. We would like to thank Cal OSHA for taking our space limitations into account and revising the definition of “cool-down area” to include an outdoor area that is shielded from direct sunlight and high radiant heat sources.

Clothing that restricts heat removal: 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. We appreciate the revisions to the definition of clothing that restricts heat removal, which accommodates the professional work attire worn by our heart of the house employees.

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.

(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.

(e) Assessment and Control Measures

We agree with the following comments provided by the Cal Chamber business community coalition:

- (1) Directs employers to measure and record temperature or heat index, and to evaluate *all other* environmental risk factors. The evaluation of environmental risk factors should be limited to those defined as such in subsection (b) definitions – environmental risk factors. Therefore, “all other” should be deleted to reference simply environmental risk factors.

- (1) (A) The Note in this subsection mandates employers to comply with section 3204 for record retention and access. Section 3204 requires records of assessment to be



maintained for 30+ years. There is no evidence that heat illness is a cumulative, chronic or long term exposure requiring a 'look back' for previous exposures. Retaining records for 30 plus years is excessive and unnecessarily burdensome on employers. The record retention requirements in section 3203 should suffice in that records be kept for one year.

- (2) (D) specifies that that the employer shall obtain the active involvement of “employees and their union representative.” The language should be revised to reflect the involvement of a union representative is limited to one that has a collective bargaining agreement with the employees and is therefore the representative. We are opposed to any union representative being actively involved with the employer’s program, unless they are the elected representative of the employees. If there is not an elected union, then there should be no union representation in the process. The following revision is suggested:

(DE) The employer shall have effective procedures to obtain the active involvement of employees and their union representative **if any**, in ~~designing and conducting the assessments.~~ performing the following:

- (3) (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. We appreciate Cal OSHA acknowledging the outdoor temperature is cooler in areas of California and including a revision to this section to allow for natural ventilation to be used when the outdoor temperature is lower than the indoor temperature.

(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. The revision in the 10/24/18 draft to change the degrees from 80 to 82 in this section is helpful to restaurants.

(h) Training

We understand the need for new employees to be trained on the employer’s specific indoor heat illness prevention plan. Many employees in our community work at more than one restaurant and/or change employers throughout the calendar year. Some of the outlined topics for the training in the proposed regulation will be universal among all restaurant employers; therefore, an employee friendly solution would be to create a universal evaluation sheet and test to correspond with those topics so new employees who have received prior training in the calendar year can comply with the regulation in an efficient manner and avoid retraining simply due to the fact that they work at more than one restaurant or have a new employer. 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 10/24/18 version of the Heat Illness Prevention in Indoor Places of Employment draft standard. Our members want to be in compliance with California's regulations, so it is important to make sure the final standard is clear and practical to implement. Our employees' safety as well as the safety of our guests is of utmost concern.

We would like to continue to work with you to provide input into the crafting of this regulation and to participate in the development of the FAQs and guidance documents to take into account the very unique nature of our members businesses.

Sincerely,



Senior Legislative Director
California Restaurant Association

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