February 22, 2019

State of California
Department of Industrial Relations
Comments submitted electronically: rs@dir.ca.gov

Subject: **Comments on Heat Illness Prevention in Indoor Places of Employment Draft Revisions 1/29/19**

The Construction Employers' Association (CEA) is comprised of over 100 union commercial building contractors performing work in Northern California. Our members collectively perform billions in public and private building construction volume annually and employ thousands of skilled trades workers.

To promote greater compliance among building contractors, the proposed heat illness prevention in indoor workplaces regulation should be as easy to follow as the current heat illness prevention standard. Over the last 13.5 years, contractors have devoted considerable resources adopting, implementing and training employees on their heat illness prevention plans. Given that building construction activities take place inside and outside concurrently, heat illness prevention and compliance with the recently proposed requirements would be easier to achieve when employers do not have to administer separate heat illness prevention protocols for the same worksite and the same workforce.

CEA offers these comments in response to the recent draft of the Heat Illness Prevention in Indoor Places of Employment:

"Radiant Heat"
We have members that are confused by this definition. Perhaps a definition taken from a dictionary would be clearer.

(c) Provision of water
CCR Section 3395 does not require that water be provided in the shaded areas. In fact, Section 3395 requires that the water be located as close as practicable to the areas where employees are working. For practical reasons, most employers provide water in and/or near the shaded areas, but it is not mandated by the regulation. To promote greater compliance among building contractors who have both indoor and outdoor workers performing work on the project, please use the same language contained in CCR Section 3395.

(d)(1) Access to cool-down areas
The proposed language is contradictory. The draft language defines the Cool-Down Area as, "an indoor or outdoor area that is shielded from direct sunlight and other high radiant heat sources and is either open to the air or provided with ventilation or cooling." However, the recently proposed language also requires that, "The temperature in the cool-down area shall be maintained at less than 82 degrees Fahrenheit, unless the employer demonstrates it is infeasible." A building contractor may use a naturally shaded area or a pop-up tent to meet the requirements of CCR Section 3395. It is not reasonable that the contractor providing a cool-down area in the shade for their outdoor workforce should have to demonstrate it's not feasible to maintain that area at less than 82 degrees if they choose to utilize that area for their indoor workforce. Furthermore, it is unreasonable to require that the contractor maintain a separate cool-down area for their indoor workforce that is maintained at less than 82 degrees.

(e)(1)(A) Assessment and Control Measures
This section requires that the employer measure and record the temperature or heat index, whichever is greater. According to the National Weather Service, "heat index values were devised for shady, light wind conditions,

exposure to full sunshine can increase heat index values by up to 15°F." Our members are confused about the applicability of using outdoor humidity and the corresponding heat index values for indoor work spaces.

(e)(1)(B)(3)
This section states, "Temperature or heat index records shall be retained for 12 months or until next measurements are taken, whichever is later, and made available at the worksite to employees and to representatives of the Division upon request."
This language is confusing. Does it mean that the employer retains the records for 12 months? Or does it mean that if the measurements are taken on Wednesday and again on Thursday, the Wednesday temperature measurements can be discarded?

(e)(1)(D)
Lastly, safety is addressed in CEA's collective bargaining agreements. The proposed language contained in (e)(1)(D) contradicts CEA's current collective bargaining agreements with the Carpenters, Laborers, and Operating Engineers.

Below are excerpts from current CEA Agreements.

2018-2023 Carpenters Master Labor Agreement for Northern California between CEA and the Carpenters 46 Northern California Counties Conference Board of the United Brotherhood of Carpenters and Joiners of America
Section 19 states in part, "The individual employer shall be solely responsible for the implementation and maintenance of such safety laws, rules, regulations, standards, orders and decisions. Neither the Union nor any Local Union or the NCCRC is responsible for such implementation or maintenance."

2018-2023 Laborers' Master Builders Agreement between CEA and the Northern California District Council of Laborers
Section 13C states in part, "The Individual Employer is solely responsible for implementing and maintaining such Laws, Standards, Rules and Regulations. Neither the Union nor any Local Union is responsible for implementing or maintaining such Laws, Standards, Rules or Regulations."

2016-2020 Master Builders Agreement for Northern California between Operating Engineers Local Union No. 3 and CEA
Section 16.02.00 states in part, "The safety standards and rules contained herein are minimum standards and are not intended to imply that the union objects to the establishment and imposition by the Individual Employer of additional or more stringent safety rules to protect the health and safety of the Employees. It shall be the exclusive responsibility of the Individual Employer to insure compliance with safety standards and rules.

Nothing is this Agreement is intended to make the Union liable to anyone in the event that injury or accident occurs."

The proposed language is contradictory and not in compliance with CEA collective bargaining agreements. Furthermore, due to the proposed role of the Union, the Union may not be supportive of the draft language due to concerns about liability.

Please align the requirements of the proposed indoor heat illness regulation with the existing outdoor heat illness regulation so that building contractors can maintain a uniform heat illness policy across the jobsite.

Thank you for the opportunity to provide comments.

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Construction Employers' Association