February 22, 2019

State of California
Department of Industrial Relations

Comments submitted electronically: rs@dir.ca.gov

SUBJECT: **HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT COMMENTS ON DISCUSSION DRAFT – JANUARY 29, 2019**

The below-signed organizations (the Coalition) appreciate the opportunity to submit comments on the most recent proposed text of draft revisions dated 1/29/19 for the "Heat Illness Prevention in Indoor Places of Employment." Safety and health of employees is a top priority for our employers. With this priority in mind, we appreciate the revisions that have been accepted, but strongly urge further revisions to this proposal so that employers have definitive standards to follow in order to achieve the proposed goal of maintaining worker safety.

(a) Scope and Limitation of Application: Consistency between Outdoor Heat Illness Regulations and Indoor Heat Illness Regulations

The coalition has consistently requested to align the application of the proposed indoor heat illness regulations with the outdoor heat illness regulations so that an employer who has employees under both requirements does not have to grapple with inconsistent standards. We respectfully reiterate this same request.

First, 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. These two qualifiers are consistent with the outdoor heat illness regulations and should similarly be included in the limitation of the indoor heat illness proposal. ***See* Section 3395(a)(2)(E)** (specifically excluding employment that consists of operating vehicles that are air-conditioned); **Section 3395(e)** (triggered when temperature reaches 95 degrees)[1]. Under the current proposal, any facility where the temperature equals or exceeds 87 degrees would be covered under the various mandates. The same protections at the same temperatures should be applicable to all employees, regardless of whether they are inside a structure versus outside. Accordingly, we respectfully request the proposal to be revised as follows:

(1) Exclude all work areas that are regularly air-conditioned; and
(2) Exclude all work areas where it is not reasonably anticipated for temperatures to reach 95 degrees or higher.

Second, there should be a clear exemption from the indoor heat illness proposal for any motor vehicle, equipped with air-conditioning, similar to the outdoor heat illness regulations referenced above. A driver who is performing work away from the main physical location of the employer, who has independent discretion to set the temperature within the vehicle, should not be covered under this proposal. An employer cannot possibly comply with the various mandates of taking temperatures with a thermometer or implementing administrative or engineering controls for individuals who are outside the main physical location of the employer in air-conditioned vehicles.

For example, an employee who drives on behalf of a company, and parks the vehicle in the sun on a summer day, may upon entry of the vehicle encounter temperatures that exceed 87 degrees. However, the employee has immediate access to air-conditioning in the vehicle to reduce the temperature to a

[1] Section 3395(d) requires access to shade when the temperature exceeds 80 degrees Fahrenheit. Given that this proposal is applicable to "indoor" space, shade is already provided no matter the temperature.

comfortable degree. Simply because the interior of the car reaches 87 degrees on one day should not then trigger all of the mandates under this proposal for an employer. Accordingly, we respectfully request this revision.

Third, there should similarly be a clear exemption from the indoor heat illness proposal for any employee engaged in the "transportation or delivery of agricultural products, construction materials or other heavy materials (e.g. furniture, lumber, freight, cargo, cabinets, industrial or commercial materials)," as those employees are explicitly covered under the outdoor heat illness regulations, as set forth in Section 3395(a)(2)(E).

Fourth, the proposal should also clarify that the requirements and/or mandates are only applicable during the time in which the temperature at the indoor facility meets or exceeds 95 degrees (or as currently set forth in the proposal, 87 degrees or higher). The concern is that, because Section (a)(1) states this "standard applies to all indoor work areas ***where*** . . ." the temperature equals or exceeds 87 degrees Fahrenheit . . ., if at any time or day the temperature at a facility hits that mark, even if only for a few minutes, it will thereafter always be under the mandates of this proposal no matter how infrequently the temperature ever hits that mark again. Again, consistent with the outdoor heat illness regulations, the proposal should only be applicable "**when**" temperatures within the indoor facility reach a high heat, defined in the outdoor heat illness regulations as 95 degrees or higher.

(b) Revise Definition of "Clothing that Restricts Heat Removal"

The proposal defines various clothing that potentially restricts heat removal. This definition needs to clarify that it is only clothing specifically issued and required by the employer to be worn during work hours. Clothes purchased by an employee and chosen by an employee to wear during work hours, that may meet any of the listed criteria, should not be covered under this proposal.

