

HEAT ILLNESS PREVENTION BULLETIN

We are well into the summer high heat season. It appears that, in many parts of the United States, temperatures are again setting record highs and for longer durations. Referring back to 2021 reminded everyone about the unusually high temperatures in the Pacific Northwest and the high number of fatalities associated with those high temperatures. As we learned last year high temperatures are not limited to just one area of the country. So, what does this mean for you as an employer? Whether you are in construction or general industry, unusually high temperatures will impact you, unless you operate air-conditioned manufacturing or warehouse facilities. My goal for all of my trade association clients is to keep our members apprised about significant hazards that may confront their employees and to remind them of their obligations those employees. Every employer should have as its number one goal, the safety of its workforce.

This year, 2022, OSHA has taken two big steps directed at heat illness prevention. The first step was to announce that OSHA will be proposing a new specific standard in both general industry and construction to set specific standards for employers in both industrial sectors. It is too early in the rule making process to predict how OSHA will actually move on these standards. But the second action by OSHA is well underway and that is to declare a National Emphasis Program (NEP) for heat illness prevention. In doing this OSHA has created probable cause to conduct inspections in high hazard industries for heat illness and just about all types of construction are on that list and to provide guidelines for compliance officers conducting NEP inspections. Remember that, even though we now have a heat illness prevention NEP, OSHA can still conduct compliance inspections in the case of an OSHA reportable illness or injury or an employee complaint.

OSHA began its enforcement efforts in 2012. On July 19, 2012 OSHA published a memorandum with a directive to expedite heat related inspections. It identified its goal of the swift abatement and reduction of heat related illnesses and death. This was ten years before OSHA declared the NEP for heat illness prevention. At that time compliance officers were directed to consider whether the employer was employing feasible and useful methods to correct the hazard. These were identified as provide immediate access to water, rest and shade (something OSHA still emphasizes now in 2022), have an acclimatization program, implement a work/rest schedule and provide climate controlled cool down areas.

Now that we have the NEP OSHA has added some additional points for compliance officers to look for when inspecting an employer under the NEP. They are:

1. Does the employer have administrative controls in place?
2. Is the employer using a buddy system?
3. Do workers have access to cool water?
4. Does the employer **require** hydration breaks and rest breaks?
5. How is the employer monitoring ambient temperatures and levels of work exertion?

The above do not really add very much to the instruction that were issued to compliance officers in 2012. But they do clarify the responsibilities of employers in preventing heat illness on the job site. They also appear to be more focused on the employer's responsibilities.

As I advised in the article I drafted a year ago on heat illness prevention you as the employer must remember that heat illness can be very insidious in its development and devastating in its results. Unfortunately, many employees, and some employers, do not realize the danger until it is too late. People with underlying health conditions are even more susceptible than others to heat illness and its more severe consequences. I advise you to pay close attention to the daily temperature extremes on your job sites and the heat indices which flow from them. **Remember the guidance published by OSHA focuses on the heat index at the work site, not the temperature. If you do not already have the OSHA Heat Index App on your smart phone: Heat Safety Tool/ Occupational Safety and Health Administration (osha.gov) you should download it and I advise requiring it for all site supervision. This is a free app which will enable you to become aware of the heat index at any location at which you are working. The app also provides a list of the precautions you should take to protect your employees because of the high heat index in which they are working.** The app also provides you with the symptoms employees will exhibit if they are suffering from heat related illnesses. Another link on the app will provide you with first-aid steps to take for each of these conditions.

While developing a standard OSHA OSHA continues to enforce heat illness protection through application of the General Duty Clause. As many of you are aware, this clause of the Occupational Safety and Health Act of 1970 requires employers to provide their workers with a place of employment that is free of recognize hazards that are causing or likely to cause death or serious physical harm. OSHA has been successful in enforcing the General Duty Clause against employers for heat illness prevention in all but a few cases. While I feel that your first goal should be protecting your employees not avoiding litigation citations under the General Duty Clause are problematic. General Duty Clause citations are nonnegotiable with OSHA to any classification less than Serious. Therefore, if you are cited for a heat illness protection plan General Duty Clause violation you will either have to accept it and try to negotiate a lower dollar penalty. But, if you do not want to have a serious citation on your record you will have to enter into litigation with OSHA. This can be quite expensive litigation.

