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NECA HEAT ILLNESS RULEMAKING

In the Fall of 2022 OSHA initiated a formal rulemaking to develop a comprehensive occupational health standard to protect against the hazard of heat illness in US workplaces with the issuance of an Advanced Notice of Proposed Rulemaking. A link to OSHA's ANPRM is here: [Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#). The ANPRM explains that OSHA is commencing this rulemaking to protect workers from hazardous heat conditions in both outdoor and indoor settings as climate change increases the intensity of heat-related events and endangers the lives of millions of employees with growing frequency.

While this is just the beginning of a multiple-year rulemaking process, development of a heat illness standard is among the highest rulemaking priorities of the Biden Administration. Based on OSHA's average timeframe for promulgating occupational safety and health standards, a final standard most certainly will not be completed during this presidential term, however, if President Biden is reelected or succeeded by another Democrat in 2024, the likelihood of OSHA significantly advancing the effort to finalize and issue a comprehensive heat illness standard is high.

At this stage of the rulemaking, the full scope and content of a heat standard has not yet been determined, however, the ANPRM provides insight into the likely contours of a proposed rule, including the agency's current plan to cover indoor settings under the standard. OSHA seems committed to covering indoor heat settings based at least in part on a five-year analysis of enforcement data indicating that while 80 percent of heat-related fatalities occur as a result of exposure to outdoor heat, the majority of non-fatal heat-related illness cases occur in indoor work environments.

OSHA is now in the process of reviewing over 1000 public comments submitted on the ANPRM, and is also receiving input from a new Heat Injury and Illness Prevention Work Group formed by the National Advisory Committee on Occupational Safety and Health to provide recommendations on the elements of a regulatory standard (and also to help develop compliance assistance tools for industry). In addition to the question of whether the standard should cover indoor work environments, a review of the comments in the docket suggests that some of the more challenging and potentially controversial topics for OSHA to address include: (1) whether and how individual personal risk factors increasing vulnerability to heat stress and illness (e.g., weight, medical conditions, recent alcohol consumption, etc.) should be addressed in the rulemaking; (2) how and what metrics and thresholds should be set to trigger application of the requirements of a heat standard (e.g., heat index, ambient temperature, wet-bulb globe temperatures, etc.); (3) whether any type of biomonitoring should be included in the standard; (4) whether and how regional differences should be taken into account in determining appropriate interventions and protocols required by a standard; (5) how acclimatization should be addressed in a standard, including

whether the NIOSH-recommended “rule of 20%” should be adopted whereby workers acclimatize by working 20 percent of the normal duration of work on their first day in hazardous heat conditions, increasing their work duration by 20 percent on each subsequent day until performing a normal work schedule). These among numerous other topics present critically important issues on which employers who will be covered by a heat standard should provide thoughtful comment as the rulemaking process unfolds.

Regardless of how the above topics are addressed, it is almost assuredly the case that the proposed heat illness rule will include the following key components:

- Requirement for a written heat illness prevention program
- Some form of mandated engineering (e.g., air conditioning; shade tents or areas; cooling rooms) and administrative controls (e.g., changes to workload/schedule, work-rest cycles, self-pacing; required rest breaks)
- Sufficient and readily available potable water supplies
- An acclimatization plan for new or returning workers
- An emergency response plan
- Training for employees and supervisors
- Possibly some form of exposure monitoring

Upon completion of the review of the ANPRM docket, OSHA will take its next steps in the rulemaking process, including the development of a health risk assessment and technological and economic feasibility evaluations. These evaluations and assessments will drive the contents of the standard. While ANPRM docket is now closed, employers will have further opportunity to submit comment to OSHA on the pros and cons of a regulatory standard to address heat illness, and the terms, scope and content of that standard. We will continue to keep you apprised of developments in this area and believe it is important for the industry to actively participate in this rulemaking.

Contact us if you have any questions about this development.

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