



Heat of the Moment: What Employers Need to Know About Nevada OSHA's Latest Proposed Heat Safety Rule and 10 Steps You Can Take to Protect Your Workers

Insights

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Employers in the Silver State may soon be required to implement a number of measures aimed at safeguarding employees from heat-related illnesses. The Nevada Occupational Safety and Health Administration (Nevada OSHA) is developing a new heat safety rule that would impose duties on employers of employees exposed to working conditions that may cause occupational exposure to heat illness, which could include heat cramps, heat rash, heat exhaustion, fainting, and heat stroke. The agency recently sent the draft regulation to state lawmakers for approval with an eye towards putting it in place before summer 2025 – but there are still 10 steps you should take this summer to protect your workers.

Why Was the New Heat Rule Proposed?

The new proposed rule – sent to state lawmakers on June 17 – comes on the heels of 127 heat-related complaints that Nevada OSHA received last month alone. It's the latest attempt to adopt a Nevada-specific heat illness regulation, after a proposed rule aimed at protecting workers exposed to temperatures at or above 90 degrees failed to pass during last year's legislative session.

The new rule coincides with federal OSHA's emphasis on heat-related protections for workers. Just last week, the federal agency announced the first-ever national heat stress rule aimed at protecting workers from heat-related illnesses and fatalities. This follows federal OSHA launching a National Emphasis Program (NEP) for Outdoor and Indoor Heat-Related Hazards in 2022. Nevada OSHA adopted the Heat NEP in a modified form in May 2022, and the program will remain effective until April 2025 – unless it is canceled, modified, or a state-specific heat illness regulation is adopted.

Who's Covered by the New Heat Rule?

The new heat rule would apply to private businesses, the state government, and local government employers whose employees are exposed to indoor and outdoor working conditions “that may cause occupational exposure to heat illness.” However, state law prevents the rule from applying to workers:

- performing household domestic service;

- working in motor vehicles operating on public highways; or
- those regulated by the Federal Mine Safety and Health Act, the Federal Safety Appliance Act, or the Federal Railroad Safety Act.

The proposed rule defines “occupational exposure” as “any working condition that creates the reasonable likelihood that heat illness could occur.” This includes but is not limited to:

- air temperature;
- relative humidity;
- radiant heat from the sun and other sources;
- conductive heat from the ground and other sources;
- the movement of air;
- the severity and duration of workloads; and
- protective clothing and personal protective equipment worn by an employee.”

“Heat illness” is defined as “a medical condition resulting from the body’s inability to cope with a particular heat load and includes, without limitation, heat cramps, heat rash, heat exhaustion, fainting and heat stroke.”

Exceptions for Small Employers and Climate-Controlled Environments

Employers with fewer than 11 employees do not have to comply with the rule’s more onerous provisions concerning written job-hazard analyses, safety programs, and training programs. Employers of any size whose employees work indoors in a climate-controlled environment, including vehicles with properly functioning air conditioners, are also exempted from the written safety, training, and job-hazard analysis requirements discussed below.

What Will the New Rule Require?

Nevada OSHA’s proposed heat safety rule contains several measures designed to protect workers from excessive heat hazards in both indoor and outdoor worksites. These measures aim to identify, monitor, prevent, and respond to working conditions that may cause heat illness. Here’s a breakdown of the proposed rule’s most significant requirements.

Hazard Analysis

Employers that are required to have a written safety program under state law – i.e., employers with more than 11 employees – must make a one-time documented job hazard analysis (JHA) to assess working conditions that may cause occupational exposure to heat illness.

The JHA must be completed before a job task is first performed or materially changes, and without regard to employee access to water, rest, or shade. It must include:

- a list of all job classifications in which the majority of employees in those job classifications have occupational exposure for more than 30 minutes of any 60-minute period, not including breaks; and
- a list of all tasks and procedures or groups of closely related tasks and procedures in which occupational exposure may occur and that are performed by employees in the aforementioned job classifications.

