

Calif. Employers Should Sweat Over Heat-Illness Rules

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As summer continues and temperatures rise, the need for California employers with employees that regularly work outdoors, such as in the agricultural, construction and oil and gas industries, to review their compliance with the state's heat-illness prevention standards, C.C.R. Title 8, Section 3395, becomes all the more important. This is especially true in light of California's new cool-down "recovery period" law that went into effect last year, and the Division of Occupational Safety and Health's ("Cal/OSHA") amendments to its heat-illness prevention regulations that just went into effect May 1.

Below are five things employers should be doing to keep themselves in compliance and their employees safe during hot weather.

1. Review and Update Written Policies

The starting point for an employer's heat-illness prevention compliance is its written policies. Cal/OSHA's regulations require employers to establish and maintain a written heat-illness prevention plan. The plan must be in both English and the language understood by a majority of the employees, and at a minimum must contain the company's: (1) procedures for the provision of water and access to shade, (2) high-heat procedures, (3) emergency response procedures and (4) acclimatization methods and procedures. The plan may be included as part of the employer's general illness and injury prevention program.

Employers should review their written programs to ensure that they include a heat-illness prevention plan, and that it is up to date with Cal/OSHA's recent amendments. Some highlights of these amendments include:

- Lowering the temperature at which employers must provide designated shade areas from 85 to 80 degrees Fahrenheit.



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- Expanding requirements for emergency response procedures, including effective communication with employees, responding to signs and symptoms of possible heat illness and providing first aid, and obtaining emergency medical services.
- Requiring effective employee observation and monitoring, as well as pre-shift meetings to review high-heat procedures, when subject to high-heat procedures.
- Adding specific acclimatization procedures for new employees and during heat waves, which include close observation by a supervisor or designee.
- Providing more specific guidance on what must be addressed in a written heat-illness prevention plan.

It is also recommended that employers update their employee handbooks (or other written break policies) to address recovery periods, along with meal and rest periods.

2. Provide Cool-Down “Recovery” Periods

An important feature of the Cal/OSHA heat-illness prevention standards is cool-down rests in the shade, also called “recovery periods,” that allow employees to cool off when they feel they are overheating. Beginning last year, the California Labor Code’s existing requirements for one additional hour of pay when a meal or rest period is not provided have been extended to these cool-down rest breaks as well. This means the importance of complying is all the greater, and employers should ensure that they have proper policies and procedures in place for providing cool-down rests at all outdoor work sites.

The standard provides that employees must be allowed and encouraged to take cool-down rests in the shade whenever they feel the need to do so to protect against overheating. The length of the rests is not defined, but must be at least five minutes (in addition to the time needed to access the shade) and an employee cannot be ordered back to work until any signs or symptoms of heat illness have abated. Also, under the amended regulations, an employee taking a cool-down rest must be monitored and asked about heat-illness symptoms, and encouraged to remain in the shade. Employees are entitled to take the cool-down rests as needed, so there is no specific limit on the number they can take.

For agricultural employees, Cal/OSHA’s new regulations create additional requirements. When the temperature is 95 degrees or above, the employer must ensure that employees take a minimum 10 minute preventative cool-down rest period every two hours. If the timing of a cool-down rest period coincides with a required meal or rest period, they can be combined. This new requirement thus imposes a minimum number of cool-down rests that must be taken during high-heat conditions, in addition to the ones employees can take as needed.

3. Establish High-Heat Procedures

For employers in the agriculture, construction, landscaping, oil and gas extraction, transportation industries (involving transportation of agricultural products, or construction or other heavy materials, unless it is with air conditioned vehicles and there is no loading or unloading), special “high-heat” procedures apply when the temperature reaches 95 degrees Fahrenheit.

Employers in these industries should review their high-heat procedures to ensure they are compliant with Cal/OSHA’s amended regulations. Key requirements for high-heat procedures, many of which are new, include:

- Effective communication by voice, observation or electronic means between supervisors and employees, as well as effective observation/monitoring of employees for alertness and signs or symptoms of heat illness through: (a) supervisor or designee observation of 20 or fewer employees, (b) mandatory buddy system, (c) regular communication with sole employee, such as by radio or cellphone or (d) other effective means of observation.
- Designating one or more employees at each work site as authorized to call for emergency medical services, and allowing other employees to do so when no designated employee is available.
- Reminding employees through the shift to drink plenty of water.
- Pre-shift meetings before work to review high-heat procedures, encourage employees to drink plenty of water and remind employees of their right to take cool-down rests in the shade.
- The additional requirements for preventative cool-down rest periods for agricultural employees, discussed above.

4. Train Employees and Supervisors

Having the right policies and procedures in place are only effective if employees are aware and properly trained on them. Being able to demonstrate proper training will also be an important part of a company’s defense in the event of litigation. Moreover, Cal/OSHA regulations specifically require training.

The regulations mandate that effective training be provided to all supervisory and nonsupervisory employees before they begin work that involves a risk of heat-illness exposure and must address:

- The types of heat illness and common symptoms, the environmental and personal risk factors for heat illness, the importance of frequent consumption of water, the importance and methods

of acclimatization, the importance of immediately reporting symptoms of heat illness, the risk that heat illness can progress quickly, and appropriate first aid.

- The company's procedures for complying with heat-illness standards, such as provision of water, shade, cool-down rests, access to first aid and prohibition on retaliation for employees exercising their rights.
- The company's procedures for responding to signs or symptoms of possible heat illness, including the provision of emergency medical services, procedures for contacting emergency medical services or transporting employees to an emergency medical service provider, if necessary; and procedures for ensuring clear and precise directions to the work site are provided to emergency responders, if needed.

Additional training is required for supervisors, and must address how supervisors are to implement the heat-illness prevention procedures; the procedures for supervisors to follow when an employee exhibits signs or reports symptoms of possible heat illness, including emergency response procedures; and how to monitor weather reports and how to respond to hot weather advisories.

Cal/OSHA guidance explains that training should be provided at the time of hire, with refresher training as needed, preferably close in time to the hot season. The training should be given in the language employees understand. In the event of an inspection, Cal/OSHA inspectors will ask employees questions to determine if training has been provided and to gauge its effectiveness.

Records of the training must be maintained for at least one year, as required for injury and illness prevention training generally.

5. Inspect Work Sites

Employers should inspect their work sites to ensure they actually comply with Cal/OSHA standards and the company's policies and procedures. In particular, this inspection should address the following:

- **Shade:** Each outdoor work site must provide sufficient shade. When the temperature is above 80 degrees, established shade areas must be provided that are large enough to accommodate the amount of employees who might be taking cool-down, rest or meal breaks at any given time, and they should be as close as practicable to where employees are working. When the temperature does not exceed 80 degrees, employers must still provide timely access to shade when requested. Where a shade structure or other continuous shade is infeasible or unsafe, alternative methods for shade that provide equivalent protection may be used. Also, except in the agricultural industry, cooling measures other than shade (such as misting machines) may be used in lieu of shade if they are at least as effective.

- Water: Outdoor work sites must have sufficient supplies of cool drinking water, as close as practicable to where employees are working.
- Observation and communication: Effective means of observation and communication with employees are needed at each work site. If relying on electronic communication, such as cellphones, they should be tested to ensure that reception is reliable.
- Directions to work site: In the event of an emergency, clear and precise directions to the work site need to be provided to emergency responders. Employers should make sure that clear directions are readily available for each work site, especially if the work site is remote or temporary and employees may not be as easily able to give directions.

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