(c) Revise Definition of "Environmental Risk Factors"

This definition lists various factors that could create the possibility for heat illness to occur. Within this definition is the term "protective clothing and personal protective equipment worn by employees." There is no proposed definition of "protective clothing" and therefore could basically be interpreted as any piece of clothing that provides even a minimal level of protection. This term needs to be deleted to avoid confusion and either refer to "clothing that restricts heat removal" as proposed to be revised above, or "personal heat-protective equipment," as proposed to be revised below.

(d) Revise Definition of "Indoor"

In our prior comments, we requested further clarity regarding structures that qualify as "indoor" versus "outdoor", given the inconsistency between this proposal and the outdoor heat illness regulations. Lack of a clear distinction between the two spaces will create confusion and significant challenges regarding compliance and safety.

There are numerous structures that have open doors and moveable walls allowing employees to walk in and out of the facilities throughout the day. When employees are outside the structure, they potentially fall under the outdoor heat illness regulations, even if they are outside for a limited time, even though most of their work is spent "indoor." For example, many construction employees perform interior work while frequently going outside to prepare or obtain materials, then going back inside.

Thus, the definition of "indoor" could make it unnecessarily burdensome for employers to determine whether an area is indoor or outdoor and to manage accordingly and correctly. Therefore, employers need clarity and the ability to harmonize the indoor requirements as much as possible with the outdoor requirements so they may maintain and manage one plan.

The Coalition again recommends further clarity as follows:

> "Indoor" refers to a space that is under a **solid** ceiling or overhead covering; and is **fully** enclosed along its **entire** perimeter by **solid** walls, doors, windows, dividers, or other physical barriers,

whether open or closed**. If the enclosure of the perimeter of the space consists of moveable walls, doors, dividers or other moveable physical barriers, it may be considered other than an indoor space for the purposes of this section if at least 50% of the perimeter of the space is open for at least 50% of the height between the floor and the ceiling or overheard covering.** All work areas that are not indoor are considered outdoor and covered by Section 3395.

NOTE: Physical barriers that allow air circulation and are largely exposed to the outside environment, such as rails, mesh screens, chain link fences, grated walkways, or decorative features are not solid and do not fully enclose a perimeter.

Alternatively, the proposal could be revised to allow an employer with employees who work both inside and outside during the work shift, to allow the employer the option to designate which regulations control.

(e) Revise the "Exception" Under the Definition of "Indoor"

As previously indicated, we have concerns with the requirement that the shaded area be used **exclusively** for shade. This exception will preclude any structure not used solely for shade from the exception; that means a structure used for a machine shed, storage, or even to shelter a hay pile could be "indoor." That would mean that the only structure that could be used for shade under Section 3395 would be a structure dedicated to the purpose of providing shade; otherwise, it would be indoor. Furthermore, many of the bays and shops mentioned in the example above are cool-down areas for outdoor workers, in compliance with Section 3395. Shade structures often serve as a lunch area, a meeting location for tailgate meetings, as well as for the morning crew daily briefing and stretching area. The requirement that an area be exclusively for shade is unreasonably limiting. Accordingly, we recommend the exception be revised to read as follows:

> EXCEPTION: "Indoor" does not refer to a shaded area that meets the requirements of Section 3395 and is used as a source of shade for employees covered by Section 3395.

(f) Revise Definition of "Personal Heat-Protective Equipment"

This section is defined as equipment worn to reduce heat illness and lists various types of garments. Again, clothes purchased and chosen by an employee to wear during work hours should not be covered under this proposal. Only garments specifically issued and required by an employer to wear during work hours should be covered. Accordingly, we request the definition be revised with this qualification.

(g) Revise Section (d)(1) - Access of Cool Down Areas

This section indicates that the temperature in a cool-down area must be available at all times and maintained at less than 82 degrees Fahrenheit. A cool-down area is also described as either an outdoor or indoor facility. Under the outdoor heat illness regulations, an employer is simply required to provide shade at any time the outside temperature reaches 80 degrees. There is no set temperature under the shade that must be maintained by the employer – just the availability of shade. Similarly, here, there is no basis to specify an exact temperature for a cool-down area, much less an arbitrary temperature such as 82 degrees.

