WHEN HOT IS TOO HOT: WORKPLACE SAFETY CONSIDERATIONS FOR EMPLOYERS AS THE TEMPERATURES CLIMB

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US Labor, Employment, and Workplace Safety Alert

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According to the Bureau of Labor Statistics, since 2011, over 400 workers in the United States have died from environmental heat exposure,[1] while thousands of other workers suffered from medical conditions related to occupational heat exposure. As large sections of the United States continue to experience soaring temperatures for extended periods, employers, especially those with workers in industries prone to heat-related illnesses, should be mindful of certain workplace safety obligations under federal and applicable state law. Below is an overview of those obligations as well as some practical tips to help protect workers from hazardous heat exposure.

BACKGROUND

With much of the country experiencing prolonged or extreme heat waves, including areas with temperatures over 100 degrees Fahrenheit for multiple weeks, there is a heightened focus on the prevention and abatement of heat hazards. Workers who are exposed to extreme heat can suffer from occupational illnesses and injuries, such as heat stroke, heat exhaustion, heat cramps, or heat rashes, as well as burns from steam or hot surfaces. Further, exposure to heat can increase the risk of workplace injuries due to decreased fine motor dexterity, fogged safety goggles, sweaty grips, and dizziness. Workers with underlying conditions such as heart disease, high blood pressure, diabetes, or obesity may be more prone to suffer from heat-related illnesses. Certain industries have a higher incidence of heat-related injuries and illnesses, including those in agriculture, construction, manufacturing, and mining. Moreover, many workplaces previously unaffected by extreme heat may be in areas where higher than average temperatures are forecasted for a significant period of time. Therefore, all employers should be aware of the risks that exposure to high heat may pose to their workforce.

APPLICABLE WORKPLACE STANDARDS

Under the General Duty Clause of the Occupational Safety and Health Act,[2] employers are required to provide a work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” The General Duty Clause has been interpreted to extend to heat-related hazards that are likely to cause death or serious bodily harm. Additionally, Washington, Minnesota, and California, which have Occupational Safety and Health Administration (OSHA)-approved State Plans, have specific laws governing occupational heat exposure, with Minnesota's plan also applying to indoor places of employment. California's Heat Illness

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Prevention Program regulation applies to all outdoor employment; however, a heat illness prevention program for indoor employment is in development.

Other OSHA standards may come into play for heat-related hazards in the workplace. For example, the personal protective equipment (PPE) standard[3] requires every employer to perform a hazard assessment to ascertain the appropriate PPE to be used to protect workers from the identified hazards. Additional industry-based regulations apply for shipyard employers,[4] maritime,[5] and construction.[6] Employers must also record[7] certain work-related injuries and illnesses, and report to OSHA all work-related fatalities within eight hours and all work-related inpatient hospitalizations within 24 hours,[8] including cases involving heat-related hazards or illnesses. Finally, employers should review OSHA standards on sanitation,[9] which require provision of and access to drinkable water, and medical services and first aid,[10] which require that in the absence of nearby medical facilities, on-site personnel must be adequately trained to administer first aid.

OSHA HAZARD ALERT AND NATIONAL EMPHASIS PROGRAM

In light of increasing temperatures and in response to President Biden's 27 July 2023 statement on protecting workers and communities from extreme heat, OSHA issued its first ever heat hazard alert on 27 July 2023 (Hazard Alert), reminding employers of their obligations to safeguard workers from hazards associated with high temperatures. The Hazard Alert builds on actions taken by OSHA in 2022 in connection with President Biden's Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad” and the US Department of Labor (DOL) Climate Action Plan, which established a goal of reducing heat-related illnesses. In April of 2022, OSHA expanded on its heat-related illness and injury prevention initiative by announcing a National Emphasis Program (NEP) directed at Outdoor and Indoor Heat-Related Hazards.[11] This targeted enforcement mechanism encourages early interventions by employers to prevent illnesses and deaths among workers during high-heat conditions, such as working outdoors in a local area experiencing a heat wave. The industries that are identified for targeted enforcement under the NEP include construction and transportation industries, as well as ranching/farming, manufacturing, waste management, warehousing, delivery operations, food production, laundry services, landscaping, oil and gas well operation, and skilled nursing.

The NEP will prioritize on-site response for complaints and for all employer-reported hospitalizations (i.e., severe injury reports) related to heat hazards. Additionally, pursuant to the NEP, OSHA will open or refer a heat-related inspection for any heat hazards reported or noted in an OSHA 300 log or 301 Incident Report and will mandate programmed inspections on days where there is heat warning or advisory for the local area. The NEP notes that based on National Weather Service (NWS) guidelines, “[w]hen the heat index is 80°F or higher, serious occupational heat-related illnesses and injuries become more frequent, especially in workplaces where unacclimatized workers are performing strenuous work (e.g., intense arm and back/lifting work, carrying, shoveling, manual sawing, pushing and pulling heavy loads, and walking at a fast pace), without easy access to cool water, or cool/shaded areas, when working in direct sunlight or areas where other radiant heat sources are present.”[12] For reference, acclimatization is a “process by which a person gradually increases their exposure time to hot environmental conditions, causing beneficial physiological changes by properly regulating body temperature that minimizes heat-related illnesses.”[13] Employers should be aware that heat-related injuries and fatalities could occur with a heat index below 80 F, especially when aggravating factors are present, including poor air quality. Further, in areas of the United States where extreme heat is less common, unacclimatized

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workers may suffer more serious heat-related illnesses even where there is no official heat or NWS weather warning.