“Designated Individual” and Heat Safety Program

If the JHA determines employees may be exposed to hazardous working conditions that may cause heat illness, employers must:

- Identify a “Designated Individual” to monitor conditions that could cause heat illness; monitor the employee to determine whether medical attention is necessary; contact emergency medical services when needed; and, in an emergency, ensure that emergency medical services are contacted and that all necessary information, including employee contact information, is provided to allow employees to be transported where responders can reach them.
- Amend the written safety program required by state law to address potential hazards that may cause heat illness, and implement the program in a manner that reasonably mitigates the risk of heat illness to affected employees.
- The amended written safety program must require:
 - An adequate supply of potable drinking water in all places of employment;
 - Rest periods for employees who are exhibiting signs of heat illness;
 - Means of cooling;
 - Training;
 - Identification and mitigation of work process which may generate additional heat or humidity;
 - Procedures for responding to an emergency; and
 - To the extent practicable, monitoring by a Designated Individual of working conditions that could cause heat illness. However, monitoring is not required while an employee loads or unloads a vehicle.

Training Program

For those employees identified in the JHA, the new rule would require employers to provide a training program which enables each employee to recognize the hazards of heat illness and shall train each employee in the procedures to be followed in order to minimize those hazards.

What's Next?

As noted above, federal OSHA just proposed a national heat standard last week. If that standard is adopted, Nevada OSHA would have to ensure its rule is “at least as effective” as federal OSHA’s rule. However, we don’t expect the federal rule to take effect until the first half of 2025 by the earliest.

In the meantime, Nevada OSHA will continue to enforce heat safety through its broad General Duty Clause, which requires employers to furnish a workplace free from recognized hazards which may cause or are likely to cause death or serious physical harm.

10 Steps Employers Should Take to Protect Workers this Summer – and Beyond

Regardless of the fate of Nevada OSHA’s proposed rule, here at 10 steps you can take to protect your workers from heat-related injuries and illnesses.

1. **Plan ahead.** Draft a prevention program to mitigate against heat-related injuries and illnesses. Conduct a hazard analysis of all of your job duties or positions that could involve exposure to extreme heat, including an analysis of outdoor and indoor workspaces.
2. **Train your workers.** Provide training to all of your workers on how to prevent heat illnesses, and make sure managers know to take the lead when it comes to spotting potential problems and ensuring compliance.
3. **Don't take risks.** Provide medical screening for all workers who will work in high-heat settings.
4. **Keep an eye out.** Designate someone at each worksite to monitor worker health and conditions on days of extreme heat. You may also consider requiring a buddy system on hot days and enforcing a procedure for employees to report heat stress symptoms.
5. **Let them rest.** Provide unscheduled rest breaks and require work/rest periods. It’s difficult to quantify specific breaks for specific scenarios in states covered by federal OSHA, so a best practice is requiring rest breaks of up to five minutes in shade every hour, or 10 minutes every two hours, when temperatures are above 87.8°F.
6. **Provide water.** Provide unlimited, easy access to cool water. OSHA has indicated that employees should drink 4 to 6 ounces every 15 to 20 minutes, but no more than 1 quart/hour and 12 quarts/24 hours.
7. **Offer cover.** Provide access to shaded areas and cooling fans. Provide hats for outdoor workers in the sun.
8. **Be flexible.** Consider changing start times and days during a project to avoid high-heat hours. Or consider rotating crews of workers to minimize work during the hottest hours.
9. **Get your workers ready.** Require an acclimatization period for workers not used to working in the heat. This not only includes new employees but existing workers returning to heat exposure or those working during seasonal changes as the weather gets warmer. OSHA provides a full list

of detailed recommendations that you should implement for a one-to-two-week period, including guidance on work periods, rest breaks, job tasks, and more.

10. **Be prepared for the worst-case scenario.** Ensure access to first aid and prompt medical attention for symptomatic employees.

Conclusion

If you have any questions, contact the author of this insight, any member of our Workplace Safety and Catastrophe Management Practice Group, or your Fisher Phillips attorney for guidance. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on workplace safety issues.

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