The obvious answer to this dilemma is to take heat illness seriously and either download the app on your smart phone (it is a very good idea to have all of your site supervisors have the app on their smart phones also) or comply with the five steps set out in the NIOSH Criteria Document for the prevention of heat illness. If you choose not to use the app you will have to use the NOAA heat index chart (Heat Forecast Tools (weather.gov)) and cross reference the temperature and humidity to get the heat index. You will find most of the requirements of the Criteria Document on the OSHA - NIOSH heat app, but below is a short summary of those requirements:

1. Ensure that all employees new to a location with a high heat index are gradually exposed to full-duty at that location. This is called the acclimatization period and may last from 7 to 14 days, depending on the employee and his/her physical condition. Even on a low-risk jobsite, the OSHA heat app recommends acclimatizing new and returning workers. The app states that “these individuals may be at high risk for heat-related illness, even at a lower heat index.”

2. Establish a work/rest regimen for all work being performed on the site with a high heat index. If you look at the OSHA - NIOSH heat app, you will see four categories of risk which require protection for employees working in that environment. These categories range from low risk to extreme risk. The app also has a category for minimal risk but does not indicate that precautions are necessary for that category. Most employers vary their work/rest regimen based upon the heat index at any given location. I suggest to all my clients that they consult with their company physician to assist them in establishing an appropriate work/rest regimen for the different heat index categories.

3. Establish a hydration schedule. If you look at any of the four risk categories on the heat illness app, you will note that they all indicate the necessity of water and shade. In fact, OSHA urges employees to always consider water, rest and shade to protect employees from heat illness. For example, OSHA suggests for the moderate risk category that employers encourage employees to consume one eight-ounce cup of water every 15 to 20 minutes if they are going to be working in the heat for less than 2 hours. OSHA also suggests that during prolonged sweating lasting several hours, that the employer also encourage their employees to drink electrolyte drinks in addition to water. OSHA also reminds employers that employees should not consume more than six eight ounce cups of water per hour. Again, this is a topic that should be discussed with your company physician to establish the appropriate frequency and amount of hydration.

4. As I have already indicated, the fourth component of protection for the jobsite is to provide shade or a climate controlled area for employees for cooling-off periods. You should set up cool shaded rest areas with close proximity to the jobsite. OSHA also suggests that you provide shade, hats and sunscreen and encourage employees to use them when working in a high heat index environment and/or direct sunlight. There have been cases reported in which employees have been directed to go to a cooling-off area which was somewhat remote from the active jobsite and, because they were already experiencing the symptoms of heatstroke, wandered aimlessly around for a long period of time with unfavorable consequences. So, when you set up your cooling-off area, set it up close enough to the jobsite that someone can at least watch an employee heading for the cooling-off area until they get to that location.

5. The final component of the NIOSH Criteria Document for heat illness prevention is training. You should train your employees on all the illnesses that can arise from working in a high heat index environment. You should train your employees regarding the hazards of those conditions, as well as the symptoms that individuals experience in each of those conditions. Again, the OSHA - NIOSH heat app provides good information with regards to those symptoms. Your employees should also be trained in how to recognize those symptoms in themselves and others and the first-aid steps that should be taken for each of the conditions. The preceding five components

summarize what OSHA considers to be feasible steps under the General Duty Clause an employer can take to prevent heat illness in its employees.

I urge you to download a copy of the app I have been referring to in this bulletin and, with the steps outlined above, develop your own heat illness prevention program. These are the minimum steps that need to be taken to protect your employees from heat illness and its consequences. Remember, you must document each step you take as you move forward to develop your heat illness prevention program and implement it and apply it to your employees. You should document the procedures you undertake to ensure you always have adequate cool water on every jobsite. You should carefully document all training regimens you employ to educate your employees regarding the entire spectrum of heat illness prevention.

Remember, **IT IS YOUR RESPONSIBILITY** to provide a place of employment for your employees that is free of recognized hazards that are causing or likely to cause death or serious physical harm. Therefore, you **SHOULD NOT** just train your employees and then leave it up to them to comply with their training. You cannot rely on your employees to ignore your heat illness prevention procedures because **THEY DO NOT FEEL THEY NEED THEM!** You **MUST** place the responsibility on your site supervisors **TO ENSURE** that **ALL** employees remain in full compliance with your heat illness prevention program whenever the heat index goes above minimal risk. Your site supervisors should constantly monitor the heat index on the site and **ENSURE** that all employees comply with the steps you have in place to protect them from heat illness for the heat index on the site (they should recognize that these safeguards may change throughout the day as the heat index changes). Employees **MUST** to understand the compliance with your work rules to prevent heat illness are as with all other safety rules not optional, but are **MANDATORY!**