EMPLOYER BEST PRACTICES

Employers with a workforce that is exposed to heat or has a higher incidence of heat-related illness should consider the following actions to reduce high-heat exposure and heat-related hazards in the workplace:

- Train workers on heat-related hazards including heat stress, and for new or returning workers, acclimatize them by gradually increasing their workloads, offering them more frequent breaks, and monitoring them for signs of heat-related illness;
- Provide workers with shorter or modified shifts, reduce the level of strenuous physical activity on high-heat days, and provide adequate shade for outdoor workers;
- Encourage workers to wear breathable, light-colored, and where not a safety hazard, loose-fitting clothing;
- Schedule strenuous work for morning hours when the temperatures tend to be lower;
- Provide employees with and encourage them to take more frequent breaks in indoor areas;
- Encourage employees to stay hydrated;
- Train supervisors on identifying symptoms of heat-related illness;
- Increase air circulation and maintain lower indoor temperatures for indoor workers; and
- Be aware that workers may seek accommodations under federal and state law for underlying conditions that may prevent them from performing certain essential functions during periods of high heat.

If a worker appears to be suffering from heat-related exposure, best practices include:

- Taking heat-related illness complaints seriously and not prejudging or discounting complaints as being unrelated to heat exposure;
- Calling 911 or getting the worker immediate medical care;
- Staying with the worker until medical care arrives;
- Taking the worker to an area where the worker can cool down while awaiting medical care, such as an area that is air-conditioned or at least out of direct sunlight; and
- Taking steps to cool the worker immediately while awaiting medical care, including removing excessive clothing, placing ice or wet towels on areas where large blood vessels are close to the surface such as head, neck, armpits, and groin, or putting the employee in cold water or an ice bath.

Finally, employers should also be mindful of air quality ratings, as poor air quality, especially when combined with higher temperatures, can increase the potential for worker illness and injury. The DOL issued a news release on 9 June 2023 in connection with the Canadian wildfires in an effort to assist US employers to protect workers. Citing

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the risk of significant disease and other medical conditions that can arise following exposure to wildfire smoke, including lung, heart, and kidney disease as well as respiratory infections, the news release provided the following recommendations for employers with employees working in outdoor environments:

- Regularly monitoring air quality conditions;
- Relocating or rescheduling work tasks to areas that are smoke free;
- Reducing levels of strenuous physical activity, such as heavy lifting, pulling, and loading;
- Increasing the frequency of and requiring breaks away from smoky areas for workers when possible;
- Where feasible, permitting and accommodating employees so they can perform work indoors where there are functioning HVAC systems or high-efficiency air filters; and
- Even if not required by the position, providing or allowing for the voluntary use of National Institute for Occupational Safety and Health-approved respirators. Employers are reminded that when permitting the voluntary use of respirators, employers must provide employees with the advisory information in Appendix D of OSHA's Respirator Protection Standard (available here).

The lawyers of K&L Gates' Labor, Employment, and Workplace Safety practice regularly counsel clients on a wide variety of issues related to workplace safety and are well positioned to provide guidance and assistance to clients on this significant development.

FOOTNOTES

[1] Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, 36 work-related deaths due to environmental heat exposure in 2021, https://www.bls.gov/opub/ted/2023/36-work-related-deaths-due-to-environmental-heat-exposure-in-2021.htm.

[2] 29 U.S.C. § 654(a) (2022).

[3] 29 C.F.R. § 1910.132(d) (2022).

[4] 29 C.F.R. § 1915.152 (2023).

[5] 29 C.F.R. § 1917.95 (2023).

[6] 29 C.F.R. § 1926.28 (2023) and 29 C.F.R. § 1926.95 (2023).

[7] 29 C.F.R. § 1904 (2023).

[8] 29 C.F.R. § 1904.39 (2023).

[9] 29 C.F.R. § 1910.141 (2023), 29 C.F.R. § 1915.88 (2023), 29 C.F.R. § 1917.127 (2023), 29 C.F.R. § 1918.95 (2023), 29 C.F.R. § 1926.51 (2023) and 29 C.F.R. § 1928.110 (2023).

[10] 29 C.F.R. § 1910.151 (2023), 29 C.F.R. § 1915.87 (2023), 29 C.F.R. § 1917.26 (2023), 29 C.F.R. § 1918.97 (2023), and 29 C.F.R. § 1926.50 (2023).

[11] *See*, United States Department of Labor, National Emphasis Program – Outdoor and Indoor Heat-Related

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Hazards, https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf

[12] *Id*. at 4.

[13] *Id*.

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