



February 22, 2019

TO: State of California, Department of Industrial Relations, Division of Occupational Safety and Health
Comments submitted electronically: rs@dir.ca.gov

FROM: Gail Blanchard-Saiger, Vice President & Counsel, Labor & Employment

SUBJECT: Indoor Heat Illness – Comments on January 29, 2019, Discussion Draft

On behalf of our more than 400 member hospitals and health systems, the California Hospital Association (CHA) respectfully offers further comments on the draft document the Division of Occupational Safety and Health developed as part of the Indoor Heat Illness Advisory Committee.

CHA appreciates the division's effort to meet the requirements of Labor Code § 6720. California hospitals take very seriously our duty to provide a safe, healthy environment for our patients and our staff, and look forward to continuing to work with you on this project. In an effort to provide support and assistance in development of a workable and effective regulation, we provide the comments below.

As you will note, we joined the CalChamber in its comments. In particular, we strongly support the following recommendations:

- The scope and application of these regulations should only apply to indoor structures that are not air conditioned and where the temperature is 95 degrees or higher.
- Instead of moving forward with this proposal, another in-person advisory meeting may be the best way to resolve outstanding concerns.

In this memo, we would like to take an opportunity to outline some hospital-specific issues.

As you are aware, under current law all employers have the responsibility to protect the health and safety of their workers, including those who work indoors. In cases where there is a risk of heat illness, employers are further responsible to address those situations in their Injury and Illness Prevention Plans. With this backdrop, in 2016 the Legislature adopted Labor Code § 6720, which explicitly directs the division to propose a standard that minimizes heat-related illness and injury among employees working indoors and specifically authorizes the division to limit the proposed standard to certain industry sectors. The Legislature passed this legislation because it was concerned that some employers, particularly those with high-risk workplaces, may need more guidance. Thus, it directed the division to

develop an indoor heat illness standard. As noted above, however, the Legislature recognized that a one-size-fits-all solution may not work; as such, it authorized a standard limited to certain industry sectors.

As many stakeholders have reiterated during this advisory committee process, indoor heat illness risks vary greatly by location and operation. For example, the risk faced by the warehouse worker in the 2012 division case that gave rise to Labor Code § 6720 varies greatly from the risk faced by a boiler room engineer in a hospital. While both may be exposed to temperatures exceeding 100 degrees, the warehouse worker's duties result in prolonged exposure while performing significant physical exertion, while the boiler room engineer may be in that work location for fewer than 15 minutes on an infrequent basis with much less physically demanding duties. Moreover, the warehouse worker may have limited areas in which to get relief from the heat, while the boiler room engineer can simply walk out of the boiler room into an air-conditioned space. While some emergency situations may require the engineer to spend longer periods of time in a high heat area, that is the exception rather than the rule — and would likely be part of a disaster response that requires special considerations. While one may argue that the draft discussion document distinguishes those situations, we respectfully disagree, for the reasons set forth in the Chamber's letter.

Hospitals are also distinguished from many other industries, as their work environment is highly regulated. In addition to Cal/OSHA, hospitals are regulated by the Office of Statewide Planning and Development, which dictates how our facilities are built — from where walls are placed to HVAC system specifications, etc. The California Department of Public Health also has significant interest in the workplace temperature, as the temperature and physical environment relates to patient care and infection control. This is very different than warehouses, laundries and most other workplaces.

CHA has worked, and will continue to work, in good faith through the Indoor Heat Illness Advisory Committee process. Unfortunately, it appears that efforts to craft a standard that covers all industries is not feasible. Thus, we recommend that the division focus on high-risk workplaces, as envisioned by the Legislature.