

July 07, 2025

California Department of Industrial Relations  
Division Of Occupational Safety & Health  
Eric Berg, Deputy Chief of Health  
1515 Clay Street  
Oakland CA 94612

Submitted Electronically: Eberg@dir.ca.gov

***Re: Comments on AB 2243 draft language for heat illness prevention, T8 3395 & 3396***

Dear Mr. Berg:

The Pacific Maritime Association (PMA) appreciates the opportunity to comment on CalOSHA's draft updates to outdoor and indoor heat illness prevention.

PMA is a nonprofit mutual benefit corporation that serves as the multi-employer collective bargaining and centralized payroll representative for approximately 70 member companies. PMA's members include shipping lines, stevedoring companies, marine terminal operators, and maintenance contractors who employ longshore and other dockworkers at marine cargo handling facilities at all 29 trading ports in California, Oregon, and Washington. Ports in California, Oregon and Washington are a critical gateway for U.S. international trade, linking the nation's consumer, industrial, and agricultural sectors to global markets.

Pacific Maritime Association and our members are concerned that the current draft proposal to amend Title 8 GISO sections 3395 and 3396 related to heat exposure does not account for the unique aspects of marine cargo handling employers in California.

### **CalOSHA's Proposed Heat Illness Updates Will Uniquely Burden the Maritime Industry**

Not all employers in California are the same. Maritime Industry Employers hire daily from a casual labor pool. The West Coast marine cargo handling industry orders longshore labor out of a "dispatch hall." Our members do not employ the same dockworkers on a daily basis. A longshore worker could very possibly work at "Employer X" for one day but not work for that employer for the rest of the year, or more likely work for a different employer every day of the week. As a result of this system, employers who employ casual labor from a dispatch hall will be disproportionately negatively affected under this proposed heat update on acclimatization copied here for reference.

*(g) Acclimatization.*

*(3) For new employees and returning employees assigned to work areas where the temperature exceeds 80 degrees Fahrenheit, the employer shall either implement subsection (e) for the unacclimatized employee for 5 working days or implement the following work schedules:*

*(A) For a new employee, the employee's exposure to heat shall be restricted to no more than 20% of the usual work duration on the first day of work, 40% on the second day of work, 60% on the third day of work, and 80% on the fourth day of work.*

*(B) For a returning employee who has been away for more than 14 days, the employee's exposure to heat shall be restricted to no more than 50% of the usual work duration on the first day of work, 60% on the second day of work, and 80% on the third day of work.*

*EXCEPTION to subsections (g)(3)(A) and (g)(3)(B): The requirements of subsections (g)(3)(A) and (g)(3)(B) do not apply if the employer can demonstrate the employee consistently worked under the same or similar conditions as the employer's working conditions within the prior 14 days.*

Marine terminal operator (MTO's) employers place labor orders based upon flexible vessel cargo requirements. When labor is ordered out of the dispatch hall, the employer does not know what individuals will report at their terminal until labor arrives at the dock<sup>1</sup>. It is unknown if the longshore worker has ever worked for that specific employer before or not – nor is it known if the worker has worked for another similar employer within the last 14 days. This creates a unique problem that other employers in California do not share, and we believe that CalOSHA did not take this into account when proposing the Acclimatization requirement.

FedOSHA has acknowledged the comparison between the maritime industry, with its unique conditions, and other industries. Indeed, as FedOSHA has stated:

*In regards to the longshoring industry, OSHA has traditionally performed separate analyses of broader databases to prepare employer lists specific to the longshoring industry. OSHA recognizes the unique qualities of this industry, has developed separate standards for maritime industries, including longshoring, and normally performs specialized investigations for longshoring facilities. The problems with data from the longshoring industry can be solved by continuing to look at this industry in a way that does not compare these employers to employers in other industries.*

*62 Fed. Reg. 6439–6440.*

The proposed Acclimatization subsection imposes burdens that are unworkable for California marine terminal operators. While California MTO's agree that employees should be protected from heat related injuries, this inflexible approach proposed by CalOSHA is based on an assumption that an individual works for their same employer every day of the week, and that the Employer has knowledge of who will be reporting to work for them on any day.

PMA believes that these issues need to be resolved during a future advisory committee. A uniform standard is unworkable with a casual workforce. The above is our most important concern. PMA would like to further add that updates to the outdoor and indoor heat illness standard should align with FedOSHA proposed rulemaking which is not yet finalized. FedOSHA has only just started their public hearing before an Administrative Law Judge on June 16 and concluding on July 02. At the close of the OSHA hearing, there will be a post-hearing comment period expected to last for 90 days along with

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<sup>1</sup> Dockworkers receive required General Safety Training, including a heat illness module, before reporting to marine terminals.

publication of the transcript at a later date.

Comments to CalOSHA now seem premature as FedOSHA has yet to determine the economic and technological feasibility, both mandatory legal requirements, of their proposed rulemaking. Additionally, FedOSHA has yet to respond to the wide range of public comments to their docket on their NPRM [OSHA-2021-0009].

CalOSHA should delay their proposed Advisory Committee to allow interested parties to fully review the FedOSHA docket when closed since CalOSHA is pulling their proposed regulatory language from that hearing packet.

PMA believes this CalOSHA heat illness rulemaking is premature for the previous reasons. CA AB 2243 does not require the division to impose an unworkable acclimatization scheme. The only requirement is to *consider developing regulations, or revising existing regulations, related to additional protections related to acclimatization to higher temperatures.*

### **State vs. Federal Jurisdictional Coverage**

PMA is concerned with CalOSHA moving forward on a preliminary FedOSHA proposal that FedOSHA may very well amend. This would lead to different heat illness regulatory requirement for landside workers from vessel workers.

California longshore workers routinely walk in and out of coverage between state (landside) and federal OSHA (vessel cargo operations). While the heat risk is exactly the same, the Employer compliance requirement will be different at the same establishment.

PMA believes the best course of action is to allow FedOSHA to complete their current heat illness rulemaking and for CalOSHA to adopt a substantially similar approach.

### **Additional Concerns to Be Discussed During Advisory Committee**

PMA has concerns over the proposed draft wording to provide copies of the heat illness plan.

*The plan shall be distributed to new employees upon hire, during heat illness prevention training, and to every employee at least once a year. Employers are not required to distribute the plan to an employee more than twice a year.*

PMA members do not have concern with providing longshore workers with knowledge or copies of their HIPP. Our concern relates back to the unique issues obtaining labor from a dispatch hall and not knowing if any worker has worked for the employer before. Can this requirement be satisfied by online posting? What is the definition of a new employee? Does providing copies of the HIPP to an authorized representative satisfy the requirement?

PMA looks forwarding to explaining these unique concerns during a future advisory committee meeting.

## Conclusion

We believe that CalOSHA's proposed heat illness updates will have a significant, disproportionate, and burdensome impact on marine cargo handling employers in California. For these reasons, PMA encourages CalOSHA to modify their current proposal to focus on preventing heat illness with a performance requirement that provides flexibility and allowing employers to tailor their programs to best reflect the nature of their industry.

Thank you for your consideration on the submitted comments and I look forward to working with CalOSHA in the future Heat Advisory Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "m = 1 A" with a long horizontal line extending to the right.

Michael Hall, CSP  
Assoc. Coast Director, Accident Prevention  
Pacific Maritime Association

Cc: [jlandaverde@dir.ca.gov](mailto:jlandaverde@dir.ca.gov)