(h) Revisions to Section (e) Assessment and Control Measures

The application of this section should be revised, as set forth above in section (a). Additionally, we request the following changes to the proposal:

1. (e)(1) – the proposal requires an employer to measure and record the temperature or heat index and "shall identify and evaluate all other environmental risk factors for heat illness." This requirement is especially difficult and unduly burdensome on an employer given the broad definition of "environmental risk factors." Environmental risk factors are defined in the proposal as air temperature, humidity, radiant heat, conductive heat, and air movement, which means that under this section, the employer would have to identify all of these different measurements

and evaluate these measurements, but for what purpose? Are all these measurements needed? If it is an air-conditioned office building where the air conditioning is temporarily turned off and the indoor temperature reaches 87 degrees for a limited time period, does an employer need to then measure the radiant heat, conductive heat, and air movement? Does the employer have to record all these measurements as proof of compliance? Again, given the current broad scope and application of this proposal, such a mandate seems extremely burdensome especially for a work facility where there is not a significant risk of high heat and the employer may not have the tools or equipment to take these required measurements.

Environmental risk factors are also defined to include "protective clothing" as referenced above. Again, this term is not defined and can essentially include any garment worn by the employee. Under this section, an employer would have to inquire into the exact clothing worn by each employee and the material used. It seems somewhat intrusive of an employee's privacy to have an employer requesting information regarding all of the employee's garments. Given these significant concerns, we respectfully request deletion from this section of the requirement for an employer to "identify and evaluate" all of the "environmental risk factors."

2. (e)(2) – This section states that the employer shall "select" the use of control measures "based on the environmental risk factors for heat illness present in the work area." This statement seems to indicate that the use of the various control measures is within the discretion of the employer based on the broad definition of "environmental risk factors" referenced above. However, in describing the control measures (engineering, administrative, and personal-heat protective equipment), it also indicates that these control measures must be utilized in a specific order, (i.e., engineering controls first), and "where feasible engineering controls are not sufficient, then administrative controls," and "where feasible engineering controls are not sufficient, personal heat-protective equipment." We believe dictating the specific controls to utilize, the specific order in which to utilize the controls, and then requiring the employer to prove feasibility or lack thereof is a significant restriction on the employer's discretion. Accordingly, we respectfully request the deletion of language in this section that seeks to proscribe the order in which the various controls should be used, thereby leaving the employer with the discretion regarding which controls to utilize and the order in which to implement those controls.

We appreciate the requested changes that were accepted, including providing a definition of a "union-representative" and revising the retention period of documents. However, we are very concerned with the significant issues that remain with this proposal, as outlined above. We believe that instead of moving forward with this proposal, another in-person Advisory meeting may be the best way in which to resolve these outstanding concerns. Again, we appreciate the opportunity to provide this input and your thoughtful and serious consideration of our recommendations.

Sincerely,

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Agricultural Council of California
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American Pistachio Growers
Associated General Contractors of California
Building Owners and Managers Association
California Association of Joint Powers Authorities
California Association of Nursery and Garden Centers
California Association of Winegrape Growers

California Attractions and Parks Association
California Building Industry Association
California Business Properties Association
California Citrus Mutual
California Citrus Nursery Society
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Cut Flower Commission
California Farm Bureau Federation
California Framing Contractors Association
California Fresh Fruit Association
California Hospital Association
California Hotel and Lodging Association
California League of Food Producers
California Manufacturers & Technology Association
California New Car Dealers Association
California Professional Association of Specialty Contractors
California Refuse Recycling Council
California Retailers Association
California Seed Association
California Trucking Association
Chemical Industry Council of California
Construction Employers' Association
Family Business Association of California
Family Winemakers of California
FarWest Equipment Dealers Association
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Fresno Chamber of Commerce
International Council of Shopping Centers
Murrieta/Wildomar Chamber of Commerce
National Association of Industrial and Office Properties
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National Federation of Independent Business
Nisei Farmers League
North Orange County Chamber of Commerce
Official Police Garages of Los Angeles
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Residential Contractor's Association
Santa Maria Valley Chamber of Commerce
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Western Agricultural Processors Association
Western Carwash Association
Western Growers Association
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